



Special Report
on experiences in the implementation of
legislation governing freedom of access
to information in Bosnia and Herzegovina

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Special report on experiences in the implementation of legislation governing freedom of access to information in Bosnia and Herzegovina

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78 000 Banja Luka/ Akademika Jovana Surutke 13
e-mail: bl.ombudsmen@ombudsmen.gov.ba
www.ombudsmen.gov.ba

Authors:

Ombudspersons of Bosnia and Herzegovina:

Prof.dr. Ljubinko Mitrović

Jasminka Džumhur, PhD

Nives Jukić, dipl. iur.

Working group:

Jasminka Džumhur, Coordinator

Alma Suljić, Assistant Ombudsman

Irma Hadživdić, Assistant Ombudsman

Dita Maglica, Ombudsman Advisor

Technical redaction:

Dragan Perić, Head of IT Department

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1 Introduction

The right to access to information is considered to be one of the basic prerequisites for the building of a democratic society. An effective system for the exercise and protection of the right to access to information is a mirror reflecting the accountability and transparency of the authorities. The citizens must be allowed, through effective mechanisms, to raise various issues of public interest.

Involvement of the public in the decision-making process should be based on the principles of transparency and openness of public bodies, which enhances citizens' trust in public authorities thus realizing the communication between citizens and public authorities in both directions.

In Bosnia and Herzegovina, this area is governed by legislation adopted at the state and entity levels, which is not fully harmonized with international human rights instruments, which causes weaknesses in its practical implementation, as identified by international experts, among others.

Ombudspersons of Bosnia and Herzegovina, acting within the powers laid down in the Law on Human Rights Ombudsman of Bosnia and Herzegovina and applicable legislation on free access to information, in resolving complaints relating to the violations of the right to free access to information and conducting *ex officio* investigations, have also noted the shortcomings of positive legislation governing this issue, but also the difficulties and inconsistencies in its implementation, both on the part of public authorities and natural and legal persons requesting information.

As a result, Ombudspersons decided to draft a special report on experiences in implementation of legislation governing the free access to information in Bosnia and Herzegovina in order to find facts related to this issue.

During the preparation of this Special Report, Ombudspersons of Bosnia and Herzegovina have reviewed the international human rights instruments guaranteeing the right to free access to information, positive legislation of Bosnia and Herzegovina, procedures implemented by the Ombudsman in this regard, and conducted a comprehensive survey of the conduct of public authorities at the level of Bosnia and Herzegovina and Herzegovina, entities, cantons, municipalities, and towns.

Recommendations were issued to the competent public authorities intended to result in unconditional adherence to the international standards in the area of free access to information, and the establishment of an effective legislative and institutional system for the exercise and protection of the right to free access to information, if implemented.

2 International standards

In most of international documents, free access to information is integrated as a part of the right to freedom of expression. For instance, Article 19 of the *Universal Declaration on Human*

*Rights*¹ provides the following:

„Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

Furthermore, Article 19 of the *United Nations Covenant on Civil and Political Rights*² grants the following guarantees:

„1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”

Cited documents guarantee the individuals the right to seek, receive and impart information of any kind regardless of the form in which the information is produced, thereby recognizing the right to access information as an indivisible part of freedom of expression.

United Nations Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, so-called *Aarhus Convention*³ is based on the need to protect, preserve and improve the environment and to ensure sustainable and environmentally sound development, and the right of the individual to live in an environment adequate for human health and well-being, and the duty to protect and improve the environment for the benefit of present and future generations. In this context, the Aarhus Convention stipulates that individuals, in order to exercise this right and respect this duty, must have access to information, have the right to participate in decision-making, and have access to justice in environmental matters.

Out of the documents adopted by the Council of Europe, because of its position in the legal system of Bosnia and Herzegovina, certainly the most important is the *European Convention on Human Rights and Fundamental Freedoms*⁴, which, in its Article 10 provides the following

¹ Universal Declaration of Human Rights, adopted by the United Nations General Assembly, Resolution 217/III on 10 December 1948

² United Nations Covenant on Civil and Political Rights, adopted by General Assembly Resolution 2200A (XXI) on 16 December 1966. Entered into force 23 March 1976

³ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, entered into force 30 October 2001, ratified in Bosnia and Herzegovina on 15 September 2008

⁴The European Convention on Human Rights and Fundamental Freedoms was signed in Rome on 4 November 1950 by twelve Council of Europe member states and entered into force on 3 September 1953

guarantees:

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

Article 10 of the European Convention on Human Rights and Fundamental Freedoms has a number of mutually linked objectives. The protection of freedom of expression is considered to promote social welfare as well as the well-being of individuals and is a prerequisite for an effective democratic system. The European Court of Human Rights in its jurisprudence has taken the opinion that freedom of expression is one of the essential foundations of a democratic society and one of the basic conditions for its progress and self-realization of each individual. The primary objective of Article 10 is to provide protection against the arbitrary interference of public authorities with a person's right to freedom of expression.⁵

*The Council of Europe Convention on Access to Official Documents (CETS 205)*⁶ is based on the following principles: the importance of transparency in the work of public authorities in a pluralistic, democratic society, that the right of access to official documents: provides a source of information for the public and helps the public to form an opinion on the state of society and public authorities, strengthen the integrity, efficiency, effectiveness and accountability of public authorities, helping to affirm their legitimacy. The preamble to the Convention states that all documents are in principle public and can only be denied in the case of protection of other rights and legitimate interests.

The Council of Europe Committee of Ministers has issued several recommendations to Member States, including the following:

- a) *The Council of Europe Committee of Ministers Recommendation No. R (81) 19 on access to information held by public authorities:*⁷

⁵ Freedom of expression and right to privacy under the European Convention on Human Rights, The Aire Centre, p. 11

⁶The Council of Europe Convention on Access to Official Documents (CETS 205), adopted on 18 June 2009; The Convention was preceded by the adoption of recommendation no. R (81) 19 of the Council of Ministers to Member States on access to information held by public bodies, the Declaration of the Council of Ministers of the Council of Europe on freedom of expression and information, and Council of Europe Recommendation R (2002) 2 on access to official documents

⁷ Recommendation R (81) 19 The Committee of Ministers of the Council of Europe adopted on 25 November 1981, at the 340th meeting of the Vice Ministers

„ Everyone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities. “

- b) *Recommendation No. R (91) 10 of the Committee of Ministers to Member States on the communication to third parties of personal data held by public bodies*,⁸ provides that the principles contained in the recommendation apply to automatic processing of personal data collected by public authorities which may be communicated to third parties. Member States may extend the scope of this recommendation to include information relating to groups, companies, associations, etc., whether or not they have the status of a legal person, as well as personal data in a non-automated form. The communication of personal data or personal data files to a third party should not be done: a) unless otherwise provided by a separate law; or b) if the public, under legal provisions governing access to public sector information, does not have access to that information; or c) if the communication does not comply with national data protection laws; or d) if the data subject has not freely and knowingly consented to it.

In addition to the above documents, it is important to mention *the Committee of Ministers Recommendation to Member States No. R (97) 18 on the protection of personal data collected and processed for statistical purposes*⁹ and *Recommendation of the Committee of Ministers to Member States No. R (2000) 13 on a European policy on access to archives*.¹⁰

3 Legislation in Bosnia and Herzegovina

The right of access to information in Bosnia and Herzegovina is governed by laws adopted at the state and entity levels. The Law on Free Access to Information in Bosnia and Herzegovina¹¹ (hereinafter: LFAI BiH) was adopted in 2000, while the Law on Free Access to Information of the Federation of Bosnia and Herzegovina¹² (hereinafter: LFAI FBiH) and Law on Freedom of Access to Information of Republika Srpska¹³ (hereinafter: LFAI RS).

In Brčko District of BiH, in force is the Instruction on Application of the Law on Free Access to Information of Bosnia and Herzegovina¹⁴ which governs the issues that should contribute to more effective implementation of the Law on Free Access to Information in Bosnia and

⁸ Recommendation of the Committee of Ministers to Member States No. R (91) 10, The Committee of Ministers adopted the Recommendation on 9 September 1991 at the 461st meeting of the Vice Ministers

⁹ Recommendation of the Committee of Ministers to Member States No. R (97) 18, The Committee of Ministers adopted the Recommendation on 30 September 1997 at the 602nd meeting of the Vice Ministers, available at: <https://rm.coe.int/16806846ca>

¹⁰ The Committee of Ministers adopted the Recommendation on 13 July 2000

¹¹ Law on Free Access to Information in Bosnia and Herzegovina “Official Gazette of Bosnia and Herzegovina”, No: 28/00, 45/06, 102/09, 62/11 and 100/13

¹² Law on Free Access to Information of the Federation of Bosnia and Herzegovina, “Official Gazette of the Federation of Bosnia and Herzegovina“, Nos. 32/01 and 48/11

¹³ Law on Free Access to Information of the Republika Srpska, „Official Gazette of Republika Srpska“, no. 20/200

¹⁴ Instructions for the Implementation of the Law on Freedom of Access to Information of Bosnia and Herzegovina (“Official Gazette of the BD BiH No. 36/04)

Herzegovina, in the Brčko District of BiH, and address the issues that contribute to the proper implementation of that Law, and to determining the costs of copying the information.

Bosnia and Herzegovina was the first country in the region to adopt these pieces of legislation, which contained very progressive solutions at that time. With the passage of time and the development of the Internet and electronic media, the content of the right of access to information has developed significantly, which created the need to upgrade existing legislation.

LFAI BiH underwent a couple of amendments responding to the above need.¹⁵ The most significant amendments to the Law related to prescribing the obligation to adopt a decision on a request for access to information, penal provisions, and prescribing the competence of the administrative inspectorate in cases of non-compliance with the provisions of the said Law.

LFAI FBiH was amended only once¹⁶ in part related to the obligation to adopt a decision on a request for access to information and in part related to a second-instance body that makes decisions on appeals from the decisions. LFAI RS has not been amended so far.

3.1 Initiatives for legislative amendments

The Personal Data Protection Agency of Bosnia and Herzegovina, in its 2011 Annual Report addressed to the Parliamentary Assembly of Bosnia and Herzegovina, initiated the adoption of the amendments to the Law on Free Access to Information of Bosnia and Herzegovina. The Council of Ministers of Bosnia and Herzegovina, acting upon the conclusion of the Parliamentary Assembly of Bosnia and Herzegovina which adopted the Annual Report of the said Agency, decided to initiate the procedure for amending the Law on Free Access to Information of Bosnia and Herzegovina, in order to comply with the Council of Europe Convention on Access to Official documents (CETS 205). Following the establishment of a Working group¹⁷, the Ministry of Justice of Bosnia and Herzegovina drafted the Amendments to the Law on Free Access to Information of Bosnia and Herzegovina, to which more than 200 objections of non-governmental organizations and international institutions operating in Bosnia and Herzegovina have been submitted. The Ombudsman of Bosnia and Herzegovina also submitted comments on the draft. Discussion about the comments never took place, and the Working group never resumed its work thereafter, so the amendment process was suspended.

After that, in 2016, the Ministry of Justice of Bosnia and Herzegovina opened a new public consultation process on the draft Law on Free Access to Information in Bosnia and Herzegovina.¹⁸ Ombudspersons of Bosnia and Herzegovina also gave their objections and comments to the wording of pre-draft of the Law. The proposed wording of the Law provides for the current Law on Free Access to Information of Bosnia and Herzegovina to be repelled, the public interest test would be expelled, and such a provision poses a potential risk of possible

¹⁵ Amendments to the Law on Free Access to Information of Bosnia and Herzegovina published in the Official Gazette of BiH “No. 45/06, 102/09, 62/11 and 100/13

¹⁶ Amendment to the Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina published in the Official Gazette of the Federation of Bosnia and Herzegovina ” No. 48/11

¹⁷ There were no representatives of the Ombudsman in this Working group

¹⁸ Available at: <http://www.mpr.gov.ba/aktuelnosti/vijesti/default.aspx?id=5605&langTag=bs-BA>

misuse and denial of disclosure of information in the public interest. Furthermore, the wording of the draft law was also deficient because it failed to proclaim the right of access to information as a guaranteed human right, protected by a series of international documents, starting from the European Convention on Human Rights, which, according to the Constitution of Bosnia and Herzegovina, has direct application in Bosnia and Herzegovina. A part of the Ombudsman's competences is also omitted.¹⁹

The mentioned concerns were the reason for holding *Taiex - IPA, ENI -Taiex expert mission on "Improving the right of access to information in Bosnia and Herzegovina"*²⁰, in the period 7 - 9 February 2018. The Taiex mission included three experts in the relevant field²¹ who submitted their Report²² to the Ministry of Justice of Bosnia and Herzegovina having completed the mission. The experts presented their suggestions and recommendations in order to meet the stated objective. In the report, the experts pointed out, inter alia, to the following:

„We would like to note that although the experts could speak to the government officials and the civil society representatives during this mission, we did not have good information on the Law implementation. Indeed, this lack of information is something we have raised as a concern with the government officials we have met, because knowing how the implementation of the Law is going on is absolutely necessary for drafting well-tailored recommendations. In other words, the information we have received indicate to a number of practical obstacles in implementation, many of which can be addressed by improving the specifics and details of the legal framework. We have concluded that there is a clear need to improve the current Law in order to comply with international standards, especially those in the European Union, as well as those in the Western Balkans, since it is the first law adopted in this field. Subsequent amendments are not sufficient to meet this aim. We have noticed that the draft amendments are well-intentioned and would generally improve the Law, but they are not sufficiently comprehensive and do not provide necessary clarifications, and have failures in terms of introducing the sufficient or appropriate instruments for the protection of the right of

¹⁹ 2016 Annual report on the results of the activities of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina p. 28-29, available at:

https://www.ombudsmen.gov.ba/documents/obudsmen_doc2017032310003163bos.pdf

²⁰ Expert report, „Improving the right of access to information in Bosnia and Herzegovina “ of 19 February 2018

²¹ Helen Darbshire, Access to Information / Open Government Partnership, Anamarija Musa, Information Commissioner, Croatia / Faculty of Law, Zagreb University, Croatia, Zoran Luša, Ministry of Administration, Department E-Croatia, Croatia

²² The expert report contains an assessment of the compatibility of the legal framework of Bosnia and Herzegovina with international standards governing the freedom of expression. The experts held that the current Law on Free Access to Information in Bosnia and Herzegovina is too complex, especially after a series of changes, which resulted in wording to be incomprehensive. The report specifically underlines the complexity of the complaint mechanisms, lack of clarity of the legal framework, as applicants may appeal to a second instance body within a public body that has decided on a request for access to information or to the Appeals Chamber of the Council of Ministers of Bosnia and Herzegovina, following a complaint to the Ombudsman and the courts. The Law does not adequately regulate the monitoring over the Law implementation especially from the institutional mechanism aspect. Comparative experience shows that the implementation of the Law is significantly improved when monitoring of its implementation is envisaged in the Law, as well as other measures that contribute to the implementation, including the training and also the sanctions. Experts concluded that there was a need to improve the current Law in order to bring it into line with international standards, especially those of the European Union and the Western Balkans, since the amended wording of the original Law is not sufficient to reach that goal.

access to information. The revised legal framework should have a sound legal basis, administrative procedures, monitoring mechanisms and the promotion of the right.”

It is also important to mention the activities of the Organization for Economic Co-operation and Development (OECD) and the European Union (SIGMA) - Support for Improvement in Governance and Management²³. Its key objective is to strengthen the foundations for improved public governance, and hence support socio-economic development through building the capacities of the public sector, enhancing horizontal governance and improving the design and implementation of public administration reforms, including proper prioritisation, sequencing and budgeting.²⁴

In January 2019, SIGMA published a document entitled "*Improving the Legislative Framework for Access to Public Information in Bosnia and Herzegovina*" containing a comprehensive analysis of the legislation on access to public information in Bosnia and Herzegovina at the level of Bosnia and Herzegovina in the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of BiH. The analysis focuses on the compliance of relevant laws with international standards and international best practices in this area, followed by recommendations on possible amendments to increase transparency of public authorities and harmonize standards of access to information across the country. The recommendations issued relate to the lack of provisions governing the proactive publication of information, the weak institutional framework for monitoring the application of legislation on access to public information, and the shortcomings in the process of accessing information on request.

Considering the mentioned documents as an important starting point for the future direction of the adoption of new legislation in the field of right of access to information, the Annex of this report comprises a detailed overview of the recommendations resulting from the Taiex - IPA, ENI - Taiex expert mission on "*Improving the right of access to information in Bosnia and Herzegovina*" a recommendation of a joint initiative of the Organization for Economic Co-operation and Development (OECD) and the European Union (SIGMA), published in the

²³ Public administration reform is defined as one of the three pillars for the success of the accession to EU membership in addition to the rule of law and economic governance, making it one of the key pre-requisites for the EU membership for the period 2014-2016. In 2014, the OECD/SIGMA developed the Public Administration Principles, which created the basis of the activities of the European Commission's in the area of public administration reform. The principles define what good governance entails in practice and outline the main requirements that countries need to meet within the EU accession process. Although the general criteria for good governance are universal, these Principles are created for the countries aspiring to join the EU and receiving the EU assistance through the Instrument for Pre-Accession Assistance (IPA). The Acquis' requirements, as well as other EU guidelines and instructions, are the core of the Principles in the areas where the Acquis is implemented. In other areas, the Principles are derived from international standards and requirements, as well as good practices in EU Member States and/or the Organization for Economic Co-operation and Development (OECD). As a minimum indicator of good governance, countries should ensure compliance with these fundamental principles. The purpose of the Principle, therefore, is to assist EU accession countries in identifying challenges and weaknesses in the functioning of public administration and in planning the changes required. Also, based on the Principles, the European Commission will measure progress in countries. The principles of public administration are common to BiH and six countries: Serbia, Macedonia, Albania, Kosovo, Montenegro and Turkey. Although the Principles are not binding, they are designed to guide good governance and fulfill the requirements of EU integration. The principles relate to: the strategic framework for public administration reform, policy making and coordination, civil service and human resources management, accountability, service delivery and financial management in the public sector. The document contains 19 key requirements from which a total of 48 principles are derived.

Information available at <http://rju.parco.gov.ba/sigma-principi/>

²⁴ Available at: <http://www.sigmaweb.org/about/>

document “*Improving the legislative framework for access to public information in Bosnia and Herzegovina*” and a comparative analysis of selected aspects of the legislative framework related to access to information.

4 Case-law of the European Court of Human Rights

Article 10 of the European Convention on Human Rights and Fundamental Freedoms guarantees freedom of expression.

Unlike Article 19 of the Covenant on Civil and Political Rights, which specifies under freedom of expression the freedom to seek, receive and impart information, Article 10 of the European Convention on Human Rights guarantees the freedom to hold opinions and to receive and impart information and ideas. Because of the way in which the freedom of expression is guaranteed by the European Convention on Human Rights and Fundamental Freedoms, the European Court of Human Rights initially took the view that the State has no positive obligation to ensure the right of access to information under Article 10 of the European Convention.²⁵ This opinion is clearly expressed in a case *Leander v. Sweden (1987)* whereby it held the following:

„The Court observes that the right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him. Article 10 does not, in circumstances such as those of the present case, confer on the individual a right of access to a register containing information on his personal position, nor does it embody an obligation on the Government to impart such information to the individual.“²⁶

The European Court of Human Rights held for a long time that Article 10 of the European Convention does not imply the obligation of the state to ensure the access to information. However, although in the cases such as *Gaskin v. the United Kingdom (1989)*,²⁷ *Guerra and others v. Italy (1998)*²⁸ and *Roche v. the United Kingdom (2005)*,²⁹ it has repeated its opinion taken in the case *Leander v. Sweden*, it nevertheless decided in favor of the applicant since it established a violation of the right to the respect for private and family life.

Since 2006, the European Court of Human Rights has modified its earlier position and for the first time in *Sdruženi Jihočeske matky v. the Czech Republic (2006)*³⁰ explicitly stating that the

²⁵ L.Ofak, the right of access to information as a right protected by the European Convention and other international human rights treaties, Compilation of papers of the Faculty of Law of the Rijeka University (1991) v. 37, no. 2, 936-942 (2016)

²⁶ *Leander v. Sweden*, Application no. 9248/81, 26 March 1987, par. 74

²⁷ As a baby, Graham Gaskin ended up in a nursing home where he spent his entire childhood to adulthood. Gaskin claimed that he had been abused during his time in custody and had requested access to his file from the social services in Liverpool. However, this insight was only partially provided to him, as the competent authorities, including the national court, considered that allowing the insight would jeopardize the rights of informants who provide information to the social service

²⁸ In the case *Guerra and others v. Italy* they were Italian nationals who lived approximately one kilometer from a chemical plant that posed a high environmental risk and were not provided with relevant information by the Italian public authorities on the hazards of that plant or the procedure envisaged in the event of an accident

²⁹ In the case *Roche* it was about a soldier exposed to chemical tests, that is, took part in chemical weapons testing (nerve gas) which caused his illness therefore he wanted the access to information about these tests.

³⁰ The case involved an ecologist NGO seeking access to documents relating to a nuclear power plant. Access was denied.

refusal of access to information by the Czech authorities meant interference with the right to receive information³¹. In doing so, the Court provided the following reasoning:

„In the present case, the applicant requested permission to consult administrative documents available to public authorities and which were accessible under the conditions laid down in Article 133 of the Law on Construction, which the applicant challenged. In these circumstances, the Court acknowledges that the refusal to do so constituted an interference with the applicant's right to receive information.“³²

The first decision of the European Court of Human Rights finding a violation of Article 10 of the European Convention in respect of a violation of the right of access to information was made in the case *Társaság a Szabadságjogokért v. Hungary* (2009)³³

In its decision the European Court of Human Rights pointed out that the Court has recently advanced towards a broader interpretation of the notion of “freedom to receive information” and thereby towards the recognition of a right of access to information. The importance of the judgment is that the European Court extended the traditional protection of the media as "public watchdogs" to NGOs which it considers as "social watchdogs". The ruling establishes an obligation on the state not to prevent the flow of information required for public debate on matters of public concern, and considers that obstacles created to prevent access to information of public interest may discourage those working in the media or related areas from engaging in such matters.³⁴

This was followed by a series of decisions by the European Court of Human Rights finding a violation of Article 10 of the European Convention: *Kenedi v. Hungary* (2009),³⁵ *Inicijativa mladih za ljudska prava v. Serbia* (2013),³⁶ *Österreichische Vereinigung zur Erhaltung,*

³¹ L.Ofak, L.Ofak, the right of access to information as a right protected by the European Convention and other international human rights treaties, Compilation of papers of the Faculty of Law of the Rijeka University (1991) 37, no. 2, p. 938 (2016)

³² *Sdružení Jihočeské Matky v. the Czech Republic* (Dec.), no. 19101/03, 10 July 2006

³³ The applicant is an association dealing with the drug-related policies. In March 2004 a Member of Parliament (“the MP”) and other individuals lodged a complaint for abstract review with the Constitutional Court. The complaint requested the constitutional scrutiny of some recent amendments to the Criminal Code which concerned certain drug-related offences. The Civil Liberties Union Társaság requested the Constitutional Court to grant them access to the complaint pending before it, but the Court denied the request explaining that it could not be made available to outsiders without the approval of its author.

³⁴ L.Ofak, L.Ofak, the right of access to information as a right protected by the European Convention and other international human rights treaties, Compilation of papers of the Faculty of Law of the Rijeka University (1991) 37, no. 2, p. 938 (2016)

³⁵ *Kenedi v. Hungary*, Application no. 31475/05, 26. May 2009: The applicant, a historian, asked the Ministry of the Interior for access to certain documents as he wished to publish a study on the functioning of the Hungarian State Security Service in the 1960s. After his request had been refused on the grounds that the documents were classified as State secrets until the year of 2048, the applicant obtained an order from a regional court for unrestricted access after successfully arguing that it was necessary for the purposes of his ongoing historical research. Following the failure of its appeal to the Supreme Court, the Ministry offered access on condition that the applicant signed a confidentiality undertaking. The applicant refused and instituted enforcement proceedings in October 2000. However, following repeated court applications and appeals by the Ministry on various grounds, the applicant had still not been given unrestricted access to all the documents concerned

³⁶ *Youth Initiative for Human Rights v. Serbia*, Application no. 48135/06, 25 June 2013: The Youth Initiative for Human Rights (NGO) asked the Security Intelligence Agency to access information about the number of people who were electronically monitored by that agency in 2005. The agency first denied the request, invoking the applicable legal provisions governing the state, official or other secret. Based on the complaint of the Initiative, the

Stärkung und Schaffung eines wirtschaftlich gesunden land und forstwirtschaftlichen Grundbesitzes v. Austria (2013)³⁷ and *Guseva v. Bulgaria* (2015).³⁸ In the above cases, the European Court of Human Rights deliberated on the violation of the right of access to information. It is quite certain that the case law of the European Court of Human Rights in the future will greatly contribute to and improve the way in which the legislation in the subject area in Bosnia and Herzegovina is interpreted.

5 The Institution of Human Rights Ombudsman of Bosnia and Herzegovina and free access to information

Pursuant to the Law on Ombudsman³⁹ and in accordance with the provisions of the and applicable legislation governing the free access to information⁴⁰ the Ombudsman deals with complaints related to violation of the right to free access to information, conducts investigations *ex officio* and also has the mandate to prepare and dispatch the guides and general recommendations relating to the implementation and application of laws in this field. Ombudspersons regularly, on an annual basis, report to the Presidency of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, the Parliament of the Federation of Bosnia and Herzegovina and the National Assembly of Republika Srpska⁴¹ describing the activities of the Ombudsman Institution, information related to the implementation of legislation governing freedom of access to information with recommendations the implementation of which should improve the situation in this field.

Information Commissioner decided that the Agency had violated the provisions of the Law on Free Access to Information of Public Importance and ordered the Agency to allow the complainant access to the requested information. The Agency finally informed the Initiative that it did not possess the requested information

³⁷ *ÖVESSG v. Austria*, Application no. 39534/07, 28. November 2013: ÖVESSG is an Austrian NGO, the Association for the Preservation, Strengthening and Creation of an Economically Sound Agricultural and Forestry Land Ownership and the impact of these transactions to the society. The association has asked the Tyrolean Real Estate Commission to give it access, by mail, to all decisions it has made since January 1, 2000. The association was prepared to offset the cost of sending the decisions. However, the Commission refused access to the requested information, arguing that the anonymized decisions did not constitute information within the meaning of Article 1 (2) of the Access to Information Act. The Commission also argued that providing information (anonymizing decisions and delivering them) would require so much resources that this would affect the exercise of the Commission's public authority. The Administrative Court dismissed the complaint on the ground that it did not have jurisdiction over the present action against the Commission decision, and the Constitutional Court upheld the Commission's decision

³⁸ *Guseva v. Bulgaria*, Application no. 6987/07, 17 February 2015: The applicant is a member of the Management Board of the Society for the Protection of Animals in Vidin, Bulgaria. Between April 2002 and June 2003, she submitted three requests to the Mayor of Vidin for access to information related to the treatment and treatment of stray animals. The mayor declined to provide the requested information, on the grounds that the contracting company had not given his consent to release the information and that some of the information was related to the procurement process. The applicant eventually obtained three judgments from the Supreme Administrative Court in her favor. However, since it had not received the requested information despite the judgments, it had applied to the European Court of Justice

³⁹ The Law on Human Rights Ombudsman of Bosnia and Herzegovina („Official Gazette of Bosnia and Herzegovina”, no. 32/00, 19/02, 34/05 and 32/06)

⁴⁰ BiH Law on Free Access to Information (“Official Gazette of BiH”, no. 28/00, 45/06, 102/09, 62/11 and 100/13, FBiH Law on Free Access to Information „ Official Gazette of BiH of FBiH“, no. 32/01 and 48/11, and Republika Srpska Law on Freedom of Access to Information „ Official Gazette of Republika Srpska“, no. 20/01

⁴¹ Article 34 and 35 of the Law on Human Rights Ombudsman of BiH, “Official Gazette of BiH”, no. 19/02, 35/04, 32/06

Analysis of the data from the central database and looking at other records kept by the Ombudsman, it can be concluded that since 2015 there has been a clear increase in the number of complaints in this area (Chart 1).

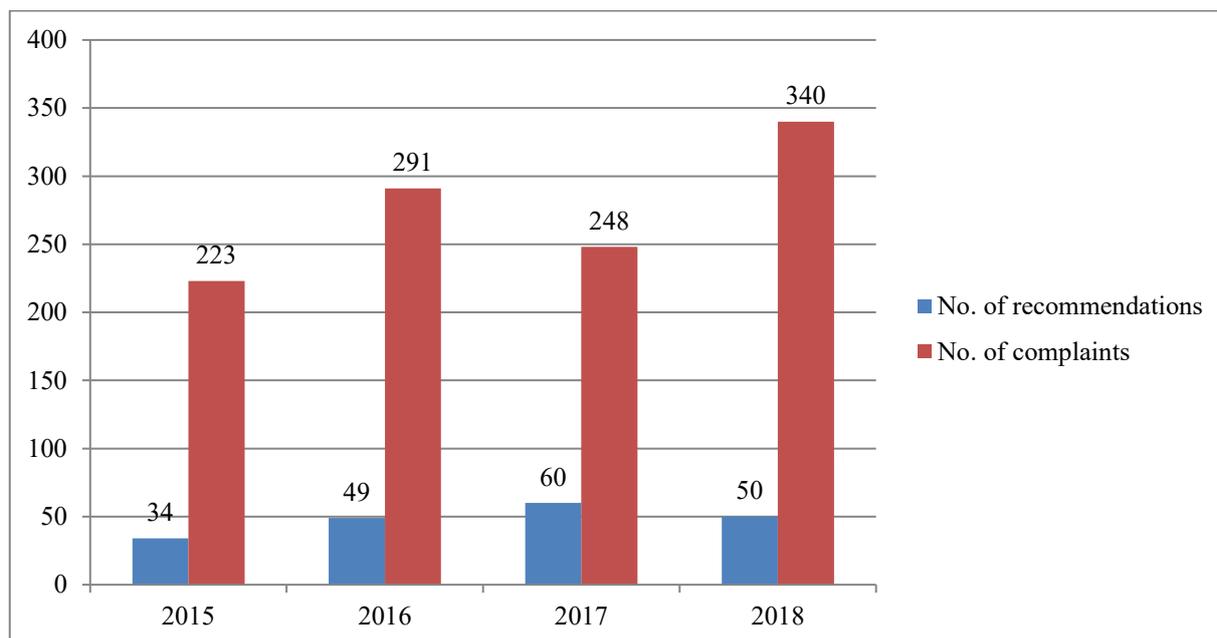


Chart 1 – Overview of complaints related to Law on Free Access to Information compared to the issued recommendations in the period 2015-2018

The increase may be the result of several factors: more frequent violations of the right of access to information by public authorities in Bosnia and Herzegovina, better information of citizens on the mechanisms of protection of the right of access to information, but also the result of the activities of the Ombudsman, as a body that monitors the implementation of the legislation on free access to information in Bosnia and Herzegovina.

The role of the media in promoting the mentioned laws is also not small, especially given the fact that, due to the lack of specific media laws, the media themselves use the laws on free access to information in BiH as a tool for obtaining information for public reporting purposes.

Complaints lodged to the Ombudsman are in two categories: those relating to the institutional flaws and those relating to the gaps in legislation.

Implementation of Law on Free Access to Information by the public authorities is accompanied by obvious weaknesses: delay in decision-making process in the first and second instance, making decisions lacking all the elements prescribed by law (introduction, disposition, reasoning, legal remedy), formal compliance with the requirement, without ensuring real access to information, the practice of public authorities to refuse access to information, by invoking the personal data protection reasons, that is, the commercial interests of third parties, without conducting a public interest test. In some cases, public authorities do not meet their obligation to act on a request for access to information received.

When it comes to complaints arising from the weaknesses in legislation the role of Administrative Inspectorate of the Ministry of Justice of Bosnia and Herzegovina under the BiH Law on Free Access to Information should be underlined⁴². This Law granted to the Administrative Inspection of the Ministry of Justice to carry out inspection surveillance over the implementation of this Law. These amendments enabled any physical or legal entity to file a request to the Administrative Inspection seeking protection of the right to free access to information when a public body denies them access. Introduction of this type of protection creates more confusion among the citizens requesting access to information from public authorities. Citizens often address all different institutions while failing to use available legal remedies and therefore miss a deadline for initiation of an administrative dispute, which makes this mechanism inefficient in practice.

Furthermore, the entity level legislation does not include sanctions. All the matters not governed by this Law, the Law on Administrative Procedure of the Federation of BiH, or the Law on General Administrative Procedure of Republika Srpska is applied.⁴³

The provisions of the Law on Free Access to Information of Republika Srpska stipulate that a party should be informed of granting or denial of access to information by a "letter", which does not have the character of an administrative document. Such a legal solution puts in question one of the basic principles of the administrative procedure, which is the availability of two instances, or the right to appeal, which was corroborated in a judgment by the Regional Court in Banja Luka.⁴⁴

⁴² Law on Amendments to BiH Law on Free Access to Information „Official Gazette of BiH”, no. j 100/13;

⁴³ Article 25 paragraph 1 of the FBiH Law on Free Access to Information and Article 25 paragraph 1 of the RS Law on Free Access to Information.

⁴⁴ Regional court in Banja Luka in its judgment no 11 0 U 014027 14 U dated 18 February 2015 held the following: *" In present case, the court indicates to the fact that the authority has the mandate to refuse access to information in whole or in part, and to inform the applicant accordingly, as foreseen by Article 14, paragraph 3 of the Law on Free Access to Information, but such notification, reading this provision in its entirety, must contain a) the legal basis for the exemption of information, mentioning the concrete invoked articles of this Law, as well as all material issues relevant to the decision, including taking into account public interest factors, and b) information to the applicant of the right to appeal to a specific authority, including the necessary contact information about this authority, the deadline for filing the appeal, as well as the costs of filing the appeal, which the above letter no. 24.010/054-3-7114 dated 21 February 2014 by the general labor inspector does not contain at all. However, although the complainant has not been instructed on the right to appeal and the appellate authority, the plaintiff initiates a lawsuit against the respondent authority by registered mail dated 10 March 2014, which further means that the responsible authority (which does not question its jurisdiction as long as it drafts its "response to appeal"), must make an appropriate decision, which must certainly be made in the form of a decision, as stipulated by the provisions of Articles 194, 197, paragraphs 2 and 3 in conjunction with Article 230, paragraph 1 of the Law on Administrative Proceedings. Namely, it is not enough to draft a letter and call it a "response on appeal", as the responsible authority did, perhaps in an effort to avoid conducting an administrative dispute, which is not possible, since the adopted decision definitely constitutes a final administrative decision act within the meaning of Article 7 of the Law on Administrative Disputes, as the court has already stated. Therefore, a letter called "response to appeal" cannot constitute a valid decision on appeal as it can only be a decision, which contains, among other mandatory elements, a disposition resolving the appeal (which can be rejected, refused or upheld), and the reasoning stating the reasons for the decision rendered on appeal, which was all missing in the present case in the challenged document and it can reasonably be said that it contains deficiencies which prevent the assessment of its legality, while, in this respect, the understanding of the plaintiff that his appeal was refused is also irrelevant, since the challenged document does not contain a decision on his appeal."*

In resolving citizens' complaints⁴⁵ related to enjoyment of rights in accordance with the existing free access to information laws, it was noted that citizens frequently asked various questions expecting to get answers, but such questions do not constitute public information within the meaning of the Law on Free Access to Information.

Ombudspersons are unable to establish with certainty whether such requests are submitted because citizens are uninformed or with an intention to abuse the Law on Freedom of Access to Information. In dealing with such cases, the Ombudsmen have taken a clear stance that laws clearly define information within the meaning of that Law.

Access to information within the meaning of applicable legislation implies access to already existing and complete information, i.e. information that exists in material form and does not imply a duty of public authorities to answer questions and interpret regulations.

Ombudspersons suggest that all the citizens have the right to access information under the existing legislation, and there is no doubt about it, but the fact that one citizen in the period from 2010 to 2015 lodged as many as 60 complaints related to freedom of access to information point to a possible misuse of the Ombudsman Institution in order to exert pressure on certain public bodies.⁴⁶

In their annual reports on the results of the activities of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina Ombudspersons indicate to the responsible authorities to the need to amend the relevant legislation and redress the detected flaws.⁴⁷ These are the following recommendations:⁴⁸

- In order to ensure more efficient implementation, the National Assembly of Republika Srpska, should consider possibilities for amending the RS Law on Freedom of Access to Information in a part related to notification of requestors about granting or denying them access to information, to define that institutions shall be obliged to issue a decision, instead of sending a notification letter⁴⁹
- The Parliamentary Assembly of Bosnia and Herzegovina, the Parliament of the Federation of BiH and the RS National Assembly should consider possibilities for amending the relevant laws on freedom of access to information in a part pertaining to granting of access to information, so that the obligation of institutions includes information on legal remedy;
- The Civil Service Agency of the Federation of BiH and the RS Civil Service Agency to ensure continuous training for information officers, which should include information about their obligations pursuant to the laws on freedom of access to information.

⁴⁵Ž-SA-1197/15, Ž-SA-05-1095/15, Ž-SA-05-778/15

⁴⁶ Ž-SA-05-1182/10, Ž-SA-05-351/11, Ž-SA-05-1330/12, Ž-SA-05-623/13, Ž-SA-05-494/14, Ž-SA-05-1099/15 etc.

⁴⁷ <https://www.ombudsmen.gov.ba/Dokumenti.aspx?id=27&tip=1&lang=BS>

⁴⁸ 2015 Annual report on the results of the activities of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, https://www.ombudsmen.gov.ba/documents/obudsmen_doc2016041515322172bos.pdf

⁴⁹ This recommendation was repeated in 2016 Annual report on the results of the activities of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, https://www.ombudsmen.gov.ba/documents/obudsmen_doc2017032310003163bos.pdf

To illustrate the above, there follow a couple of examples of complaints lodged by the citizens:

Example: In deciding on a request to access to information whereby the complaints⁵⁰ requested from the Public Company Elektroprivreda (Electric Power Utility) of Bosnia and Herzegovina d.d. Sarajevo – Termoelektrana (Thermal Power Plant) Tuzla Branch the copies of meat purchase contracts concluded with a private company, but this public body decided to decline access to information invoking the commercial interest of a third party. The complainants appealed this decision, but it was refused. In deciding on this request the first-instance authority neither conducted the public interest test in accordance with Article 9 of the Law on Free Access to Information of the Federation of Bosnia and Herzegovina to assess the possible benefits and damages that could arise from disclosure of requested information, nor it established exceptions pursuant Articles 6 – 8 of the mentioned Law, but applied provisions of a rulebook, which is a legislative act with less legal power than the Law on Free Access to Information in this particular case so that the access to information was denied as it was declared to be an official secret. The second-instance body dismissed the appeal on the basis of an exception related to commercial interests of a third party although the procedure under Article 7 of the Law was not conducted, nor the type of commercial interest allegedly jeopardized in this case was specified.

On 28 December 2017 Ombudsman issued their recommendation no. P-328/17 recommending to the public body to cancel issued decisions and issue the new ones granting the access to information as requested, and to harmonize its decisions and its Rulebook on official secret with the provisions of Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina.⁵¹

Example:⁵² The Civil Service Agency of the Federation of Bosnia and Herzegovina received a request for access to documentation of the selected candidates who won the public competition for the positions in semi-open Sarajevo Prison under numbers 03 Expert Associate for Security Issues and 04 Expert Associate for Convicted Persons Treatment Planning and Development. The first-instance body granted the complainant access to a part of the documentation, but refused her access to „*individual Panel members points given to the candidates at oral part of examination for the positions under 03 and 04 and documents of the selected candidate V.K.*“ In part related to access to documents of the selected candidates the first-instance body refused it claiming that it contains personal data and therefore asked the candidates for their consent, which one of them refused to give thus the complainant could not have the access to it. This standpoint was corroborated in a second-instance body’s decision by which the complainant’s appeal was quashed as ill-founded.

Ombudspersons have issued a recommendation to the Civil Service Agency of the Federation of Bosnia and Herzegovina⁵³ to cancel both decisions and adopt a new one granting access to information and to appoint the information officer with a power to issue first-instance decisions

⁵⁰ Ž-SA-05-929/17

⁵¹ On 02 April 2018 the Ombudsman received a letter of Elektroprivreda no. 01-06-9111/18 dated 30 March 2018 in which it was said that Elektroprivreda would render disputed decisions null and void in sense of conducting the public interest test and return it to a new decision-making procedure, but the part of the recommendations relating to the harmonization of of the Rulebook on official/trade secret and Decision on free access to information was not implemented since the public body persisted on its conviction that the case at hand involved an official secret

⁵² Ž-SA-05-1125/17

⁵³ No. P-1/18 of 04 January 2018

on requests for access to information thus ensuring the existence of two-instances in administrative proceedings.⁵⁴

Example:⁵⁵ The complainants addressed the Municipal Court in Modriča on 25 April 2017 with request to access to information. Since they did not receive any answer in legally provided deadline, on 16 May 2017 they addressed it again, but in vain and never received an answer until the date of addressing the Ombudsman.

After the investigation, Ombudspersons of Bosnia and Herzegovina issued to the Municipal Court of Modriča their recommendation⁵⁶ asking it to *grant access to requested information with no further delay pursuant to the provisions of Law on Freedom of Access to Information in Republika Srpska in compliance with this recommendation of the Ombudsman.*

On 21 September 2017 the mentioned court informed the Ombudsman in their letter no. 086-0-Su-17-000-491 that it granted access to information to the Ombudsman's complainants based on their decision no 086-0-Su-17-000-268.

5.1 Recommendations of the Ombudsman of Bosnia and Herzegovina

As an institution with a specific mandate under the legislation governing the free access to information, which in part relates to the supervision over the implementation of the Law on Free Access to Information, the recommendations of the Ombudsman of Bosnia and Herzegovina have a dual role. On the one hand, they have a corrective role, which involves elimination of the perceived violation of the right of access to information. Ombudsman's recommendations, on the other hand, often include opinions and interpretations of the Law on Free Access to Information that seek to educate the public authorities on the effective and proper implementation of the above-mentioned legislation in order to prevent further violation of the right to access to information.

Below is an overview of a part of a recommendation which illustrates the above.⁵⁷

„III Opinion of the Ombudsman of Bosnia and Herzegovina

The Law on Human Rights Ombudsman of Bosnia and Herzegovina stipulates that Ombudspersons of Bosnia and Herzegovina may react when they reasonably suspect that the manner in which the law and international human rights and fundamental freedoms protection instrument have been applied leads to unfair results.

Ombudspersons of BiH remind of Article 4 of the Law on Free Access to Information of the Federation of Bosnia and Herzegovina, which prescribes the right of every natural and legal person to have access to information, as well as the obligation of every public body to disclose information in its possession. This right may be restricted only in the manner and under the

⁵⁴Civil Service Agency of the Federation of Bosnia and Herzegovina replied in a letter no. 06-34-8-225-82/17 of 30 January 2018 claiming that the complainant *sued the Agency because of the deletion of the mentioned decisions and initiated administrative proceedings before the Cantonal court in Sarajevo and that after the finishing of these proceedings the Agency would inform the Ombudsman on the measures taken in respect of the Ombudsman's recommendation.*

⁵⁵Ž-BL-05-381/17

⁵⁶No. P-206/17 of 27 July 2017

⁵⁷No Ž-SA-05-1233/18, recommendation no.: P-225/19

conditions laid down in the provisions of the Law on Free Access to Information of the Federation of BiH, and the competent authorities are obliged to take all necessary actions in order to communicate the requested information held by the competent authority.

An illustrative case processed by the Ombudsman can be summarized as follows:

The complainant submitted to the public authority three requests for access to information, requesting information regarding the work of the Senate, as well as decisions and minutes of the meetings of the Scientific and Educational Council, the documents originating from 2005 and 2008. The complainant also sought information on persons who, during a specifically indicated period, performed the duties of the Senate members. The Dean of the public authority made decisions on all the requests granting to the complainant the direct access to the documents. Some information was not provided because it did not exist in its original form. The Dean of the public authority also made decisions on the appeals from his original decision and rejected it as ill-founded.

Ombudspersons of Bosnia and Herzegovina established that the same instance made decisions on requests and appeals, and that the public authority in question does neither have a guide to access to information nor an index-register and an appointed information officer. Asked about reasons for these failures, the Dean mentioned lack of funds for hiring an information officer.

As for the concrete solutions on access to information in this case the Ombudsman does not deal with the merits of the reached decisions. However, it has to indicate to the the fact that the public body is not authorized to assess whether or not the access to information would be granted by means of personal direct access (insight) to requested documents or providing the copies of it. The legislator's intention is clearly expressed in Article 14 paragraph 2 of Law on Freedom of Access to Information which reads as follows:

(2) If access to the information is granted, either in whole or in part, the competent authority shall notify the requester in writing thereof. This notice shall: inform the requester that the information is available for access in person at the premises of the competent authority; and b) inform the requester whether duplication is possible, the cost of the duplication, and that the duplication shall be provided to the requester upon payment. Where the duplication of the information is unusually complex or time-consuming, the duplication shall be provided to the requester at a time mutually acceptable to the requester and the competent authority; and/or include duplication of the requested information where it can be supplied at no cost as provided for under Article 16.

A decision granting access to information must include information about the possibility of insight and duplication of information, or in another option the requested information should be enclosed to the decision. If the complainant has indicated how s/he wishes to access the information, the public authority is obliged to act within the requested boundaries. On the other hand, merely granting access to the documentation or information requested does not constitute the ultimate goal of exercising the right of access to information

Apart from this, when a public authority refuses access to information, it must first establish

the possible exceptions within the meaning of Articles 6, 7 or 8 of the Law on Free Access to Information of the Federation of Bosnia and Herzegovina. Establishing exceptions does not necessarily mean that access to information will be denied, but rather that the public authority should carry out a public interest test, which serves as a balance in assessing the reasons for granting or refusing the access to information. The reasons for the decision must include a description of all the facts and reasons guiding the public authority to make its decision on request. Merely invoking an article of the law providing for an exception does not meet the purposes of Article 14 of the Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina.

As it comes to Information Officer, it should be noted that Article 19 of the Law on Free Access to Information of the Federation of Bosnia and Herzegovina prescribes the obligation of all public authorities to appoint an Information Officer, who will process requests for access to information, as well as the obligation to refer its decision on appointment to the Ombudsman. In this regard, it should be emphasized that the most of public authorities give the authority to their information officers, in the exercise of their duties within the meaning of the Law on Freedom of Access to Information of Bosnia and Herzegovina, to make decisions in the first instance. In such a situation, the appeal against the Decision should be filed with the head of that authority, as required by Article 14, paragraph 4 of the Law.

At the same time, the Law does not specify that the job description of this officer only has to comprise processing of requests for access to information. As far as the Ombudsman knows, information officers in most public bodies are persons who, in addition to their regular tasks, perform the tasks of processing requests for access to information. Thus, the justification that a public authority does not have sufficient material resources to employ a person to carry out the afore mentioned jobs as a valid reason for not appointment. This also applies to the obligation of having a guide for access to information and an index-register, as well as a form for lodging a request for information. "

6 Situational analysis

With the aim of establishing the facts regarding the implementation of the legislation governing the free access to information in Bosnia and Herzegovina, the Ombudsman sent a questionnaire to 70 public authorities of Bosnia and Herzegovina, 46 public authorities of the Federation of Bosnia and Herzegovina, 69 public authorities of Republika Srpska, 26 public bodies of the Brčko District of BiH and 184 public bodies in the cantons.⁵⁸ The questionnaire was also sent to the addresses of 30 municipalities/towns in the Federation of Bosnia and Herzegovina ⁵⁹ and 22 municipalities/towns ⁶⁰ in Republika Srpska.⁶¹

⁵⁸ The questionnaire is attached as Annex 1 to this Report as well as the list of all institutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the cantons, Republika Srpska, Brčko District of Bosnia and Herzegovina to which it was sent.

⁵⁹ Bihać, Bosanski Petrovac, Cazin, Orašje, Domaljevac-Šamac, Odžak, Zenica, Doboju Jug, Tešanj, Goražde, Pale-Prača, Foča, Tuzla, Teočak, Živinice, Travnik, Dobretići, Bugojno, Mostar, Ravno, Čapljina, Široki Brijeg, Grude, Ljubuški, Sarajevo, Trnovo, Novi Grad Sarajevo, Livno, Bosansko Grahovo and Tomislavgrad.

⁶⁰ Banja Luka, Bijeljina, Brod, Višegrad, Gacko, Gradiška, Derвента, Zvornik, Han-Pijesak, Kneževno, Kotor-Varoš, Modriča; Ljubinje, Laktaši, Mrkonjić-Grad, Nevesinje, Prijedor, Sokolac, Srebrenica, Teslić, Trebinje and Šipovo.

The questions in the questionnaire were about the implementation of this Law, in particular as it comes to exceptions from disclosure of information, conducting the public interest test, fulfillment of obligations under the Law in respect of the appointment of information officers, the adoption of guides and index-registers, preparation of periodic reports, and the definition of obstacles related to the implementation of legislation. The questionnaire sent to the public authorities is part of Annex 1 to this Special Report.

The Ombudsman received responses from 36 public authorities of Bosnia and Herzegovina, 28 public authorities of the Federation of Bosnia and Herzegovina, 40 public authorities of Republika Srpska, including the towns and the municipalities, 9 public authorities of the Brčko District of BiH and 63 public authorities in cantons, including the towns and the municipalities.

Hereby are presented the opinions of the public authorities which replied to the Ombudsman.

6.1 Exemption for confidential commercial information

Where a competent authority reasonably determines that a request for access to information involves the confidential commercial interests of a third party, the competent authority shall forthwith notify the third party in writing of the specifics of the request and inform the third party that the disclosure of the information is imminent unless the third party, within 15 days from receipt of the notice, responds in writing that it considers the information to be confidential and gives reasons as to why harm would result from disclosure. Upon receipt of such a response, the competent authority shall claim an exemption.⁶²

6.1.1 Exemption for confidential commercial information – public authorities in Bosnia and Herzegovina

An analysis of the responses provided by the public bodies in Bosnia and Herzegovina shows that most public authorities have no experiences related to requests for access to information involving commercial interests of third parties, so that the Ombudsman could not know how they would act upon the receipt of a request containing the above information.

Some public bodies replied that in mentioned cases they asked a third party's consent under Article 7 LFAI BiH.⁶³

Directorate for European Integration of Bosnia and Herzegovina⁶⁴ and Bosnia and Herzegovina Mine Action Center⁶⁵ in their replies claim that they have no experiences related to requests for

⁶¹ The total number of municipalities in Bosnia and Herzegovina is 143, 79 of which in the Federation of Bosnia and Herzegovina and 64 in the Republika Srpska. The questionnaire was sent to the municipalities and towns of the Federation of Bosnia and Herzegovina (canton headquarters, larger administrative units according to the 2013 census and the smallest canton municipality), and in Republika Srpska an equal number of towns according to the 2013 census were taken as the target sample.

⁶² Article 7 of the Law on Free Access to Information of Bosnia and Herzegovina, Article 7 of the Law on Free Access to Information of Republika Srpska, Article 7 of the Law on Free Access to Information of the Federation of Bosnia and Herzegovina

⁶³ Ministry of Defense of BiH, Indirect Taxation Authority of BiH, Veterinary Office of BiH, Medicines and Medical Aids Agency of BiH;

access to information involving commercial interests of third parties, but in case that they receive such requests they would implement Article 7 of LFAI BiH.

The Ministry of Civil Affairs of Bosnia and Herzegovina replies that they have Guide for Access to Information and Index-register of information controlled by the Ministry of Civil Affairs and these documents are published on the web site of the Ministry, and that they act in accordance with these documents.⁶⁶

Foreign Investment Protection Agency (FIPA) in its reply asserts that „*most of information is not confidential and is available at the web site of the Agency*“. In case that a party – information holder opposes to its publishment, they would adopt a decision denying the access to information pursuant to Article 7 LFAI.⁶⁷

In its reply Competition Council of Bosnia and Herzegovina invokes Article 38 paragraphs (1), (2) and (3) of the Law on Competition governing the issue of official/trade secret, what is considered to be a trade secret and its keeping, and underlined that in processing the requests for access to information on different aspects of the Competition Council’s work it respects the right or the third parties to protection of confidential information and pursuant to the legal obligations in this respect, do not publish such information.⁶⁸

6.1.2 Exemption for confidential commercial information – public authorities in Republika Srpska

An analysis of the responses provided by the public bodies in Republika Srpska shows that most public authorities act in accordance with Article 7 of LFAI RS and inform the third party of the details of such requests⁶⁹, while 15 bodies reported that they do not have experience with requests for access to information involving commercial interests of third parties.

The Ministry of Finance – the Tax Administration of Republika Srpska in its letter mentions that they implement Article 4 of the Law on Tax Procedures of Republika Srpska, which is a *lex specialis*, if the requested information constitute a tax secret.⁷⁰

House of Peoples of Republika Srpska in their letter claims that „*pursuant the Rulebook of the House of Peoples of Republika Srpska, our Institution in its work does not dispose with*

⁶⁴ Directorate for European Integration of Bosnia and Herzegovina document no. 01-50-MT-1021-2/19 of 01 August 2019

⁶⁵ Bosnia and Herzegovina Mine Action Center document no. DPA/01-12-1-1056/19 of 16 August 2019

⁶⁶ Ministry of Civil Affairs BiH document received on August 2019

⁶⁷ Foreign Investment Protection Agency (FIPA) document received on 20 August 2019

⁶⁸ Competition Council of Bosnia and Herzegovina document no. 01-12-1-213-3/19 of 01 August 2019

⁶⁹ the National Assembly of Republika Srpska, the Ministry of Finance of Republika Srpska, the Ministry of Traffic and Communications of Republika Srpska, the Ministry of Family, Youth and Sports of Republika Srpska, the Ministry of Education and Culture, the Ministry of Science and Technology Development, High, the Ministry of Scientific-Technological Development, Higher Education and Information Society, the Government of Republika Srpska – the Republic Secretariat for Displaced Persons and Migrations, the Agency for Traffic Safety of Republika Srpska, Statistic Institute of Republika Srpska, Pension and Disability Insurance Fund of Republika Srpska, Banja Luka Town Administration, The Town Administration Bijeljina, the Municipality of Nevesinje, Helicopter Service of Republika Srpska, the Town Administration of Zvornika, the Municipality Laktaši...

⁷⁰ Tax Administration of Republika Srpska document no. 06/1.01../0103-052.4.-13014/2019 of 08 August 2019

confidential information described in Article 7 of Law on Free Access to Information of Republika Srpska („Official Gazette of Republika Srpska”, no. 20/01) “⁷¹

6.1.3 Exemption for confidential commercial information – public authorities in the Federation of Bosnia and Herzegovina

Replies provided by the public authorities at the level of the Federation of Bosnia and Herzegovina show that they do not have experience with requests for access to information involving commercial interests of third parties.

A few public bodies claimed that they act in accordance with Article 7 LFAI FBiH, and inform the third party of the details of the requests for access to information.⁷²

Archives of the Federation of Bosnia and Herzegovina asserts that in respect of access to information related to archive materials in their possession they act according the provisions of Article 32 Item 19 of the Law on Archives of the Federation of Bosnia and Herzegovina⁷³ which reads as follows: *"Archives of the Federation of Bosnia and Herzegovina upon request of the interested legal and physical persons shall issue certificates, confirmations, authorized copies, copies and other official documents on the facts comprised by the archives material being kept safe. Article 23 of the said Law provides for the following: „Archived documents can be used with no restrictions by the parties created it and its safekeepers for the purposes for which it was created or used”, while Article 25 provides for the following: " Archived documents kept safe in the Archives of the Federation can be studied, researched, or microfilmed with the permission of the Archive of the Federation, save for the archived documents kept safe in the Archives, but are in private ownership“.*⁷⁴

Public Institution Center for Judicial and Prosecutorial Education of the Federation of Bosnia and Herzegovina in their letter provide the following information: *„The Center granted access to information upon requests related to the amount of fees paid to the trainers of the Center from the budget of the Federation since it is convinced that the public spending should be transparent and available to the citizens...“*⁷⁵

6.1.4 Exemption for confidential commercial information – public authorities in the cantons

As mentioned before, the questionnaire was sent not only to cantonal institutions, but also to a number of the towns and municipalities. After an analysis of the received replies, it was

⁷¹ House of Peoples of Republika Srpska document no. 03.2-365/19-1 of 13 August 2019

⁷² Government of the Federation of Bosnia and Herzegovina, the Federal Ministry of Trade, Insurance Supervision Agency of the Federation of Bosnia and Herzegovina, the Federal Agro-Mediterranean Institute, Federal Administration for Inspections and the Federal Ministry of Energy, Mining and Industry

⁷³ Official Gazette of the Federation of Bosnia and Herzegovina no. 45/02

⁷⁴ Archives of the Federation of Bosnia and Herzegovina, document no. 02-48-3/1-19 of 05 August 2019

⁷⁵ Public Institution Center for Judicial and Prosecutorial Education of the Federation of Bosnia and Herzegovina, document no. 01-38-348-02/19 of 03 September 2019

established that five public bodies⁷⁶ acts in accordance with Article 7 of LFAI FBiH applying the whole procedure as foreseen in the Law. However, the most of public bodies do not have experience with requests for access to information involving commercial interests of third parties.⁷⁷

The Municipality of Travnik mention in their letter that the requests processed under Article 7 or 9 of LFAI FBiH a deadline of 15 is extended and a responsible body informs the requestor about it providing the reasons for the extension.⁷⁸ Municipality of Orašje has received a request for access to information involving confidential commercial information of the third parties and in processing of this request, the Mayor refused the requestor denying the access to information. This decision was appealed from.⁷⁹

The Ministry of Veterans of Tuzla Canton provided an example of their practice on a request from the Center for Investigative Reporting in Sarajevo to submit reports on the use of funds allocated to associations or organizations in the period 2012 to 2017. In processing of this request, the Ministry informed the relevant entities to which the request relates and sought consent to provide information, after which a decision was made.⁸⁰

Cantonal Administration for Civil Protection of the Bosnia-Podrinje Canton, in their reply argue that for all the questions mentioned in the questionnaire related to the application of the Law on Free Access to Information in the Bodies of the Administration of the Bosnia-Podrinje Canton, the Public Relations Office of Bosnia and Herzegovina - Podrinje Canton Goražde is in charge.⁸¹ Cantona Archives Travnik in its reply emphasize that they carry out their business pursuant to the provisions of the Law on Archives in Central-Bosnia Canton,⁸² as well as the Archives of Herzegovina-Neretva Canton invoking the Law on Archives of Herzegovina-Neretva Canton and

⁷⁶ Ministry for Construction, Landscaping and Environmental Protection of Una-Sana Canton, Ministry of Economy of Herzegovina-Neretva Canton, the Ministry of Interior of Sarajevo Canton, Ministry for Veterans of Herzegovina-Neretva Canton, the Ministry of Justice and Administration of Sarajevo Canton

⁷⁷ Cantonal Privatization Agency of Tuzla Canton, document no. 01-06-372/2019 of 08 August 2019, Ministry of Interior of Zenica-Doboj Canton document no. 08-01-01 / 1-02-1-3933-1 / 19 dated 2 August 2019, Ministry of Landscaping, Construction and Environmental Protection of Sarajevo Canton, document no. 05 / 01-49-30099 / 19 of 05 August 2019, Ministry of Education, Science, Culture and Sports of the West Herzegovina Canton, document no. 07-01-49-423-2 / 19 of 01 August 2019, Cantonal Administration for Civil Protection of Tuzla Canton, document no. j18 / 1-10-015778 / 19 of 6 August 2019, Ministry of Culture and Sport of Sarajevo Canton, document no. 12-10-29781 / 19 of 22 August 2019, Ministry of Health and Social Policy of the Central Bosnia Canton, document no. 03-02-455 / 19-2 of 09 August 2019, Cantonal Archives Travnik, document no. 05-48.11-126 / 19 of 09 August 2019, Ministry of the Interior of the Una-Sana Canton, document no. 05-01-05-61 / 19 of 08 August 2019, Živinice Town Administration, document no. 02 / 3-05-4386 / 19 of 19 August 2019, Roads Administration Livno, Canton 10, document no. 20-01-10-69 / 19 of 5 August 2019, the Government – the President's Office of the West Herzegovina Canton, document no. 17-72-1 / 19 of 08 August 2019, Ministry of Justice and Administration of Posavina Canton, document no. 03-05-204 / 19 of 01 August 2019, Ministry of Justice and Administration of the West Herzegovina Canton, document no. 03-02-49-587-2 / 19 of 26 August 2019, Ministry of Interior of Herzegovina-Neretva Canton, document no. 02-03 / 1-1-04-741 / 19 of 11 September 2019, Ministry of Agriculture, Forestry and Water Management of Herzegovina-Neretva Canton, document no. 11-02-1407-1 / 19 of 16 August 2019, Ministry of Labor, Health, Social Welfare of Canton 10, document no. 09-01-05-1 / 19 of 22 August 2019, Ministry of Justice and Administration of Una-Sana Canton, document no. 07-05-9068-1 / 19 of 14 August 2019, County Legal Aid Office of the West Herzegovina Canton, document no. 20-46-157-1 / 19 of 19 August 2019. The Public Relations Service of the Bosna – Drina Canton, a letter without a number and a date

⁷⁸ Municipality of Travnik, document no. 03-05-14-21-157/19 of 12 August 2019

⁷⁹ Municipality of Orašje, document no. 02-49-745/19 od 29 July 2019

⁸⁰ Ministry of Veteran of Tuzla Canton, document no. 15/1-05-015702/19 of 31 July 2019

⁸¹ Cantonal Administration for Civil Protection of Bosna-Drina Canton, document no. 17-02-174-1/19 of 20 August 2019

⁸² Cantonal Archives of Travnik, document no. 05-48-11-126/19 of 09 August 2019

the Rulebook on Terms and Methods of the Use of Archived Documents and Books in kept in the Archives of Herzegovina-Neretva Canton.⁸³

An example of acting pursuant to Article 7 of LFAI FBiH was submitted by the Ministry of Health, Labor and Social Protection of Una-Sana Canton, which, upon the receipt of a request for access to information, if the requested information includes the confidential commercial information, carries out a public interest test, assessing the different circumstances and having analysed it makes a decision.⁸⁴

6.1.5 Exemption for confidential commercial information – public authorities of Brčko District of Bosnia and Herzegovina

Asked whether or not there was any action under Article 7 of Law on Free Access to Information the Expert Service of the Brčko District of BiH Assembly, the Judicial Commission of Brčko District of BiH, Department of Public Registrar of the Government of Brčko District of BiH, the Police of Brčko District BiH, and the Securities Commission of Brčko District BiH, in their reply assert that they did not process any request for free access to information, thus they could not act under Article 7 LFAI BiH.⁸⁵

6.2 Exemption for the Protection of Personal Privacy

„A competent authority shall claim an exemption where it reasonably determines that the information involves the personal privacy interests of a third person.“⁸⁶

For decision-making on a request for access to information involving the personal privacy interests of third persons, it is very important to establish how the notion „*privacy interests of a third person*“ is understood by the public authorities. In the next chapter the Ombudsman will present the understanding of this notion by the public bodies in cases of a request for access to information involving the personal privacy interests of third persons.

6.2.1 Exemption for the Protection of Personal Privacy – public authorities of Bosnia and Herzegovina

Analysis of the received replies indicates that some institutions understand the notion of „*privacy interests of a third person*“ as personal interests⁸⁷ related to the privacy of third persons

⁸³ Archives of Herzegovina-Neretva Canton, document no. 20-01-02-114-2/19 of 29 July 2019

⁸⁴ Ministry of Health, Labor and Social Policy of Una-Sana Canton, document no. 09-05-6600-UP-1/19U of 21 August 2019

⁸⁵ Expert Service of the Municipality of Brčko District of BiH document no. 02-05-828/19 of 07 August 2019, Judicial Commission of Brčko District of BiH, document no. SuPK-1337/19 of 02 August 2019, the Government of Brčko District of BiH, Public Register Department, a letter with no number received on 09 August 2019, Police of Brčko District of BiH, a letter with no number received on 15 August 2019, Securities Commission of Brčko District of BiH, document no. 05-15.02-595/19 of 29 July 2019

⁸⁶ Article 8 of Law on Free Access to Information of Bosnia and Herzegovina, Article 8 of Law on Free Access to Information of Republika Srpska, Article 8 of Law on Free Access to Information of the Federation of Bosnia and Herzegovina

⁸⁷ Insurance Agency of BiH, document no. 02-12-233-2/19 of 06 August 2019, Intellectual Property Institute, document no. 05-12-1-554-2/19SD of 30 July 2019

as provided for in Article 8 LFAI BiH,⁸⁸ that is, the personal interests and personal data of third persons.⁸⁹ Directorate of Civil Aviation understands this notion as the data defined by the Law as „*personal information*“.⁹⁰ Veterinary Office of Bosnia and Herzegovina understands the privacy of third persons as the data of personal and business nature.⁹¹

Some of the institutions view „*privacy of third persons*“ within the context of the provisions of the Law on Personal Data Protection,⁹² while the Ministry of Defense of Bosnia and Herzegovina in its reply specifies that these are the data involving personal interests including: ID number, physical identity, economic and ethnic identity.⁹³

Information and Recognition of Documents in the Higher Education Area Center considers that personal data and information related to third party privacy are: genetic and physical information, privacy of mail, telephone conversations and other forms of communication.⁹⁴

Demining Center sees „ *privacy of third persons* “ to include the following: racial, national or ethnic origin, political opinion or party affiliation, or union membership, religious, philosophical or other beliefs, health status, genetic code, sex life, criminal convictions, biometrics, bank accounts, etc.⁹⁵

Office of Attorney General of Bosnia and Herzegovina in its reply holds that a personal information on somebody is defined by the Law on Personal Data Protection and it includes every information relating to a third person’s private life (their personal, family, business, economic and other identity).⁹⁶

Central Electoral Commission of Bosnia and Herzegovina thinks that privacy of third persons include: “*the data* relating to their ID number, physical, mental, economic, ethnic, religious or social identity,⁹⁷ while the Standardization Institute of Bosnia and Herzegovina maintains that this includes the personal information of their employees and personal data of the interested parties cooperating with the Institute.⁹⁸

The understanding of the notion “third person’s privacy” by a public authority determines the way they treat the requests for access to such information. Thus, in response to the Ombudsman’s questionnaire, the Ministry of Finance and Treasury of Bosnia and Herzegovina states that it does not grant access to information relating to the privacy of third parties, unless it is about a third party’s salary from the budget because such information is in public interest, and such requests are most commonly received in the Ministry. Personal information is protected by

⁸⁸Food Safety Agency no. 03-3-12-1001-3/19 of 19 August 2019, BiH Indirect Taxation Administration, document no. 01/3-14-1-1632-1/19 of 13 August 2019, BiH Public Procurement Agency, document no. 02-12-2125-2/19 of 31 July 2019, Agency for Harmonization and Co-ordination of Payment Systems in Agriculture, Nutrition and Rural Development in BiH, document no. 02-9-50-3-1882/19 of 01 August 2019

⁸⁹ Return Fund of BiH, document no. 03-12-1-392-2/19 of 06 August 2019

⁹⁰ Civil Air Traffic Directorate, document no. 1-2-50-2-538-2/19 of 05 August 2019

⁹¹ Veterinary Office of Bosnia and Herzegovina, document no. 01-7-50-8-582-1/19 of 06 August 2019

⁹² The Ministry of Foreign Trade and Economic Relations, document no. 05-50-2-516-2/19 of 26 August 2019, BiH za zaštitu zdravlja bilja akt broj 05-50-2-516-2/19 od 09.09.2019. godine, Regulatorna agencija za komunikacije BiH Administration for the Protection of the Health of Plants received on 05 August 2019, Medicines and Medical Aids Agency of BiH, document no. 10-02.3-3784-1/19 of 01 August 2019

⁹³ The Ministry of Defense of BiH, document no. 14-03-1-335-25/19 of 26 August 2019

⁹⁴ Center for Information and Documents Validation in the area of Higher Education, document no. 04-12-1228-1/2019 of 29 August 2019

⁹⁵ Demining Center, letter no. DPA/01-12-1-1056/19 of 16 August 2019

⁹⁶ Office of Attorney General of Bosnia and Herzegovina, letter no. 04-29-1-PbiH-300/19 of 04 September 2019

⁹⁷ Central Electoral Commission, document no. 04-12-561-2/19 of 01 August 2019

⁹⁸ BiH Standardization Institute, document no. 04-50.1-45-957-2/19 of 01 August 2019

withholding an address, account numbers, etc., but first and last names, the position the persons hold and the income they generate from the budget are available to the public.⁹⁹

Some public bodies have linked their decision of whether or not to grant the access to information to obtaining the consent of third parties that information can be provided, so the Ministry of Communications and Transport of Bosnia and Herzegovina in response states that this is information that can be provided if the third party gives consent, otherwise the privacy of third persons is violated.¹⁰⁰

Replies of two public bodies indicate that they have never received a request for access to information involving information related to third person's privacy interests.¹⁰¹

Civil Service Agency of Bosnia and Herzegovina provided a wider elaboration of their procedure with information containing third person's private interests emphasizing that „*The notion 'third person's privacy' implies a wide area of private and personal data, which is a human right guaranteed by conventions and domestic constitutional and legal provisions, and the fact that persons are provided with protection mechanisms in cases where they suspect that their personal data is being processed illegally. However, this rule is not without the exception, so it is necessary to disclose the information requested, regardless of privacy interests, if it is justified by the public interest. In deciding of whether or not such information should be disclosed, any benefit and any harm that may result from disclosure must be carefully considered. The primary objective of the Law on Personal Data Protection is to provide all persons, regardless of their nationality or place of residence, with the protection of human rights and fundamental freedoms, and in particular the right to privacy related to the processing of personal data concerning them. According to Article 4 of the Law on Protection of Personal Data, data controllers are obliged to process personal data in accordance with the basic principles of lawful processing of personal data, first of all by legal regulations, and to determine the purpose and manner of processing personal data on the basis of applicable laws or regulations. Article 17 of the said Law prescribes the disclosure of personal information to a third party. Namely, paragraph (1) of this Article stipulates that the data controller may not provide personal data to any users prior to notifying thereof the data subject. If the data subject does not consent to providing of the personal data, the data shall not be disclosed to the third party unless such disclosure is in the public interest. Personal data may be processed for statistical, archival or scientific purposes without the consent of the data subject. When processed for the aforesaid purposes, personal data must be made anonymous. When using personal data for these purposes, it is imperative that the right to privacy and privacy of the data subject is respected. Further, the written request must include the purpose and legal basis for the use of the personal data, and the types of personal data being sought. Third person's privacy interest related information is all personal information, such as PIN, contact information, parent's name, maiden name, nationality, educational related documents, professional upgrade exam, work experience, etc. We also need to be aware of the fact that the right to privacy has no absolute primacy over other rights.*”¹⁰²

In its response, the Postal Service of Bosnia and Herzegovina presented a procedure for handling information containing third party personal information, defining personal information as identifiable information by a third party whose disclosure or submission could compromise its

⁹⁹ Ministry of Finance and Treasure of BiH, a letter no. 01-16-1-5491-2/19 of 02 August 2019

¹⁰⁰ Ministry of Communication and Traffic, document (no number), of 06 August 2019

¹⁰¹ BiH Common Affairs Service, document no. 06/I-50-1-1709-1/19 of 07 August 2019, the Ministry of Human Rights and refugees, document no. 05-12-1-1819-2/19 of 06 August 2019

¹⁰² Civil Service Agency of Bosnia and Herzegovina, document no. 03-50-28-1/19 of 09 August 2019

privacy. Personal information may constitute a legitimate reason for the exception, unless there is a written consent or consent of a third party to submit or publish it. The Agency is also of the opinion that information, upon request for access to information can be made available or published without the consent of a third party, so that it will be made available or published without personal data of that person, provided that, after the public interest test is conducted, it is determined that it is in the public interest for that particular information to be published and that the publication of the requested information outweighs the possible damage that might result from its publication.¹⁰³

Appellate Board of Bosnia and Herzegovina in its reply states that under the term "third party privacy", it considers information including copies of appeals and rulings containing information relating to the privacy of a civil servant. They consider that the submission of copies of the appeals sought and the decisions made by the Board (specifically) based on complaints relating to the appraisal of civil servants would constitute a threat to the protection of privacy, since the said acts include personal interests relating to the privacy of third parties, and which cannot be justified by a public interest factor.¹⁰⁴

6.2.2 Exemption for the Protection of Personal Privacy – public authorities of Republika Srpska

Asked how they understand the notion "*third party privacy*" the public authorities of Republika Srpska provide considerably different replies. Some public authorities have responded that they define "*third party privacy*" under the Law on Protection of Personal Data¹⁰⁵ while the Common Affairs Service of the Government of the Republika Srpska referred to the definition prescribed by the provision of the Law on Free Access to Information.¹⁰⁶

The National Assembly of Republika Srpska stated that the notion "privacy of third parties" means "*those data which are prescribed by law as not being public.*"¹⁰⁷

A certain number of public bodies replied that they understand „*third persons privacy*“ to be as follows: "*Personal data and any information related to an individual, such as PIN, ID card, passport number, residence address, telephone number*"¹⁰⁸, as well as personal information,

¹⁰³ Agency for Postal Traffic of Bosnia and Herzegovina, a letter no. 01-03-1-50-4-474-5/19 of 08 August 2019

¹⁰⁴ Civil Service Appellate Board of Bosnia and Herzegovina, a letter no. 01-1-12-1-130-2/19 of 09 August 2019

¹⁰⁵ Banja Luka Town, Bijeljina Town Administration, a letter no. 02/8-052-3-49/19 of 01 August 2019, Helicopter Service of Republika Srpska, a letter no. 116/19 of 31 July 2019, the Ministry of Traffic and Communications of Republika Srpska, a letter no. 13.02./053-1421/19 dated 17 August 2019, the Ministry of Finance – Tax Administration of Republika Srpska, a letter no. 06/1.01./0103-052.4-13014/2019 of 08 August 2019, the Government of Republika Srpska – Republic Secretariat for Displaced Persons and Migrations, a letter no. 26.05-07-882/19 of 12 August 2019, the Ministry of Justice – Free Legal Aid Provision Center of Republika Srpska, a letter no. 08/2.01/025-260-1/19 of 08 August 2019, the House of Peoples of Republika Srpska, a letter no. 03.2-305/19-1 of 13 August 2019, Republic Center for War Crimes and Missing Persons of Republika Srpska, a letter dated 13 August 2019, Ministry of Science and Technology Development, Higher Education and Information Society, a letter no. 19.02/052-6732/19 of 13 August 2019, Statistic Institute of Republika Srpska, a letter no. 06.3.07/060-528/19 of 13 August 2019, Municipality of Laktaši, a letter no. 02-02-22/19 of 02 August 2019

¹⁰⁶ Joint Affairs Service of the Government of Republika Srpska, a letter no. 04/2.3.3.-053-626-1/19 of 12 August 2019,

¹⁰⁷ National Assembly of Republika Srpska, a letter no. 02/2-1352-1/19 of 12 August 2019

¹⁰⁸ Republic Administration for Inspections Republika Srpska, a letter no. 24.2004 / 054-101-2/19 of 06 August 2019, Office of the President of the Republic of Srpska, a letter no. 01-2-054-3021-1/19 of 13 August 2019, State Board of Appeal of Republika Srpska, a letter no. 052-326/19 of 06 August 2019, RS Pension Insurance Fund, a letter no. O-98/2019-91 dated 13 August 2019, Seized Property Management Agency, a letter no. 08-3-053-7/19 of 21 August 2019, Gender Center of Republika Srpska, a letter dated 21 August 2019

payment ordered by court judgments, extrajudicial settlements, payments from the budget to individuals based on one-time or humanitarian assistance decisions, partly employment data, information covered by official/trade confidentiality or governed by the Law on Personal Data Protection”¹⁰⁹

Three public bodies have submitted that they think that data including personal interests of a person constitute the content of the notion „*third persons privacy*“¹¹⁰

Other bodies provided different answers. For instance, Gradiška Municipality in their letter dated 05 August 2019 replied that the mentioned notion means "*protection of personal information, privacy, copyright. Personal information is any information or data by which an individual can be identified*".

Zvornik Town Administration in its letter provides the following definition: "*information that implies the privacy of third parties, information relating to the identity of the individual, then sensitive information that can be revealed with free consent of the person concerned, namely religion, gender, language, affiliation with a political party, receiving of social welfare, being a victim of violence, being convicted for a criminal offence.*"¹¹¹

Adults Education Institute of Republika Srpska, in their letter say that "*third persons privacy includes all the data related to third persons / parties to a dispute*"¹¹²

Public authorities of Republika Srpska provided different responses regarding the procedure applied to the requests for access to information involving the privacy of third persons, which may be linked to the difference in understanding the notion of third person's privacy.

Some public authorities argue that they do pursuant to Article 8 LFAI RS, which means that they establish an exemption, but they do not describe the procedure followed in order to establish an exemption.¹¹³ It also happens that the public bodies test whether or not the requested information includes personal data of third persons and if they do, the request is denied.¹¹⁴

Helicopter Service of Republika Srpska replied that "*Access to the information may be requested personally only by the person to whom they relate, by signing the request in person and*

¹⁰⁹ Ministry of Finance of Republika Srpska, a letter no. 06.01./059-1925/19 of 08 August 2019, the Republika Srpska Traffic Safety Agency, a letter no. 13/1/052-873/19 of 8 August 2019, Ministry of Family, Youth and Sports of Republika Srpska, a letter no. 20.03/052-6370/19 dated 13 August 2019

¹¹⁰ Han-Pijesak Municipality, a letter no. 02-053-15/19 of 05 August 2019, Municipality of Nevesinje, a letter dated 07 August 2019, Ministry of Education and Culture of Republika Srpska, a letter no. 07.034 / 053-15-163/19 of 12 August 2019

¹¹¹ Town Administration of Zvornik, a letter no. 07-053-14/19 od 08 August 2019

¹¹² Adults Education Institute of Republika Srpska, a letter no. 07/5.5/034-229/19 of 29 August 2019

¹¹³ Bijeljina Town Administration, a letter no. 02/8-052-3-49/19 of 01 August 2019, Han-Pijesak Municipality, a letter no. 02-053-15/19 of 05 August 2019, Gradiška Town Administration, a letter of 05 August 2019, the Republika Srpska Pension Insurance Fund, a letter no. O-98 / 2019-91 dated 13 August 2019, Ministry of Education and Culture of Republika Srpska, a letter of 29 August 2019, Agency for Confiscated Property Management Agency, a letter no. 08-3-053-7 / 19 of 21 August 2019

¹¹⁴ Nevesinje Municipality letter of 07 August 2019, Office of the President of the Republika Srpska, a letter no. 01-02-054-3021-1/19 of 13 August 2019, Ministry of Justice - Free Legal Aid Center of Republika Srpska, a letter no. 08/2/01/025-260-1/19 of 08 August 2019, the National Assembly of RS, a letter no. 02 / 2-1352-1/19 of 12 August 2019, the House of Peoples, a letter no. 03.2-305/19-1 of 13 August 2019; Republic Center for Investigation of War, War Crimes and Search for Missing Persons, a letter dated 13 August 2019, Laktaši Municipality, a letter no. 02-02 / 22/19 of 02 August 2019

*presenting a valid photo identification document. The request may also be submitted by a legal representative or a proxy of the persons to whom the personal information relates.”*¹¹⁵ However, the procedure to be followed if the applicant requests the access to data relating to a third party, which is under the control of the Republika Srpska Helicopter Service, as a public authority, is unclear.

A number of public authorities replied that they do not grant access to such information without the prior consent of a third party.¹¹⁶

Republic Administration for Inspections of Republika Srpska submitted that: *“Any information that may violate the privacy of third parties is omitted from the information provided upon request for access to information, so that it is blacked out so as not to be visible”*.¹¹⁷

Also, it is noticeable that some public authorities invoke the provisions of the Law on Personal Data Protection in Bosnia and Herzegovina.¹¹⁸

Zvornik Town Administration in its reply claims *“that it will consider all circumstances and make the decision to publish only if the information is justified by the public interest”*,¹¹⁹ while some public authorities inform the Ombudsman that they did not have in their practice any such requests.¹²⁰

The Ministry of Justice of Republika Srpska in their letter maintain that they have granted *“... access to information for all lodged requests except in three cases, namely the request for access to data related to payment of salaries, benefits and other income of the members of the notary exam panel, the bar exam panel, and related to a person who served as a minister of justice.”*¹²¹

6.2.3 Exemption for the Protection of Personal Privacy– public authorities of the Federation of Bosnia and Herzegovina

Replies of the public bodies in the Federation of Bosnia and Herzegovina related to the understanding of the notion *“privacy of third persons”* are rather different.

Some public bodies of the Federation of Bosnia and Herzegovina assert that they define the *“privacy of third persons”* pursuant to the Law on Personal Data Protection.¹²² Some public bodies replied that they consider this notion to mean the following: *“Personal information and*

¹¹⁵ Helicopter Service of Republika Srpska, a letter no. 116/19 of 31 July 2019

¹¹⁶ Ministry of Finance of Republika Srpska, a letter no. 06/01/01 / 0103-052.4.-13014/2019 of 08 August 2019, Ministry of Transport and Communications of the Republika Srpska, a letter no. 13.02./053-1421/19 of 17 August 2019, RS Traffic Safety Agency, a letter no. 13/1/052-873/19 of 8 August 2019. Ministry of Family, Youth and Sports of the Republika Srpska, a letter no. 20.03/052-6370 /19 dated 13 August 2019, Ministry of Science and Technology Development, Higher Education and Information Society, a letter no. 19.02./052-6732/19 of 13 August 2019., Statistic Institute of Republika Srpska, a letter no. 06.3.07 / 060-528 / 19 of 13 August 2019

¹¹⁷ Republic Administrative for Inspections of Republika Srpska, a letter no. 24.2004/054-101-2/19 of 06 August 2019

¹¹⁸ The Ministry of Finance – Tax Administration of Republika Srpska, a letter no. 06/1.01./0103-052.4-13014/2019 of 08 August 2019, Gender Center of the Government of Republika Srpska, a letter dated 21 August 2019

¹¹⁹ Zvornik Town Administration, a letter no. 07-053-14/19 of 08 August 2019

¹²⁰ State Administration Appellate Board of Republika Srpska, a letter no. 052-326/19 of 06 August 2019, Common Affairs Service of the Government of Republika Srpska, a letter no. 04/2.3.3.-053-626-1/19 of 12 August 2019

¹²¹ the Ministry of Justice of Republika Srpska, a letter no. 08.040/052-6349/19 of 27 August 2019

¹²² Government of the Federation of Bosnia and Herzegovina, a letter no. 04-05-763/2019 of 16 August 2019, Banking Agency of the Federation of BiH, a letter no. 04-1-2-2795/19 of 13 August 2019, Federal Ministry of Trade, a letter no. 01-05-931/19 of 02 August 2019, Federal Ministry of Environment and Tourism, a letter no. 08-49-571/19 of 20 August 2019, Regulatory Commission na komisija za energiju u Federaciji BiH – FERK akt broj 04-01-836-02/19 of 26 August 2019, Public Institution Judges and Prosecutors Training Center of FBiH, a letter no.: 01-38-348-02/19 of 03 September 2019, Federal Administration for Land Survey and Property Issues, a letter no. 01-02-123372019 of 29 July 2019

*any information related to an individual, such as PIN, ID card, passport number, residence address, telephone number”*¹²³

Federal Institute for Agropedology informs that the notion “*privacy of third persons*” is understood to include “*personal and other information publication of which could have a negative effect on the person in relation to his or her personality and dignity*”.¹²⁴

Federal Administration of Civil Affairs says in its letter: “*public funds allocated for social benefits, health care and unemployment protection. Any information about carrying out a public office and any court decisions not included in the restricted list of information*”¹²⁵

In its reply, the Federal Ministry of Labor and Social Policy emphasizes that personal data are in their opinion, the data relating to a physical person based on which that person can be identified, including PIN, physical, mental, economic, ethnic, religious etc. status or situation.¹²⁶

Federal the Ministry of Education and Science said in its reply that requests for access to information they received were rejected as requested data were considered personal under the provisions of LFAI FBiH and the Law on Personal Data Protection.¹²⁷

A response from the Federal Ministry of Transport and Culture indicates that any information that is not publicly available or that is labeled as confidential constitutes a third party’s personal information.¹²⁸

The Federal Statistics Institute states in its reply: “*...Therefore, according to Article 38 of the Law on Statistics, the Institute is competent to use the collected data for statistical purposes and not for other purposes. This further means that the Institute cannot use the collected data for the individual personal purposes of persons for the exercise of their personal rights, for which the law, procedure and methods of exercising such rights are determined by another law The foregoing indicates that the Law on Statistics is "lex specialis" which takes precedence over a general law such as the Law on Free Access to Information because the Law on Statistics, due to the specific nature of the tasks executed by the Institute, cannot use its basic principles, purpose and jurisdiction, i.e. it cannot provide personal individual data, i.e. statistical information. According to the Law, lex specialis refers to informing the public about statistical aggregated data or areas in which “personal individual data” are excluded from information and violating the basic principles and powers of the Law on Statistics would not only violate the Law, but also endanger work and activities of the statistical authority. The Federal Statistics Institute, pursuant to Articles 9, 36 and 37 of the Law on Statistics in the Federation of Bosnia and Herzegovina (FBiH Official Gazette 63/03 and 9/09) and strict recommendations of the Steering Committee of the International Monitoring Mission (SC IMO) given to the directors of the statistic institutions of Bosnia and Herzegovina on data protection and confidentiality standards, as provided for on the protection of persons with regard to the automatic processing of personal data of the Council of Europe and relevant European Union regulations, from 1 January 2018 ceased to provide information on ethnic origin/addresses at which persons were registered*

¹²³ Federal Prosecutor’s Office, a letter no. A-398/19 of 13 September 2019, Federal Ministry of Energy, Mining and Industry, a letter no. 04-49-1365/19 of 13 August 2019, Federal Administration for Inspections, a letter no. 01-49-1-03850/2019 of 21 August 2019, Federal Agro-Mediterranean, a letter no. 05-05-3-1189-2/19 of 13 August 2019, Federal Ministry of Justice, a letter no. 09-49-2227/19 of 12 August 2019, Common Affairs Service of the Federation of BiH, a letter no. 03-05-2288/19 of 07 August 2019

¹²⁴ Federal Institute Agropedology, a letter no. 05-49-838-2/19 od 13 August 2019

¹²⁵ Federal Administration for Civil Affairs, a letter no. 03-05/18-457-1/1 od 08 August 2019

¹²⁶ Federal Ministry of Labor and Social Policy, a letter no. 01-49/1-1955/19NM of 07 August 2019

¹²⁷ Federal Ministry of Education and Science, a letter no. 01-49-3277-1/19 od 30 August 2019

¹²⁸ Federal Ministry of Traffic and Communications, a letter no. 01-49-1191/19 od 08 August 2019

during the 1991 Census of Population, Households, Flats and Farms in Bosnia and Herzegovina.”¹²⁹

6.2.3.1 Exemption for the Protection of Personal Privacy – public authorities in the cantons

In the framework of the analysis of implementation of Law on Freedom of Access to Information and dealing with exceptions to disclosure of information involving the privacy of third parties at the cantonal level, responses received from the town and municipal administrations were considered as well. This section also includes the views of public authorities at this level of government regarding the understanding of the notion "*privacy of third persons*".

In defining of the scope of information that falls under "*privacy of third persons*" the largest number of public authorities at the cantonal level referred to Article 3 of the Law on Personal Data Protection, while a smaller number of public authorities referred to the provisions of Article 3, paragraph 4 of the LFAI FBiH, which defines the notion "*personal information*".

Ministry of Economy of Herzegovina-Neretva Canton in its reply states that the data relating to "*privacy of third persons*" fall under the scope of this wording,¹³⁰ while the Ministry of Interior of Sarajevo Canton uses the same wording with additional explanation that this would include the data disclosure of which would identify a person to which this information relates.¹³¹

The Ministry of Interior of Bosna-Drina Canton defines "*privacy of third persons*" using the facts, that is, information that could serve to identify a person directly or indirectly, while the Cantonal Archives Travnik that it should include „*only medical data if not relevant for the context of the case at hand.*"¹³²

In its response to the Ombudsman's inquiry the Ministry of Health, Labor and Social Policy of the Una-Sana Canton emphasizes that each information should be analyzed separately and determined if it can be communicated, thus stating that under the notion of a third person's privacy, in general, one should consider the health situation, family circumstances, sexual orientation, property, etc., but they think that third party privacy should be broadly interpreted in each particular case. For example, they think that it does not matter whether in respect of a person's health it is about a flu or a sexually transmitted disease, as they do not rule out the situation when a common flu may, under certain circumstances, constitute a piece of information that could not be disclosed.¹³³

The Mayor of Goražde in his reply claims that information involving „*privacy of third persons*“ are information about health condition, family circumstances, adoption etc.¹³⁴ while the Municipality of Orašje replied that the funds allocated for one-time assistance, medical

¹²⁹ Federal Statistic Institute, a letter no. 07-32-9-797-2/19 of 01 August 2019

¹³⁰ Ministry of Economy of Herzegovina-Neretva Canton, a letter no. 07-02a)-51-375-1/19 of 23 August 2019

¹³¹ Ministry of Interior of Sarajevo Canton, a letter no. 01-5-49-4298 of 16 August 2019

¹³² Cantonal Archives Travnik, a letter no. 05-48.11-126/19 of 09 August 2019

¹³³ Ministry of Health and Social Policy of Una-Sana Canton, a letter no. 09-05-6600-UP-1/19U of 21 August 2019

¹³⁴ Mayor of Goražde, a letter no. 02-05-2-3070/19 of 02 August 2019

assistance, income and personal incomes of the employees and office-holders are considered to be information that falls under the privacy of a third persons.¹³⁵

Cantonal, town and municipal institutions, asked to furnish information including the privacy of third persons, provided different answers from not having such requests¹³⁶ to informing that in such cases they implement provisions of Article 8 LFAI FBiH, which means that they establish exemption, but at the same time specify the procedure applied in the process of the exemption establishment.¹³⁷

Some public authorities have indicated that they first assess whether the information requested includes personal interests relating to the privacy of third persons, and if so, a decision is made to reject the request in accordance with Article 8 of the LFAI FBiH.¹³⁸

It is evident that public bodies invoke the provisions of Law on Free Access to Information.¹³⁹

Upon receipt of a request for the submission of information involving the privacy of third persons, the City of Živinice Town notifies the third party whose information was requested, invoking the necessity to have the consent to communicate the requested information.¹⁴⁰

The Common Affairs Office of the Cantonal administrative bodies of the Bosna-Drina Canton states in its response that if the relevant official assesses that the disclosure of the information will result in damaging a third party, then the requested information is exempted.¹⁴¹

On the other hand, if the request contains the purpose and legal basis for communicating the requested information, the response of the Ministry of Interior of the Herzegovina-Neretva Canton is that it will make a decision to grant access to the requested information.¹⁴²

Response of the Ministry of Economy of the Una – Sana Canton shows that this public body is assessing the public interest in communicating information containing personal interests and related to the privacy of a third persons, and then decides whether to disclose the requested information.¹⁴³

Cantonal Archives Travnik indicate that this issue causes a great deal of discussion in archives circles: „...*Epecially in the countries that have acceded to the EU after the adoption of EU Regulation 2016/679 (EU GDPR). The protection of personal data in the archives circles creates*

¹³⁵ Orašje Municipality, a document no. 02-49-745/19 of 29 July 2019

¹³⁶ Ministry of Trade, Tourism and Environmental Protection of Herzegovina-Neretva Canton, a letter no. 10-02-36-369/19 of 30 August 2019, Ministry of Health and Social Policy of the Central Bosnia Canton, a letter no. 03-02-455/19-2 of 09 August 2019, Orašje Municipality, a letter no. 02-49-745/19 of 29 July 2019, Cantonal Administration for Civil Protection of Tuzla Canton, a letter no. 18 /1-10-015778 / 19 of 6 August 2019, Ministry of Economy of Zenica-Doboj Canton, a letter no. 04-05-1239-3/19 dated 05 September 2019, Roads Administration of Livno Canton 10, a letter no. 20-01-10-69 /19 of 05 August 2019

¹³⁷ Ministry of Justice and Administration of the Central Bosnia Canton, a letter no. 01/2-02-225/2019 of 31 July 2019, Cantonal Privatization Agency of Tuzla Canton, a letter no. 01-06-372/2019 of 08 August 2019

¹³⁸ Ministry of Interior of Bosna-Drina Canton Goražde, a letter no. 07-01-02-3492/19 of 19 August 2019, Ministry of Justice and Administration of Sarajevo Canton, a letter of 19 August 2019, Ministry of Agriculture, Forestry and Water Management of Herzegovina-Neretva Canton, a letter no. 11-02-1407-1/19 of 16 August 2019

¹³⁹ Cantonal Administration for Inspections of Tuzla Canton, a letter no. 17/1-05-007567/19 of 16 August 2019, Ministry of Economy of Herzegovina-Neretva Canton, a letter no. 07-02a) -51-375-1/19 of 23 August 2019, Ministry of Agriculture, Water Management and Forestry of the Central Bosnia Canton, a letter no. 02-02-493/19 of 15 August 2019, Ministry of Economy of Sarajevo Canton, a letter no. 07-01-10-29781-2/19 dated 5 August 2019, the Government - Office of the President of the West Herzegovina Canton, a letter no. 17-72-1/19 of 08 August 2019, Ministry of Justice and Administration of the West Herzegovina Canton, a letter no. 03-02-49-587-2/19 of 26 August 2019

¹⁴⁰ Živinice Town, a letter no. 02/3-05-4386/19 of 19 August 2019

¹⁴¹ Common Affairs Office of the Cantonal Bodies of the Administration of the Bosna-Drina Canton, a letter no. 15-49-400-1/19 of 07 August 2019

¹⁴² Ministry of Interior of Herzegovina-Neretva Canton, a letter no. 02-03/1-1-04-741/19 of 11 September 2019

¹⁴³ Ministry of Economy of Una-Sana Canton, a letter no. 06-05-7432-UP-1/19 of 23 August 2019

*major problems because it is very difficult to separate the notion of "privacy" of third persons, in documents drafted based on the activities of state administration, and the archive legislation allows the right to use archival material for a maximum of 30 years from its creation. This means that everything except certain archival holdings should be public after 30 years from the creation of the document, which is contrary to the formulation "privacy of third persons". Archivists believe that democratic rights are extinguished in this way, because archives as institutions were created in the French Revolution, as an expression of the democratic right of the people.*¹⁴⁴

The Cantonal Administration of Civil Protection of Sarajevo Canton acts on a case-to-case by examining whether the requested information does indeed involve the privacy of third parties by contacting the competent institutions, that is, legal and natural persons, to determine whether the communication would violate the privacy of the person whose information is disclosed.¹⁴⁵

Ministry of Landscaping, Construction and Environmental Protection of Sarajevo Canton makes all personal data invisible prior to furnishing requested information, records or minutes.¹⁴⁶

6.2.4 Exemption for the Protection of Personal Privacy – public authorities of the Brčko District BiH

Public bodies in Brčko District of BiH asked of their understanding of the notion „*privacy of third persons*“ provided rather different answers. The Government of Brčko District of BiH Department of Public Registry in its reply invokes the legal provisions not specifying which particular piece of legislation¹⁴⁷ while the Police of Brčko District BiH¹⁴⁸ thinks that it includes personal data related to third persons.

Securities Commission of Brčko District BiH think that „*privacy of third persons*“ means the following: PIN, address and data release of which could harm the dignity of that person¹⁴⁹. Judicial Commission of Brčko District BiH holds that this notion comprises the following „*a corpus of personal data of a particular person other than the requestor, that is, any information relating to an identified or identifiable natural person as defined by the Law on Personal Data Protection*“.¹⁵⁰

Given the differences in understanding of the notion „*privacy of third persons*“, it is not surprising that actions in processing requests for access to information involving third persons interests differ. For instance, the Judicial Commission of Brčko District BiH in its reply states that „*...information involving the privacy of a third person is consistently provided under the Law on Protection of Personal Data of Bosnia and Herzegovina, which, in the provisions of Article 54,*

¹⁴⁴ Cantonal Archives of Travnik, a letter no. 05-48.11-126/19 of 09 August 2019

¹⁴⁵ Cantonal Administration of Civil Defense of Sarajevo Canton, a letter no. 03-05-248/19 of 31 July 2019

¹⁴⁶ Ministry of Landscaping, Construction and Environmental Protection of Sarajevo Canton, a letter no. 05/01-49-30099/19 of 05 August 2019

¹⁴⁷ Department of Public Registry of the Government of Brčko District BiH, a letter received on 09 August 2019

¹⁴⁸ Police of Brčko District BiH, a letter of 15 August 2019

¹⁴⁹ Securities Commission of Brčko District BiH, a letter no. 05-15.02-595/19 of 29 July 2019

¹⁵⁰ Judicial Commission of Brčko District SuPK-1337/19 of 02 August 2019

prescribes the manner of its implementation in the procedures based on requests for access to information“.¹⁵¹

The Government of Brčko District of BiH Department of Public Registry in its reply underlines that it did not have cases of such requests relating to their persons privacy¹⁵² while the Securities Commission of Brčko District BiH holds that care „must be taken of the third persons privacy interest“.¹⁵³ Police of Brčko District BiH invoke the provisions of Article 8 LFAI BiH and Article 17 of the Law on Personal Data Protection in Bosnia and Herzegovina.¹⁵⁴

6.3 Public interest test

„A competent authority shall disclose the requested information, notwithstanding that it has claimed an exemption under Articles 6, 7 or 8, where to do so is justified in the public interest having regard to both any benefit and harm that may accrue from doing so. In determining whether disclosure is justified in the public interest, a competent authority shall have regard to considerations such as but not limited to, any failure to comply with a legal obligation, the existence of any offence, miscarriage of justice, abuse of authority or neglect in the performance of an official duty, unauthorized use of public funds, or danger to the health or safety of an individual, the public or the environment. If disclosure of the requested information for which a competent authority has claimed an exemption under Articles 7 or 8 is determined to be in the public interest, the competent authority shall notify the third party in writing that the information shall be disclosed upon the expiry of 15 days of receipt of the notice. The notice shall inform the third party of the availability of appeal, the specific body to whom the appeal should be addressed including the necessary contact information, and the deadline for and cost of filing an appeal. The notice shall also inform the third party of his or her right to apply to the Ombudsman and shall include the necessary contact information.“¹⁵⁵

6.3.1 Public interest test – public authorities of the of Bosnia and Herzegovina

Public interest test is the most demanding but also the most important part of processing a request for access to information. Asked how they carry out the public interest test, most of public authorities submitted a response stating that they had not considered the requirements under which they would be required to carry out the public interest.

Some of the authorities replied that they had in their practice cases when they carried out this test and it was in accordance with the provisions of Article 9 LFAI BiH.¹⁵⁶

Competition Council of Bosnia and Herzegovina in its reply stated that all decisions of the Council are public and, therefore, pursuant to Article 44 paragraph (1) and (2) of the Law on

¹⁵¹ Ibidem

¹⁵² Department of Public Registry of the Government of Brčko District BiH, a letter no. 03-1151SJ-002/19 dated 07 August 2019

¹⁵³ Securities Commission of Brčko District BiH, a letter no. 05-15.02-595/19 of 29 July 2019

¹⁵⁴ Police of Brčko District BiH, a letter of 15 August 2019

¹⁵⁵ Article 9 of Law on Free Access to Information of Bosnia and Herzegovina, Article 9 of Law on Free Access to Information of Republika Srpska, Article 9 of Law on Free Access to Information of the Federation of Bosnia and Herzegovina

¹⁵⁶ Ministry of Civil Affairs of Bosnia and Herzegovina, Competition Council of Bosnia and Herzegovina, Indirect Taxation Authority of Bosnia and Herzegovina, Center for Information and Recognition of Documents in Higher Education Area, Attorney General of Bosnia and Herzegovina, Civil Service Agency of Bosnia and Herzegovina, Directorate for European Integration of Bosnia and Herzegovina

Competition in Bosnia and Herzegovina, they publish it in the "Official Gazette of BiH, official gazettes of the entities and Brčko District BiH, as well as the official web page of the Competition Council.¹⁵⁷

6.3.2 Public interest test – public authorities of Republika Srpska

The largest number of public authorities in Republika Srpska, including towns and municipalities, responded by stating that in their practice not had any requirements requiring decision-making under the provisions of Article 9 of the LFAI RS.¹⁵⁸

Some public authorities state that they act in accordance with Article 9 of the Law on Freedom of Access to Information RS, providing information disclosure of which is justified by the public interest, without specifying the procedure used to carry out the public interest test.¹⁵⁹

Traffic Safety Agency and the RS Ministry of Family, Youth and Sports in their response state *"if it is established that the request involves confidential commercial interests of a third person, this person will be informed by letter of the contents of the request and will be asked to consent to the disclosure of requested information"*.¹⁶⁰ A reply like this indicates the lack of understanding of the provisions of the Law related to necessity of carrying out the public interest test.

In its reply, Banja Luka Town Administration claims the following: *„...if the information requested in the request for access to information falls under one of the exceptions provided for by the Law, a "public interest test", in accordance with Article 9, will be carried out to determine, before denying the access to information, whether the public interest is greater than the damage that can be caused by disclosure of a piece of information falling within one from protected categories of information..."*¹⁶¹

Other public authorities in Republika Srpska in their replies state that in cases when disclosure of information is justified by the public interest, they act in accordance with Article 9 of the RSLFAI, stating that they are using the procedure prescribed by the said Law.¹⁶²

¹⁵⁷ Competition Council of Bosnia and Herzegovina, a letter no. 01-12-1-213-3/19 of 01 August 2019

¹⁵⁸ Town Administration of Bijeljina, a letter no. 02 / 8-052-3-49/19 of 01 August 2019, Han-Pijesak Municipality, a letter no. 02-053-15 / 19 dated 5 August 2019, Gradiška, a letter of 05 August 2019. Ministry of Transport and Communications of the Republika Srpska, a letter no. 13.02 / 053-1421/19 of 17 August 2019, Ministry of Finance - Tax Administration of the Republika Srpska, a letter no 06/1.01 / 0103-052.4-13014 / 2019 of 08 August 2019, Ministry of Finance of the Republic of Srpska, a letter no. 06.01/059-1925/19 of 08 August 2019, Office of the President of the Republika Srpska, a letter no. 01-2-054-3021-1/19 of 13 August 2019, State Appellate Commission, a letter no. 052-326/19 of 06 August 2019, Ministry of Justice - Free Legal Aid Center, a letter no. 08/2.01/025-260-1/19 of 08 August 2019, Common Affairs Service of the Government of the Republika Srpska, a letter no. 04/2.3.3.-053-626-1/19 of 12 August 2019, Ministry of Science and Technology Development, Higher Education and Information Society, a letter no. 19.02/052-6732 / 19 of 13 August 2019, Bureau of Statistics, a letter no. 06.3.07/060-528/19 of 13 August 2019, Gender Center of the Government of Republika Srpska, a letter of 21 August 2019, Republika Srpska Institute for Adult Education, a letter no. 07/5.5/034-229/19 of 29 August 2019, Laktaši Municipality, a letter no. 02-02-22/19 of 02 August 2019

¹⁵⁹ Nevesinje Municipality, a letter of 07 August 2019, Government of Republika Srpska-Republic Secretariat for Displaced Persons and Migration, a letter no. 06.05-07-882/19 of 12 August 2019, Center for Investigation of War, War Crimes and Missing Persons, a letter of 13 August 2019, Seized Assets Management Agency, a letter no. 08/3-053-7/19 of 21 August 2019, Zvornik Town Administration, a letter no. 07-053-14/19 of 08 August 2019

¹⁶⁰Traffic Safety Agency of Republika Srpska, a letter no. 13/1/ 052-873-19 dated 08 August 2019, and the Ministry of Family, Youth and Sports of Republika Srpska, a letter of 13 August 2019

¹⁶¹ Banje Luke Town Administration, a letter no. 23-059-1066/2019 of 03 December 2019

¹⁶² Republika Srpska Helicopter Service, a letter no. 116/19 of 31 July 2019, National Assembly of Republika Srpska, a letter no. 02/2-1352-1/19 of 12 August 2019, Ministry of Education and Culture of Republika Srpska, a letter received on 29 August 2019

6.3.3 Public interest test – public authorities of the Federation of Bosnia and Herzegovina

Most of the public authorities provided replies informing the Ombudsman that they had no any request for access to information that would necessitate carrying out the public interest test for purposes of Article 9 LFAI FBiH.¹⁶³

Some public authorities in the Federation of Bosnia and Herzegovina state that they act in accordance with Article 9 of the Law on Freedom of Access to Information FBiH providing information disclosure of which is justified by the public interest, using the procedure foreseen by the mentioned Law.¹⁶⁴

6.3.3.1 Public interest test – public authorities of the cantons

Analysis of the responses from the cantonal level public authorities, it was established that 26 public bodies, including the towns and municipalities, replied that they had not had such cases in their practice so far¹⁶⁵ that is, they never acted upon a request for access to information which would require a public interest test to be conducted.

The Ministry of Justice and Administration of Sarajevo Canton in their letter claims the following: „*This authority would communicate the information requested, notwithstanding the*

¹⁶³ Federal Ministry of Health, a letter no. 01-10-4715/19 of 05 August 2019, Federal Ministry of Labor and Social Policy, a letter no. 01-49/1-1955/19NM dated 07 August 2019, Federal Attorney's Office, a letter no. FP-432/19 of 6 August 2019, Federal Civil Service Administration, a letter no. 03-05/18-457-1/19 of 08 August 2019, Insurance Monitoring Agency, a letter no. 01-02.2.-059-2220/19 of 15 August 2019, Federal Ministry of Justice, a letter no. 09-49-2227/19 of 12 August 2019, Government of the Federation of Bosnia and Herzegovina - Public Relations Office, a letter no. 01-49-88/19 of 2 August 2019, Federal Ministry of Environment and Tourism, a letter no. 08-49-571/19 of 20 August 2019, Federal Ministry of Transport and Communications, a letter no. 01-49-1191/19 of 08 August 2019

¹⁶⁴ Federal Administration for Land Survey and Property Issues, a letter no. 01-02-1233720/19 of 29 July 2019, Federal Ministry of Trade, a letter no. 01-05-931/19 of 2 August 2019, FBiH Constitutional Court, a letter no. 2-57-1/19 of 30 July 2019, Federal Hydrometeorological Institute, a letter no. 07-49-1-954-1/19 of 09 August 2019, Banking Agency of the Federation of Bosnia and Herzegovina, a letter no. 04-1-2-2795/19 of 13 August 2019, FBiH Government, a letter no. 04-05-763/19 dated 3 September 2019, Federal Agro-Mediterranean Institute, a letter no. 05-05-3-1189-2/19 of 13 August 2019, Federal Institute for Agropedology, a letter no. 05-49-838-2/19 of 13 August 2019, Federal Inspection Administration, a letter no. 01-49-1-03850/2019 of 21 August 2019, FBiH Energy Regulatory Commission, a letter no. 04-01-836-02/19 of 28 June 2019, Federal Ministry of Culture and Sports, a letter of 27 August 2019, Federal Ministry of Education and Science, a letter no. 01-49-3277-1/19 of 30 August 2019, Federal Prosecutor's Office, a letter no. A-398/19 of 13 September 2019, Federal Ministry of Energy, Mining and Industry, a letter no. 04-49-1365/19 of 13 August 2019

¹⁶⁵ Ministry of Trade, Tourism and Environmental Protection of Herzegovina-Neretva Canton, a letter no: 10-02-36-369/19 of 30 August 2019, Ministry of Interior of Goražde of Bosnia and Herzegovina Canton, a letter no. 07-01-02-3492/19 of 19 August 2019, Cantonal Archives Travnik, a letter no. 05-48.11-126/19 of 09 August 2019, Ministry of Health and Social Policy of the Central Bosnia Canton, a letter no. 03-02-455/19-2 of 09 August 2019, Orašje Municipality, a letter no. 02-49-745/19 of 29 July 2019, Cantonal Archives Travnik, a letter no. 05-48.11-126/19 of 09 August 2019, Inspection Directorate of West Herzegovina Canton, a letter no. 16-01-49-01131/19 of 6 August 2019, Cantonal Administration for Civil Protection of Sarajevo Canton, a letter no. 03-05-248/19 of 31 July 2019, Ministry of Education, Science, Culture and Sports of the West Herzegovina Canton, a letter no. 07-01-49-423-2/19 of 01 August 2019, Ministry of the Interior of Zenica-Doboj Canton, a letter no. 08-01-01/1-02-1-3933-1/19 dated 2 August 2019, Ministry of Veterans Affairs of Tuzla Canton, No. 15/1-05-015702/19 dated 31 July 2019, Ministry of Construction, Zoning and Environment of Una-Sana Canton, a letter no. 11-10-8737-2/19 of 07 August 2019, West Herzegovina Canton, the Government, Office of the President, a letter no. 17-72-1/19 of 08 August 2019, Ministry of Agriculture, Forestry and Water Management of Herzegovina-Neretva Canton, a letter no. 11-02-1407-1/19 of 16 August 2019, Ministry of Justice and Administration of the West Herzegovina Canton, a letter no. 03-02-49-587-2/19 of 26 August 2019, and the Public Relations Office of the Bosnian Podrinje Canton, a letter without number and date

*exceptions set out in the Law, if justified by the public interest. In doing so, it takes into consideration all benefits and harms that may arise from communicating the information. If it were to determine that the communication of the requested information was an exception within the meaning of the provisions of the Law in the public interest, this authority would inform the third party by a decision that it would communicate the information after the expiration of 15 days from the date of receipt of that decision. The aforementioned decision would include instruction on legal remedy, that is, the right to appeal, as well as instructions on the right to address the Ombudsman Institution, indicating the necessary contact information of the Ombudsman.*¹⁶⁶

The Ministry of Interior of Herzegovina-Neretva Canton in its reply emphasizes that it communicates the requested information, irrespective of the exception established in accordance with Articles 6, 7 and 8 of the LFAI FBiH, if it is justified by the public interest. If it establishes an exception within the meaning of Article 6 of the LFAI FBiH, this authority will make a decision to deny access to the requested information, unless the public interest justifies its disclosure.¹⁶⁷

Reply of the Ministry of Interior of the Central Bosnia Canton indicates that this Ministry has so far had several cases of denial of access to information, which means that this public authority had to examine and assess the public interest by conducting a public interest test.¹⁶⁸

The Cantonal Inspection Administration of Sarajevo Canton points out that it is conducting the public interest test referred to in Article 9 of the LFAI FBiH by assessing whether the requested information contains any evidence of non-compliance with legal obligations, unauthorized spending of public funds, threats to public health or safety of the individual etc..¹⁶⁹

Asked about their processing of requests under Article 9 of LFAI FBiH, Public Relations Service of the Posavina Canton Government in their letter claims that it serves as a „*link between a person requesting information and the authority disposing of such information*“.¹⁷⁰

Joint Affairs Service of the cantonal administrative authorities of Bosna-Drina Canton states that it will grant access to information if it is justified by the public interest which is established by taking into consideration all the benefits and harms that could be caused by disclosure of such a piece of information.¹⁷¹

6.3.4 Public interest test – public authorities of the Brčko District of BiH

Institutions in the Brčko District of BiH were asked whether or not they consider and examine potential benefits and harms that may arise from disclosing some information if justified by the public interest. In response, the Judicial Commission of the Brčko District of BiH stated that the benefits and harms of disclosing the information were examined, but only if an exception to the

¹⁶⁶ the Ministry of Justice and Administration of Sarajevo Cantona, a letter with no number or date, received on 19 August 2019

¹⁶⁷ Ministry of Interior of Hercegovina-Neretva Canton, a letter no. 02-03/1-1-04-741/19 of 11 September 2019

¹⁶⁸ Ministry of Interior of Central Bosnia Canton, a letter no. 01/2-49-1-1097/19 of 27 August 2019

¹⁶⁹ Cantonal Administration for Inspections of Sarajevo Canton, a letter no. 14-03-49-03273/17 of 12 July 2019

¹⁷⁰ Public Relations Service of the Posavina Canton Government, a letter no. 01/VI-10-64-1/19 of 08 August 2019

¹⁷¹ Joint Affairs Service of the cantonal administrative authorities of Bosna-Drina Canton, a letter no. 15-49-400-1/19 of 07 August 2019

disclosure of information has previously been established, when acting within the meaning of Article 9 of the LFAI BiH.¹⁷²

In its response, the Expert Service of the Assembly of the Brčko District of BiH stated that in previous practice it had not acted on requests for access to information, which required it to examine the public interest.¹⁷³

The same answer was provided by the Public Registry Department of the Brčko District BiH Government quoting the provisions of Article 9 of LFAI BiH, as well as the Police of Brčko District of BiH, which asserts in its reply that in deciding on requests for access to information they weight the benefits and harms arising from potential disclosure of requested information.¹⁷⁴

Securities Commission of Brčko District of BiH claims in its reply that it should be taken into consideration.¹⁷⁵

Public Affairs Department of the Government of Brčko District of BiH and the Office for Audit of Public Administration and Institutions in the Brčko District of BiH in their answers claim that they had no experience with such requests, so they are not in position to reply to the Ombudsman's questionnaire.¹⁷⁶

6.4 Circumstances for the exemption of information from publishing

„In determining whether disclosure is justified in the public interest, a competent authority shall have regard to considerations such as but not limited to, any failure to comply with a legal obligation, the existence of any offence, injustice, abuse of authority or neglect in the performance of an official duty, unauthorized use of public funds, or danger to the health or safety of an individual, the public or the environment.“¹⁷⁷

6.4.1 Circumstances for the exemption of information from publishing – public authorities of Bosnia and Herzegovina

Asked whether they take into account all the circumstances that could cause certain information to be exempted from communication, and whether they take into account all benefits and harms that could arise from its publishing, almost all public authorities surveyed provided a positive answer.

Joint Affairs Service of the Institutions of Bosnia and Herzegovina in its reply claims that: „... *the most requests for access to information is in the field of public procurement, and disclosure*

¹⁷² Judicial Commission of Brčko District BiH, a letter no. SuPK- 1337/19 of 02 August 2019

¹⁷³ Expert Service of Brčko District BiH Assembly, a letter no. 02-05-828/19 of 07 August 2019

¹⁷⁴ Public Registry Department of the Brčko District BiH Government, a letter with no number or date, received by the Ombudsman on 09 August 2019, Police of Brčko District BiH, a letter with no number dated 15 August 2019

¹⁷⁵ Securities Commission of Brčko District BiH, a letter no. 05-15.02-595/19 of 29 July 2019

¹⁷⁶ Public Affairs Department of the Government of Brčko the District of BiH, a letter no. 03-1151sj-002/19 of 7 August 2019, Office for Audit of Public Administration and Institutions in the Brčko District of BiH, a letter no. 01-48-353 / 19 of 31 July 2019

¹⁷⁷ Article 9 of Law on Free Access to Information of Bosnia and Herzegovina, Article 9 of Law on Free Access to Information of Republika Srpska, Article 9 of Law on Free Access to Information of the Federation of Bosnia and Herzegovina

thereof cannot lead to damage, since the procurement process itself is public and transparent and regulated by law. ¹⁷⁸

Personal Data Protection Agency of Bosnia and Herzegovina in its reply claims that: *„...there were no any such requests so far. The Agency acts in accordance with Article 6 of the Law* ¹⁷⁹

6.4.2 Circumstances for the exemption of information from publishing – public authorities of Republika Srpska

The most of Republika Srpska public authorities, asked about the circumstances they consider in determining exceptions, stated in their responses that they take into account all the circumstances that could cause certain information to be exempted from communication, while only the RS Government Common Affairs Service provided a reply that it did not had requests but to act in terms of provisions of LFAI RS. ¹⁸⁰

Asked whether they consider and weigh all benefits and harms that may arise from communicating a certain piece of information, if it is justified by the public interest, the largest number of public authorities responded positively. ¹⁸¹

Republika Srpska Pedagogical Institute responds by stating that in deciding on a request for access to information, it does not take into account any benefit and harm that may result from the communication of requested information. ¹⁸²

6.4.3 Circumstances for the exemption of information from publishing – public authorities of the Federation of Bosnia and Herzegovina

Asked whether they take into account all the circumstances why certain information should be exempted from communication, institutions in the Federation of Bosnia and Herzegovina almost all answered affirmatively.

The Constitutional court of the Federation of Bosnia and Herzegovina in its reply points out the following: *„... The Constitutional Court of the Federation of Bosnia and Herzegovina may refuse a request for access to information (exempted information), in whole or in part, when it is required: due to the protection of data relevant to the Court's decisions, protection of proceedings from which the public is excluded and where the request for access to information involves personal interests in accordance with the Law and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 8 of the Convention).* ¹⁸³

¹⁷⁸ Joint Affairs Service of the Institutions of Bosnia and Herzegovina, a letter no. 06/I-50-1-1709-1/19 of 07 August 2019

¹⁷⁹ Personal Data Protection Agency of Bosnia and Herzegovina, a letter no. 05-1-34-16-712-2/19 of 13 August 2019

¹⁸⁰ Joint Affairs Service of the Institutions of Republika Srpska, a letter no. 04/2.3.-053-626-1/19 of 12 August 2019

¹⁸¹ Helicopter Service of Republika Srpska, Ministry of Transport and Communications of Republika Srpska, National Assembly of Republika Srpska, Ministry of Family, Youth and Sports of Republika Srpska, Ministry of Finance of Republika Srpska, Pension and Disability Insurance Fund...

¹⁸² Republika Srpska Pedagogical Institute, a letter with no number datad 14 August 2019

¹⁸³ The Constitutional court of the Federation of Bosnia and Herzegovina, a letter no. S-57-1/19 of 30 July 2019

Asked whether they consider and weigh all benefits and harms that may arise from communicating a certain piece of information, if it is justified by the public interest, the largest number of public authorities responded positively, claiming that they do so.

Federal Ministry of Environment in its reply underlines: „...*In proper implementation of the Law aimed at providing the requested information so far we never had a case that its publishing caused any damage.*“¹⁸⁴

Federal Administration for Land Survey and Property Issues points out: „...*Information must be available in accordance with the Law on Free Access to Information, and benefits and harms are in a causal relationship that should not affect access to information, except in the case of commercial data and the public interest.*“¹⁸⁵

6.4.3.1 Circumstances for the exemption of information from publishing – public authorities of the cantons

Responses received show that most public authorities in cantons, including public authorities in towns and municipalities, take into account all the circumstances why certain information should be exempted from communication and take into account the benefits and harms arising from the communication of information.

A number of public authorities stated that they did not have requests for access to information, that is, requests which would necessitate the implementation of the provisions of Article 9 of the LFAI FBiH.¹⁸⁶

6.4.4 Circumstances for the exemption of information from publishing – public authorities of the Brčko District of BiH

Asked whether they take into account all the circumstances why certain information should be exempted from communication, five institutions answered affirmatively.¹⁸⁷

Judicial Commission in its reply points out the following „*A general rule proclaimed in the Law on Free Access to Information is that every physical and legal body is entitled to access to information controlled by public bodies except in cases where exemptions are established as provided in this Law and where the public interest does not exist In addition to its being exempted. Therefore, in accordance with BiH Law on Free Access to Information, one of the mandatory steps in the procedure of granting access to information is to assess whether the requested information is exempt from access and whether there is a public interest in releasing the information which is exempted. In order to find this out, it is necessary to take into account*

¹⁸⁴ Federal Ministry of Environment and Tourism, a letter no. 08-49-571/19 od 20 July 2019

¹⁸⁵ Federal Administration for Land Survey and Property Issues, a letter no. 01-02-1233/2019 of 29 July 2019

¹⁸⁶ Institute for the Protection of the Cultural and Historical Heritage of the Herzegovina-Neretva Canton, Cantonal Directorate for Civil Protection of the Central Bosnia Canton, Ministry of Agriculture, Water Management and Forestry - Forestry Administration of the Posavina Canton, Office for European Integration of the West Herzegovina Canton, Office for Legislation of the Government of West Herzegovina, Ministry of Science, Culture and Sports of the West Herzegovina Canton, Ministry of Justice and Administration of the West Herzegovina Canton

¹⁸⁷ Judicial Commission of the Brčko District of BiH, a letter no. SuPK-1337/19 of 2 August 2019, Expert Service of the Assembly of the Brčko District of BiH, a letter no. 02-05-828/19 of 7 August 2019, Department for Public Register of the Government of the Brčko District of BiH, a letter without number and date, received at the Ombudsman Institution on 09 August 2019., Brčko District Police, a letter with no number dated 15 August 2019, Securities Commission of the Brčko District of BiH, a letter no. 05-15.02-595 / 19 of 29 July 2019

all the circumstances that may determine the information requested as an exemption and all circumstances in which the public interest is reflected.“

6.5 Public bodies practice in cases involving partial publishing of information

If part of the requested information is determined to be exempt, the competent authority shall sever that part and disclose the remainder of the information unless the severance has rendered it incomprehensible.¹⁸⁸

6.5.1 Public bodies practice in cases involving partial publishing of information – public authorities of Bosnia and Herzegovina

Submitted responses by the public authorities at the level of Bosnia and Herzegovina indicate that most public authorities in the past have acted on requests for access to information, whereby a decision was made on partial access to information within the meaning of Article 10 of the LFAI BiH. However, the answers show that there are also public authorities that have not considered this type of request so far.¹⁸⁹

6.5.2 Public bodies practice in cases involving partial publishing of information – public authorities of Republika Srpska

Most public authorities in Republika Srpska have stated that they have not so far had cases that some of the requested information was designated as an exception to disclosure.

The Statistic Institute of Republika Srpska, in its reply, states that they had one request which was denied, while the Zvornik Town Administration in its response emphasizes that *“in our practice we had an example of granting the requested information as we thought that its publishment was necessary for implementation of legal obligations, so we granted access to information pursuant to the Law.*“¹⁹⁰

Banja Luka Town Administration in its reply holds: *„In case that a part of the requested information is determined to be exempt, the competent authority shall sever that part and disclose the remainder of the information unless the severance has rendered it incomprehensible.*“¹⁹¹

¹⁸⁸ Article 10 of Law on Free Access to Information of Bosnia and Herzegovina, Article 10 of Law on Free Access to Information of Republika Srpska, Article 10 of Law on Free Access to Information of the Federation of Bosnia and Herzegovina

¹⁸⁹ BiH Civil Aviation Directorate, Ministry of Communications and Transport of BiH, Ministry of Foreign Trade and Economic Relations of BiH, Institute of Metrology of Bosnia and Herzegovina, BiH Food Safety Agency, BiH Central Election Commission, Audit Office of BiH Institutions, Anti-Doping Control Agency of BiH, BiH Ministry of Human Rights and Refugees, BiH Veterinary Office, BiH Mine Action Center, Directorate for European Integration of BiH, Institute for Standardization of BiH, Agency for Protection of Personal Data of BiH and Joint Affairs Office of the Institutions of BiH

¹⁹⁰ Statistic Institute of Republika Srpska, a letter no. 06.3.07/060-528/19 of 13 August 2019, and Zvornik Town Administration, a letter no. 07-053-14/19 of 08 April 2019

¹⁹¹ Banja Luka Town Administration, a letter no. 23-059-1066/2019 od 03 December 2019

6.5.3 Public bodies practice in cases involving partial publishing of information – public authorities of the Federation of Bosnia and Herzegovina

Provided responses of public authorities the Federation of Bosnia and Herzegovina have stated that they have not so far had cases that some of the requested information was designated as an exception to disclosure.

A few public authorities had requests for access to information of the above mentioned type and in such situations where the requested information constituted an exemption, they made decisions granting the partial access to information.¹⁹²

6.5.3.1 Public bodies practice in cases involving partial publishing of information – public authorities of the cantons

Most cantonal public authorities, including public authorities in the towns and municipalities, have so far not received any requests for access to information which would require their decision on granting the partial access to information.

Some public authorities have acted on requests for access to information granting the partial access to information.¹⁹³ In addition to that, some authorities attached to their replies some examples of decisions granting the partial access to information.¹⁹⁴

Cantonal Administration for Inspections of Sarajevo Canton replied that it acts in accordance with the provisions of LFAI FBiH and the Guide of the Administration which provide for a part of the requested information which is determined to be exempt to be excluded and the remainder of the information to be disclosed unless the exclusion has rendered it incomprehensible.¹⁹⁵

6.5.4 Public bodies practice in cases involving partial publishing of information – public authorities of the Brčko District of BiH

Police of Brčko District of BiH and Judicial Commission of Brčko District of BiH in their reply indicate that they had cases of decisions granting partial access to information.

The Assembly of the Brčko District of BiH - Expert Service of the Assembly, the Securities Commission of the Brčko District of BiH and the Government of the Brčko District of BiH -

¹⁹² Federal Ministry of Justice, a letter no. 09-49-2227/19 dated 12 August 2019, Federal Ministry of Health 05 August 2019, Federal Ministry of Education and Science, a letter no. 01-10-4715/19 of 30 August 2019, Federal Ministry of Energy, Mining and Industry, a letter no. 01-49-3277-1/19 of 13 August 2019

¹⁹³ Cantonal Privatization Agency of Tuzla Canton, Cantonal Inspection Directorate of Canton Sarajevo, Ministry of Economy of Herzegovina-Neretva Canton, Cantonal Administration for Inspection Affairs of Tuzla Canton, Ministry of Labor, Health, Social Protection and Displaced of Canton 10, Ministry of Interior of Canton of Bosna-Drina Canton, Ministry of the Interior of the Una-Sana Canton, Ministry of Veterans Affairs of Sarajevo Canton, Ministry of Culture and Sports of the Sarajevo Canton, Živinice Town, General Administration Service of Travnik Municipality, Inspection Directorate of West Herzegovina Canton, Cantonal Administration for Civil Protection of the Sarajevo Canton.

¹⁹⁴ Cantonal Administration for Civil Protection of Sarajevo Canton, Inspection Directorate of West Herzegovina Canton, General Administration Office of Travnik Municipality, Ministry of Interior of Una-Sana Canton, Ministry of Interior of Bosna-Drina Canton, Cantonal Administration for Inspections of Sarajevo Canton, Ministry of Interior of Sarajevo Canton, Ministry of the Interior of the Central Bosnia Canton

¹⁹⁵ Cantonalna Administration for Inspections of Sarajevo Canton Sarajevo, a letter no. 14-03-49-03273/17 of 12 July 2019

Public Registry Department do not have practical experience with requests for access to information, which would necessitate a part of the requested information to be determined as an exception from communication.

6.6 Decision-making on requests for access to information

Article 14 of Law on Free Access to Information of Bosnia and Herzegovina:

If access to the information is granted, either in whole or in part, the competent authority shall notify the requester in writing thereof. This notice/decision shall:

- inform the requester that the information is available for access in person at the premises of the competent authority; and*
- inform the requester whether duplication is possible, the cost of the duplication, and that the duplication shall be provided to the requester upon payment. Where the duplication of the information is unusually complex or time-consuming, the duplication shall be provided to the requester at a time mutually agreeable to the requester and the competent authority; or*
- include duplication of the requested information where it can be supplied at no cost as provided for under Article 16.*

If access to the information is denied, either in whole or in part, the competent authority shall notify the requester in writing thereof. This notice shall: a) include the legal grounds for the exempt status of the information including the Articles of the Law being relied upon and all material issues relevant to the decision including public interest factors taken into account; and b) inform the requester of the availability of appeal, the specific body to whom the appeal should be addressed including the necessary contact information, and the deadline for and cost of filing an appeal. The notice shall also inform the requester of his or her right to apply to the Ombudsman, and shall include the necessary contact information.

Article 14 of Law on Free Access to Information of Republika Srpska:

- (1) Upon receiving a request for access to information, the competent authority shall take all reasonable measures to collect the requested information and shall consider all facts and circumstances pertinent to the processing of the request.*
- (2) If access to the information is granted, either in whole or in part, the competent authority shall notify the requester in writing thereof. The notice shall: a) inform the requester that the information is available for access in person at the premises of the competent authority; and b) inform the requester whether duplication is possible, the estimated cost of the duplication, and that the duplication shall be provided to the requester upon payment. Where the duplication of the information is unusually complex or time-consuming, the duplication shall be provided to the requester at a time that is mutually acceptable to the requester and the competent authority; and/or include a copy of the requested information where it can be supplied at no cost as provided for under Article 16.*
- (3) If access to the information is denied, either in whole or in part, the competent authority shall inform the requester with notice thereof. The notice shall: a) include the legal grounds for the exempt status of the information including the Articles of*

this Act being relied upon, and all material issues relevant to the decision including public interest factors taken into account; and b) inform the requester of the availability of appeal, the specific body to whom the appeal should be addressed including the necessary contact information, and the deadline for and cost of filing an appeal. This notice shall also inform the requester of his or her right to apply to the Ombudsman of the Republika Srpska, and shall include the necessary contact information.

(4) Notices referred to in subsection (2) and subsection (3) shall be sent out no later than 15 days from receipt of the request. For requests that necessitate processing under Article 7 and/or Article 9(3), this 15 day time limit shall be correspondingly extended by the time limits provided for in those Articles. The requester shall immediately be notified in writing of any extension including the reasons for the extension.

Article 14 of Law on Free Access to Information of the Federation of Bosnia and Herzegovina:

(1) Upon receiving a request for access to information, the competent authority shall take all reasonable measures to collect the requested information and shall consider all facts and circumstances pertinent to the processing of the request.

(2) Where the competent authority grants access to the information, either in whole or in part, it shall notify the requester in writing thereof. This notice shall: 1) inform the requester that the information is available for access in person at the premises of the competent authority; and 2) inform the requester whether duplication is possible, the cost of the duplication, and that the duplication shall be provided to the requester upon payment. Where the duplication of the information is unusually complex or time-consuming, the duplication shall be provided to the requester at a time acceptable to the requester and the competent authority; and/or 3) include duplication of the requested information where it can be supplied at no cost as provided for under Article 16. (3) If the competent authority denies access to the information, either in whole or in part, it shall notify the requester in writing thereof in form of a decision. This decision shall: 1) include the legal grounds for the exempt status of the information under the Act including all material issues relevant to the decision and the public interest factors taken into account; and 2) instruction of the right to appeal, the specific body to whom the appeal should be addressed including its address, and the deadline for and cost of filing an appeal.

(4) Unsatisfied party is entitled to appeal from a decision referred to in paragraph (3) of this Article to the head of the authority no later than eight days from receipt of the request. (5) A decision made on appeal referred to in paragraph (4) of this Article is final in administrative procedure and an unsatisfied party is entitled to initiate dispute before the relevant court 7 and/or Article 9(3), this 15 day time period shall be correspondingly extended by the time limits provided for in those Articles. The competent authority shall immediately notify the requester in writing of all extensions including the reasons for the extensions

6.6.1 Decision-making on requests for access to information – public authorities of Bosnia and Herzegovina

Responses received from public authorities indicate that most public authorities process the requests for access to information and issue relevant decisions.

Postal Traffic Agency of Bosnia and Herzegovina in its reply points out the following: „...*Having decided on a request for access to information it is communicated to a requestor in the form of a decision and the requested information is furnished, that is, the access is granted in a form specified by the requestor in their request if such a form is foreseen in the Law on Free Access to Information in Bosnia and Herzegovina. If the requestor did not specify the form or method of granting the access or specified a form not foreseen in the Law on Free Access to Information in Bosnia and Herzegovina, the Agency notifies the requestor about it in writing asking the requestor to complete their request...*“¹⁹⁶

Asked about a form in which a decision related to request for access to information is granted (a decision, a notification letter, a conclusion) public authorities of Bosnia and Herzegovina provide different answers. Most of them issue decisions on requests for access to information, three bodies send a notification letter, and two bodies do it in the form of a conclusion.

The Communications Regulatory Agency of Bosnia and Herzegovina states in its reply that it decides on requests in the form of a decision or a letter in the cases when the Agency is not competent or when a party declares that it wants a reply in that form.¹⁹⁷

A similar response was provided by the Ministry of Transport and Communications of Bosnia and Herzegovina, which points out that it communicates its decision on a request for free access in the form of a decision, except when forwarding that decision to the competent authority – in which case a letter is drafted, or due to the lack of formal requirements- a conclusion is drawn.¹⁹⁸

Medicines and Medical Aids Agency of Bosnia and Herzegovina in its reply points out the following: „...*When a request for access to information is granted, a requesting party is informed by a letter comprising the practical details...In situations when a request is partially granted or denied, a decision is made pursuant to the Law.*“¹⁹⁹

In reply to a question whether an instruction on legal remedy is included in issued documents, the public bodies of Bosnia and Herzegovina provided following replies:

- a) An appeal can be lodged within the Council of Ministers of Bosnia and Herzegovina Appellate Committee²⁰⁰

¹⁹⁶ Postal Traffic Agency of Bosnia and Herzegovina, a letter no. 01-03-1-50-4-474-5/19 of 08 August 2019

¹⁹⁷ Regulatory Communications Agency of Bosnia and Herzegovina, a letter with no number, received on 05 August 2019

¹⁹⁸ Ministry of Traffic and Communication of Bosnia and Herzegovina, a letter with no number, received on 06 August 2019

¹⁹⁹ Medicines and Medical Aids Agency of BiH, a letter no. 10-02.3-3784-1/19 of 01 August 2019

²⁰⁰ Anti-Doping Control Agency of BiH, a letter without number and date, Agency for Personal Data Protection in Bosnia and Herzegovina, a letter no. 05-1-34-16-712-2 / 19 of 13 August 2019, State Appellate Commission, a letter

- b) An appeal can be lodged within the Council of Ministers of Bosnia and Herzegovina Appellate Committee and the Institution of Human Rights Ombudsman of Bosnia and Herzegovina²⁰¹
- c) An appeal can be lodged within the the Director of the Service and the Institution of Human Rights Ombudsman of Bosnia and Herzegovina²⁰²
- d) An appeal can be lodged within the decision issuing body²⁰³
- e) An appeal can be lodged to the Director of the Indirect Taxation Authority of Bosnia and Herzegovina within 15 days from the date of the receipt of a decision and the Institution of Human Rights Ombudsman of Bosnia and Herzegovina²⁰⁴
- f) An appeal can be lodged within the Chair of the Regulatory Communication Agency of Bosnia and Herzegovina;²⁰⁵

Standardization Institute of Bosnia and Herzegovina points out in its reply: „*all requests for access to information were resolved positively to the favor of a requesting party by granting the access. There were no cases of partial vi zahtjevi su riješeni pozitivno u korist podnosioca. Nije bilo djelimičnog rješenja pristupa informacijama.*“²⁰⁶

6.6.2 Decision-making on requests for access to information – public authorities of Republika Srpska

The largest number of replies of public authorities of Republika Srpska indicates that in processing the requests for access to information, they decide in the form of a letter, in accordance with the LFAI RS.²⁰⁷

no. 01-1-12-1-130-2/19 of 9 August 2019, Ministry of Human Rights and Refugees BiH, a letter no. 05-12-1-1819-2/19 of 6 August 2019, Office for Harmonization and Coordination of Payment Systems in Agriculture, Food and Rural Development of BiH, a letter no. 02-9-50-3-1882/19 of 01 August 2019, BiH Agency for Medicinal Products and Medical Devices, a letter no. 10-02.3-3784-1/19 of 01 August

²⁰¹Ministry of Civil Affairs of BiH, a letter without number, received on 15 August 2019, Agency for the Prevention of Corruption and Coordination against Corruption, a letter no. 03-12-1-382-2/19/19 (S.S) of 05 August 2019, Attorney General of Bosnia and Herzegovina, a letter no. 04-29-1-PbiH-300/19 of 4 September 2019, Public Administration Reform Coordinator's Office, a letter no. 06-29-1-56-5/17 of 16 September 2019, Civil Service Agency, a letter no. 03-50-28-1/19 of 09 August 2019, Postal Traffic Agency of Bosnia and Herzegovina, a letter no. 01-03-1-50-4-474-5/19 of 08 August 2019, European Integration Directorate, a letter no. 01-50-MT-1021-2/19 of 01 August 2019, Civil Aviation Directorate, a letter no. 1-2-50-2-538-2/19 of 05 August 2019, Market Surveillance Agency, a letter no. 02-12-368-2/19 of 08 August 2019, Office for Audit of the Institutions of BiH, a letter no. 01/4-12-832-2/19 of 7 August 2019, Veterinary Office of Bosnia and Herzegovina, a letter no. 01-7-50-8-582-1/19 of 6 August 2019, Ministry of Finance and Treasury of BiH, a letter no. 01-16-1-5491-2 /19 of 2 August 2019, Ministry of Communications and Transport of BiH, a letter no. number, received on 06 August 2019, Intellectual Property Institute of BiH, a letter no. 05-12-1-554-2/19SD dated 30 July 2019, BiH Council of Competition, a letter no. 01-12-1-213-3/19 of 01 August 2019, BiH Insurance Agency, a letter no. 02-12-233-2/19 of 6 August 2019, BiH Central Election Commission, a letter no. 04-12-561-2/19 of 01 August 2019

²⁰² Joint Affairs of the Institutions of Bosnia and Herzegovina Service, a letter no. 06/I-50-1-1709-1/19 of 07 August 2019

²⁰³Public Procurement Agency of BiH, a letter no. 02-12-2125-2/19 of 31 July 2019

²⁰⁴ Indirect Taxation Administration of BiH, a letter no. 01/3-14-1-1632-1/19 of 13 August 2019

²⁰⁵ Regulatory Communications Agency of BiH, a letter with no number, received on 05 August 2019

²⁰⁶ Standardization Institutet of BiH, a letter no. 04-50.1-45-957-2/19 of 01 August 2019

²⁰⁷ Banja Luka Town Administration, a letter no. 23-059-1066 / 2019 dated 03 December 2019, Bijeljina Town Administration, a letter no. 02 / 8-052-3-49/19 of 01 August 2019, Han-Pijesak Municipality, a letter no. 02-053-15/19 dated 5 August 2019, Municipality of Nevesinje, a letter dated 07 August 2019, Republic Administration for Inspections of Republika Srpska, a letter no. 24.2004 /054-101-2/19 of 6 August 2019, Ministry of Finance of Republika Srpska, a letter no. 06.01 / 059-1925/19 of 08 August 2019, Office of the President of the Republika Srpska, a letter no. 01-2-054-3021-1/19 of 13 August 2019, Government of Republika Srpska-Republic Secretariat

Some institutions underline in their replies that they issue decisions on requests for access to information.²⁰⁸

Ministry of Transport and Communications of Republika Srpska, Ministry of Finance - Tax Administration of Republika Srpska, Ministry of Education and Culture of Republika Srpska and the Ministry of Family, Youth and Sports of Republika Srpska have stated that decisions are made both in the form of a letter and in the form of a decision.²⁰⁹

Joint Affairs Service of the Government of Republika Srpska said in their answer that they do not have a defined form of a reply to a request for access to information.²¹⁰

In respect to providing an instruction on available legal remedy, most of the public bodies in Republika Srpska claim that an instruction on legal remedy includes all elements prescribed under Article 14 of LFAI RS.²¹¹ According to their own replies, some public authorities do not indicate the availability of a legal remedy.²¹²

for Displaced Persons and Migration, a letter nNo. 26.05-07-882/19 of 12 August 2019, State Board of Appeals of Republika Srpska, a letter no. 052-326/19 of 06 August 2019, Ministry of Justice, Center for the Provision of Free Legal Assistance of Republika Srpska, a letter no. 08/2.01/025-260-1/19 of 08 August 2019, National Assembly of Republika Srpska, a letter no. 02/2-1352-1/19 of 12 August 2019, Republika Srpska Pension Insurance Fund, a letter no. O-98/2019-91 dated 13 August 2019, House of Peoples of Republika Srpska, a letter no. 03.2-305/19-1 of 13 August 2019, Ministry of Science and Technology Development, Higher Education and Information Society, a letter no. 19.02/052-6732/19 of 13 August 2019, Statistic Institute of Republika Srpska, a letter no. 06.3.07 / 060-528 / 19 of 13 August 2019, Seized Asset Management Agency, a letter no. 08/3-053-7/19 of 21 August 2019, Zvornik Town Administration, a letter no. 07-053-14/19 of 08 August 2019, Institute for Adult Education of Republika Srpska, a letter no. 07/5.5/034-229/19 of 29 August 2019, Laktaši Municipality, a letter no. 02-02-22/19 of 02 August 2019, the Government of Republika Srpska-Secretariat-General for Information-Public Relations Office, a letter no. 04.3/053-19 of 14 August 2019, Ministry of Health and Social Welfare, a letter no. 11/02-500-450/19 of 19 August 2019, RS Bureau of Statistics, a letter no. 06.3.07/ 060-528 /19 of 13 August 2019

²⁰⁸ Helicopter service of Republika Srpska, a letter no. 116/19 of 31 July 2019, Gradiška Town Administration, a letter dated 05 August 2019, RS Traffic Safety Agency, a letter no. 13/1/052-873/19 of 8 August 2019, Ministry of Justice, a letter no. 08.040/052-6349/19 dated 27 August 2019, Republic Center for the Investigation of War and War Crimes and Search for Missing Persons of Republika Srpska, a letter 13 August 2019, Gender Center of the Government of Republika Srpska, a letter of 21 August 2019

²⁰⁹ Ministry of Transport and Communications of Republika Srpska, a letter no. 13.02/ 053-1421 /19 of 08 August 2019, Ministry of Finance - Tax Administration of Republika Srpska, a letter no. 06/1.01/ 0103-052.4-13014/2019 of 08 August 2019, Ministry of Education and Culture of Republika Srpska, a letter no. 07.034 / 053-15-163/19 of 12 August 2019, Ministry of Family, Youth and Sports of Republika Srpska, a letter of 13 August 2019

²¹⁰ Joint Affairs Office of the Government of Republika Srpska, a letter no. 04/2.3.3.-053-626-1/19 of 12 August 2019

²¹¹ Bijeljina Town Administration, a letter no. 02/8-052-3-49/19 of 01 August 2019, Gradiška Town, a letter of 05 August 2019, RS Ministry of Transport and Communications, a letter no. 13.02/053-1421/19 of 17 August 2019, Ministry of Finance of Republika Srpska, a letter no. 06.01/059-1925/19 of 08 August 2019, Office of the President of Republika Srpska, a letter no. 01-2-054-3021-1/19 of 13 August 2019, Government of Republika Srpska-Republic Secretariat for Displaced Persons and Migration, a letter no. 26.05-07-882/19 of 12 August 2019, Ministry of Justice Center for the Provision of Free Legal Aid of Republika Srpska, a letter no. 08/2.01/025-260-1/19 of 08 August 2019, Republika Srpska Pension Insurance Fund, a letter no. O-98/2019-91 dated 13 August 2019, Republika Srpska Traffic Safety Agency, a letter no. 13/1/052-873/19 of 8 August 2019, Ministry of Family, Youth and Sports of Republika Srpska, a letter 13 August 2019, Ministry of Science and Technology Development, Higher Education and Information Society, a letter no. 19.02/052-6732/19 of 13 August 2019, Gender Center of the Government of Republika Srpska, a letter no. 21 August 2019, Institute for Adult Education of the Republika Srpska, a letter no. 07/5.5/ 034-229/19 of 29 August 2019

²¹² State Board of Appeals of Republika Srpska, a letter no. 052-326/19 of 06 August, Joint Affairs Service of the Government of Republika Srpska, a letter no. 04/2.3.3.-053-626-1/19 of 12 August 2019, House of Peoples of the Government of Republika Srpska, a letter no. 03.2-305/19-1 of 13 August 2019

Some public authorities instruct applicants on the possibility of addressing the competent ministers and the director, but without specifying the other elements contained in LFAI RS.²¹³

Helicopters Service of Republika Srpska in its reply points out: *"if a party requesting the access to information is not satisfied with given response or a decision related to their request, it may appeal from that decision to the Helicopter Service Director within 8 days from the date of the receipt of the mentioned reply or a decision"*.²¹⁴

Seized Property Management emphasizes in its reply *"if the Agency denies the access to required information fully or in part it will notify the requestor about it within 15 days from the date of its receipt of a request."*²¹⁵

Statistics Institute of Republika Srpska, Republic Administration for Inspections and Nevesinje Municipality provided the answer saying that they had no cases of denial of access to information.²¹⁶

6.6.3 Decision-making on requests for access to information – public authorities of the Federation of Bosnia and Herzegovina

Analysis of the received replies provided by the public authorities of the Federation of Bosnia and Herzegovina shows that most of public bodies issues decisions on requests for access to information.

Some institutions indicate in their replies that they issue decisions and notification letters after the processing of requests for access to information.²¹⁷

Federal Hydro-Meteorologic Institute in its reply indicates that: *„...Most requests received from the external users come in the form of a letter, and for specifics of information required (data on measured, observed values and phenomena etc.) the provided answers are also given in the form of a letter, and very rarely according to the lodged request and in the form of a decision."*²¹⁸

Joint Affairs Service of the Federation of Bosnia and Herzegovina Authorities claims as follows: *„...In most cases, replies are provided in the form of decisions. However, in certain cases, in the case of information of such a nature that it requires only a written notification they are provided including the requested information or a requested document."*²¹⁹

²¹³ Ministry of Finance – Tax Administration of Republika Srpska, a letter no. 06/1.01./0103-052.4-13014/2019 of 08 August, the Ministry of Education and Culture, a letter of 08 August 2019, Republic Center for Investigation of War, War Crimes and Search for Missing Persons, a letter with no number dated 14 August 2019

²¹⁴ Helicopter Service of Republika Srpska, a letter no. 116/19 of 31 July 2019

²¹⁵ Seized Property Management Agency, a letter no. 08/3—053-7/19 of 21 August 2019

²¹⁶ StatisticInstituteof Republika Srpska, a letter no. 06.3.07/060-528/19 of 13 August 2019, Republic Administration for Inspections, a letter no. 24.2004/054-101-2/19 od 06 August 2019, Nevesinje Municipality, a letter of 07 August 2019

²¹⁷ Federal Hydro-Meteorologic Institute, Joint Affairs Service of the Federation of Bosnia and Herzegovina authorities, Federal Prosecutor's Office and Federal Ministry of Environment and Tourism

²¹⁸ Federal Hydro-Meteorologic Institute, a letter no. 07-49-1-954-1/19 of 09 August 2019

²¹⁹ Joint Affairs Service of the Federation of Bosnia and Herzegovina authorities, a letter no. 03-05-2288/19 of 07 August 2019

Some public bodies emphasize that they only adopt relevant decisions on requests for access to information.²²⁰

Most of the public authorities of the Federation of Bosnia and Herzegovina, in their replies, state that the information on available legal remedy contains information of the instance to which the adopted decision can be appealed from, that it is usually the competent minister or a head of the body, the deadline within which an appeal can be lodged, while the instruction does not contain information about the possibility of addressing the Institution of Human Rights Ombudsman of Bosnia and Herzegovina.²²¹

Some public authorities replied that they act pursuant to Article 14 of LFAI FBiH,²²² while the Federal Ministry of Culture and Sports indicate the following: „*Our decision does not contain an instruction on legal remedy, which is in accordance with Article 14 paragraph 2 of the Law.*“²²³

Reply of the Federal Agropedology Institute reads: „...*Our instruction on legal remedy contains the following: In the whole course of the procedure a requesting party can address the Institution of Human Rights Ombudsman of Bosnia and Herzegovina.*“²²⁴

Federal Ministry of Environment and Tourism in its reply underlines: „*When we reply in the form of a letter, no instruction on legal remedy is included. When we issue a decision a legal remedy provided is the following: This decision can be appealed before the the Institution of Human Rights Ombudsman of Bosnia and Herzegovina within 15 days from its receipt.*“²²⁵

6.6.3.1 Decision-making on requests for access to information – public authorities of the cantons

Analysis of the received replies provided by the public authorities of the cantonal level, including the towns and the municipalities, shows that most of public bodies issues decisions on requests for access to information.

²²⁰ Federal General Attorney's Office and Public Institution Judges and Prosecutors Education Center of the Federation of BiH

²²¹ Federal Land Survey and Property Issues Administration, a letter no. 01-02-1233720 / 19 of 29 July 2019, Federal Ministry of Labor and Social Policy, a letter no. 01-49/1-1955/19 NM dated 7 August 2019, Federal Ministry of Health, a letter no. 01-10-4715/19 of 05 August 2019, Federal Attorney's Office, a letter no. FP-432/29 of 6 August 2019, Federal Civil Service Administration, a letter no. 03-05/18-457-1/19 of 08 August 2019, Joint Affairs Administration of the Federation of Bosnia and Herzegovina authorities, a letter no. 03-05-2288 / 19 of 07 August 2019, Federation of BiH Insurance Supervision Agency, a letter no. 01-02.2-059-2220/19 of 15 August 2019, Federal Ministry of Justice, a letter no. 09-49-2227/19 of 12 August 2019, Federal Hydrometeorological Institute, a letter no. 07-49-1-954-1/19 of 09 August 2019, Banking Agency of the Federation of Bosnia and Herzegovina, a letter no. 04-1-2-2795/19 of 13 August 2019., Regulatory Commission for Energy in the Federation of BiH Act No. 04-01-836-05/19 of 28 June 2019, Federal Prosecutor's Office, a letter no. A-398/19 of 13 September 2019, Federal Ministry of Energy, Mining and Industry, a letter no. 04-49-1365/19 of 13 August 2019

²²² Government of the Federation of BiH, a letter no. 04-05-763 / 2019 dated 3 September 2019, Federal Agropedology Institute, a letter no. 05-49-838-2/19 of 13 August 2019, Federal Inspection Administration, a letter no. 01-49-1-03850/2019 of 21 August 2019, Federal Ministry of Environment and Tourism, a letter no. 08-49-571/19 of 20 August 2019, Federal Ministry of Education and Science, a letter no. 01-49-3277-1/19 of 30 August 2019

²²³ Federal Ministry of Culture and Sports, a letter of 27 August 2019

²²⁴ Federal Agropedology Institute, a letter no. 05-49-838-2/19 of 13 August 2019

²²⁵ Federal Ministry of Environment and Tourism, a letter no. 08-49-571/19 of 20 August 2019

The Ministry of Interior of Sarajevo Canton states in its response that it makes decisions in the form of decisions and conclusions.²²⁶

Ministry of Construction, Landscaping and Environment of Una-Sana Canton, Cantonal Privatization Agency of Tuzla Canton, Ministry of Justice and Administration of West Herzegovina Canton states that decisions are made in the form of decisions and notification letters.

Ministry of Health, Labor and Social Welfare of the Herzegovina-Neretva Canton states in its reply that it responds to requests for access to information in the form of letters, which do not contain any instruction on legal remedy.²²⁷

Public authorities at the cantonal level, when deciding on a request for access to information, usually mention, as a remedy available to a requesting party, the possibility of filing an appeal with the Minister, the Head of the Authority or the Mayor within 8 days of the receipt of the decision.²²⁸

Some authorities explicitly mention that in addition to the possibility of filing an appeal with the Minister, the Head of the Authority or the Mayor within 8 days of the receipt of the decision, the requesting party can lodge an appeal with the Institution of Human Rights Ombudsman of Bosnia and Herzegovina.²²⁹

Ministry of Education, Science, Culture and Sports of West Herzegovina Canton in its reply indicates that it does not include the instruction on legal remedy in its documents.²³⁰

Ministry of Justice and Administration of Posavina Canton emphasizes that its decisions made upon requests for access to information include an instruction on legal remedy mentioning that

²²⁶ Ministry of Interior of Sarajevo Canton, a letter no.: 01-5-49-4298 of 16 August 2019

²²⁷ Ministry of Health, Labor and Social Protection of Hercegovin –Neretva Canton of 21 August 2019

²²⁸ Ministry of Judiciary and Administration of Central Bosnia Canton, a letter no. 01/2-02-225/2019 of 31 July 2019, Caantonal Administration for Inspections of Tuzla Canton, a letter no. 17/1-05-007567/19 of 16 August 2019, Goražde Town, the Mayor, Bosna-Drina Canton, a letter no. 02-05-2-3070/19 of 02 August 2019, Živinice Town, a letter no. 02/3-05-4386/19 of 19 August 2019, the Ministry of Health and Social Policy of Central Bosnia Canton, a letter no. 03-02-455/19-2 of 09 August 2019, the Ministry of Culture and Sports of Sarajevo Canton, a letter no. 12-10-29781/19 of 22 August 2019, Ministry of Industry of Zenica-Doboj Canton, a letter no.:04-05-1239-3/19 of 05 September 2019, Ministry of Economy of Sarajevo Canton, a letter no.: 07-01-10-29781-2/19 of 05 August 2019, Ministry of Landscaping, Construction and Environmental Protection of Sarajevo Canton, a letter no. 05 / 01-49-30099/19 of 05 August 2019, Ministry of the Interior of Zenica-Doboj Canton, a letter no. 08-01-01/1-02-1-3933-1/19 of 08 February 2019, West Herzegovina Canton, Government-Office of the President, a letter no. 17-72-1/19 of 08 August 2019, Cantonal Agency for Privatization of Sarajevo Canton, a letter no. 21-06/1-49-117-1 dated 26 August 2019. Ministry of Justice and Administration of the West Herzegovina Canton no. 03-02-49-587-2/19 of 26 August 2019, Ministry of Justice and Administration of Sarajevo Canton, a letter without number, received on 19 August 2019

²²⁹ Ministry of Economy of Herzegovina-Neretva Canton, a letter no. 07-02a) -51-375-1/19 of 23 August 2019, Ministry of Interior of Bosna-Drina Canton of Goražde, a letter no. 07-01-02-3492/19 of 19 August 2019, Municipality of Travnik, no.: 03-05-14-21-157/19 of 12 August 2019, Ministry of Veterans of Tuzla Canton, a letter no. 15/1-05-015702/19 of 31 July 2019, Joint Affairs Service of Cantonal Administrative Bodies -Podrinje Canton, a letter no. 15-49-400-1/19 of 07 August 2019, Ministry of Health, Labor and Social Policy of Una-Sana Canton, a letter no. 09-05-6600-UP-1/19 of 21 August 2019, Ministry of Labor, Health and Social Welfare of Canton 10, a letter no. 09-01-05-1/19 of 22 August 2019, Ministry of Agriculture, Forestry and Water Management of Herzegovina-Neretva Canton, a letter no., Ministry of Veterans of Herzegovina-Neretva Canton, a letter no. 12-01-12-3271/19-2 of 30 July 2019

²³⁰ Ministry of Education, Science, Culture and Sports of West Herzegovina Canton, a letter no. 07-01-49-423-2/19 of 01 August 2019

an appeal can be lodged with the Federal Ministry of Justice within 15 days from the date of a decision's receipt.²³¹

It is not specified in this reply in which way the Federal Ministry of Justice acted in a procedure upon an appeal from a decision made by the Ministry of Justice and Administration of Posavina Canton.

Ministry of Health, Labor and Social Protection of Hercegovina-Neretva Canton claims that „...*Since we reply to requests for access to information in the form of a letter, it does not include any instruction on availability of legal remedies.*“²³²

Cantonal Administration for Inspections of Sarajevo Canton in its reply informs the Ombudsman that they always include an instruction on legal remedy which comprises all the elements prescribed by Article 14 paragraph (3) Item 2 of LFAI FBiH and its form is always the same irrespective of the merits of the adopted decision.²³³

6.6.4 Decision-making on requests for access to information – public authorities of Brčko District of BiH

Public authorities of Brčko District of BiH replied to the inquiry of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina indicating that they resolve requests for access to information by adopting the relevant decisions.²³⁴

As it comes to the instruction on legal remedy, the Police of Brčko District of BiH informed the Ombudsman in its reply „*that an appeal can be lodged with the Appellate Commission of Brčko District of BiH, within 15 days from the date of submission and this appeal is referred via the Police of Brčko District of BiH.*“

Assembly of Brčko District-Expert Service of the Assembly points out that its decision „*includes the information on the right to appeal from a decision within the Appellate Commission of Brčko District of BiH, within 15 days from the date of submission and that a requesting party can address the Institution of Human Rights Ombudsman of BiH in Brčko District*“.²³⁵

Judicial Commission of Brčko District of BiH is identical: „*A decision denying the access to information in full or in part includes the instruction on available legal remedy, the right to appeal, the address of the appellate body, the deadlines and costs involved in appealing process, as well as the instruction on the right to address the Ombudsman with necessary contact information of the Ombudsman.*“²³⁶

The Government of Brčko District of BiH-Public Registry Department in its reply indicates that a decision on a request for access to information includes the name and the address of a appellate

²³¹ Ministry of Justice and Administration of Posavina Canton, a letter no. 03-05-204/19 of 01 August 2019

²³² Ministry of Health, Labor and Social Protection of Hercegovina-Neretva Canton, a letter 21 August 2019

²³³ Cantonal Administration for Inspections of Sarajevo Canton, a letter no. 14-03-49-03273/17 of 12 July 2019

²³⁴ Assembly of Brčko District – Expert Service, a letter no. 02-05-828/19 of 07 August 2019, Police of Brčko District of BiH, a letter without number, received on 15 August 2019, Government of Brčko District of BiH – Public Registry Department, a letter without number, received on 09 August 2019 and Judicial Commission of Brčko District of BiH, a letter no. SuPK-1337/19 of 02 August 2019

²³⁵ Assembly of Brčko District of BiH, a letter no. 02-05-828/19 of 07 August 2019

²³⁶ Judicial Commission of Brčko District of BiH, a letter no. SuPK-1337/19 of 02 August 2019

body, the deadlines and costs involved in appealing process, as well as the instruction on the right to address the Ombudsman with necessary contact information of the Ombudsman.²³⁷

6.7 Examination of justification and/or reasoning of a request

„A public authority shall neither require nor ask for any reason or justification for the request.“²³⁸

6.8 Examination of justification and/or reasoning of a request and establishment of the authority - public bodies of Bosnia and Herzegovina

Analysis of replies provided by the public bodies at the level of Bosnia and Herzegovina indicates that the most of these bodies does not examine justification or a request nor ask for its reasoning.

Some public bodies, however, mentioned that they examine the justification of a request for access to information.²³⁹

A conclusion can be drawn from some replies that a reasoning is asked only if a request is not clear or precise, so that some clarifications are necessary.²⁴⁰

Postal Traffic Agency of Bosnia and Herzegovina in its reply claims the following,*„...In each specific request for access to information, the Agency assesses the justification of the submitted request, and if its justification is not sufficiently clear or substantiated, it addresses the requestor in writing, leaving them a deadline to complete and specify the request. This is done to enable the requestor to facilitate granting the access to the requested information on the one hand, and to protect the public and the interests of third parties from abuse of the right to access information, on the other.“²⁴¹*

Competition Council of Bosnia and Herzegovina points out in its reply *„...if the Competition Council establishes that there is no justification for granting access to information, the Council issues a Decision not to grant access to information relevant regulationsUkoliko Konkurencijsko vijeće utvrdi da ne postoji opravdanost za dostavljanje informacija, isto donosi Rješenje kojim se ne odobrava pristup informacijama..... It happens, however, that request for access to information is not sufficiently clear in which case the Competition Council seeks*

²³⁷ Government of Brčko District of BiH – Public Registry Department, a letter without number, received on 09 August 2019

²³⁸ Article 11 of the Law on Free Access to Information of Bosnia and Herzegovina, Article 11 of the Law on Free Access to Information of Republika Srpska, Article 11 of the Law on Free Access to Information of the Federation of Bosnia and Herzegovina

²³⁹ BiH Public Procurement Agency, Ministry of Foreign Trade and Economic Relations of BiH, Directorate of Bosnia and Herzegovina for Plant Health Protection, Office for Harmonization and Coordination of Payments in Agriculture, Food, and Rural Development of BiH, Veterinary Office of BiH, BiH Mine Action Center, BiH Intellectual Property Agency and BiH Ministry of Defense

²⁴⁰ Personal Data Protection Agency in BiH, BiH Return Fund, BiH the Ministry of Finance and Treasury and BiH Competition Board

²⁴¹ BiH Postal Traffic Agency, a letter no. 01-03-1-50-4-474-5/19 of 08 August 2019

further clarification, after which it begins to draft a decision in accordance with the relevant legislation. ²⁴²

Asked if they had requests falling out of their mandate and how was the case handled in such situations, a half of the public authorities in their responses stated that they received requests for which they were not competent, and that in such cases they forwarded them to the competent authority and informed the requestor about it.

European Integration Directorate of Bosnia and Herzegovina in its reply points out the following: *„...Also, pursuant to Article 13 of the Law, the Directorate processed requests for information for which it was not a competent authority and in such cases if it was established that the information is under its control and when the competent public authority, after being informed of the details of the request, had no objection for the public authority that received the request to process it.* ²⁴³

On the other hand, a half of public authorities had no such experience.²⁴⁴

Audit Office of Institutions of Bosnia and Herzegovina replies: *„...Often, however, information is requested from the Office whose initial producer or processor is another institution, so these institutions might be more appropriate to be 'addressed' with such requests, and the Office has obtained this information through the audit process.* ²⁴⁵

6.8.1 Examination of justification and/or reasoning of a request and establishment of the authority - public bodies of Republika Srpska

Asked whether, in deciding on a request for access to information, they examine the justification or ask for the request to be reasoned, the largest number of public authorities in Republika Srpska submitted a reply that they do not examine the justification of a request, nor they ask for a justification for it.²⁴⁶

²⁴² Competition Board of Bosnia and Herzegovina, a letter no. 01-12-1-213-3/19 of 01 August 2019

²⁴³ European Integration Directorate of Bosnia and Herzegovina, a letter no. 01-50-MT-1021-2/19 of 01 August 2019

²⁴⁴ BiH Standardization Institute, BiH Anti-Doping Agency, Medicines and Medical Devices Agency of BiH, BiH Central Election Commission, BiH Appeals Review Office, BiH Insurance Agency, BiH State Appeals Board, BiH Market Surveillance Agency, Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption, Affairs Office of the Institutions of Bosnia and Herzegovina, Institute for Metrology of BiH, Directorate for Civil Aviation of BiH, Institute for Intellectual Property of BiH, Office for Harmonization and Coordination of Payment Systems in Agriculture, Food and Rural Development BiH, BiH Plant Protection Administration, BiH Public Procurement Agency, BiH Postal Traffic Agency and BiH Foreign Investment Protection Agency (FIPA)

²⁴⁵ Audit Office of Institutions of Bosnia and Herzegovina, a letter no. 01/4-12-832-2/19 of 07 August 2019

²⁴⁶ State Board of Appeals, Republic Inspection Directorate, Republic Secretariat for Displaced Persons and Migration, Ministry of Justice, Seized Property Management Agency, Republic Pedagogical Institute, Gradiška Town, Ministry of Education and Culture, Municipality of Nevesinje, Ministry of Education and Culture- Adult Education Institute, Republican Commission for Conflict of Interests in the Bodies of Republika Srpska, Laktaši Municipality, Republika Srpska Pension and Disability Insurance Fund, Bijeljina Town and Banja Luka Town Administration

Some public bodies in Republika Srpska replied that they do examine justification of a request.²⁴⁷

Replies provided by the public authorities indicate that in the case of incomplete or unclear requests for access to information, the officer in charge of requests the applicant to justify the request or its part.²⁴⁸

Most of public authorities at the level of Republika Srpska did not have any experience with requests for access to information not falling within their mandate.

Public authorities which did have experience with such requests submitted that they informed the requestor about them not being competent and directed the requesting party to the competent authority.²⁴⁹

6.8.2 Examination of justification and/or reasoning of a request and establishment of the authority - public bodies of the Federation of Bosnia and Herzegovina

The largest number of public authorities submitted a reply that they do not examine the justification of a request. A small number of the authorities replied that they do examine justification of a request.²⁵⁰

Federal Prosecutor's Office replied that they examine justification of a request in cases: "*when information officer cannot clearly define what concrete information is sought by a requestor.*"²⁵¹

Federal Agro-Mediterranean Institute says in its answer: „*Yes, we always ask for justification of a request.*“²⁵²

A reply provided by the Federal Civil Protection Administration indicates that justification of a request is assessed based on the nature of the sought information and related circumstances.²⁵³

Asked about their actions in case of not having the competence, a smaller number of the public authorities replied that they never had such requests.

Some public authorities replied that in such cases they would inform the requesting party that they were not competent for it and instruct them about the competent body.²⁵⁴

²⁴⁷ Ministry of Landscaping, Construction and Ecology, Republic Directorate for Reconstruction and Construction, President of the Republic-President's Office, Zvornik Town, Ministry of Justice- Free Legal Aid Center, Ministry of Finance, House of Peoples of Republika Srpska, Ministry of Finance-Tax Administration, Ministry for Science and Technology Development, Higher Education and the Information Society, Republika Srpska Helicopter Service and Republic Center for Research of War, War Crimes and Search for Missing Persons

²⁴⁸ Ministry of Finance, Government of Republika Srpska – Joint Affairs Service, Ministry of Family, Youth and Sports, Republic Statistics Agency, Traffic Safety Agency

²⁴⁹ Gradska uprava Grada Bijeljine Town Administration, a letter no. 02/8-052-3-49/19 of 01 August 2019, Helicopter service of Republika Srpska, a letter no. 116/19 of 31 July 2019, Ministry of Transport and Communications of Republika Srpska, a letter no. 13.02/053-1421/19 of 17 August 2019, Ministry of Finance of Republika Srpska, a letter no. 06.01/059-1925/19 of 08 August 2019, Government of Republika Srpska-Republic Secretariat for Displaced Persons and Migration, a letter no. 26.05-07-882/19 of 12 August 2019, Traffic Safety Agency of Republika Srpska, a letter no. 13/1/052-873/19 of 08 August 2019, Republic Center for Research on War and War Crimes and Search for Missing Persons of Republika Srpska, a letter of 13 August 2019, Ministry of Science and Technology Development, Higher Education and Information Society, a letter no. 19.02 /052-6732/19 of 13 August 2019, Statistics Office of Republika Srpska, a letter no. 06.3.07/060-528 / 19 of 13 August 2019

²⁵⁰ Federal General Attorney's Office and Government of the Federation of BiH

²⁵¹ Federal Prosecutor's Office, a letter no. A-398/19 of 13 September 2019

²⁵² Federal Agro-Mediterranean Institute, a letter no. 05-05-3-1189-2/19 of 13 August 2019

²⁵³ Federal Civil Protection Administration, a letter no. 03-05/18-457-1/19 of 08 August 2019

²⁵⁴ Federal Administration for Land Survey and Property Affairs, a letter no. 01-02-1233720/19 of 29 July 2019, Federal Attorney's Office, a letter no. FP-432/29 of 6 August 2019, FBiH Constitutional Court, a letter no. 2-57-1/19 dated 30 July 2019, Federal Civil Administration, a letter no. 03-05/18-457-1/19 of 08 August 2019, Joint Affairs Service of the Federation of BiH Bodies, a letter no. 03-05-2288/19 of 07 August 2019, Federal Ministry of Justice,

Federal the Ministry of Health states in its reply: "...depending of a nature of a request, some requests are falling out of the scope of the Ministry, and it is not rare that such request does not have features of a request for access to information as prescribed by the Law."²⁵⁵

Federal Hydro-Meteorology Institute in its answer claims that they would: "...inform the requesting party by phone or email" in case that they would not be in charge of requested information.²⁵⁶

6.8.2.1 Examination of justification and/or reasoning of a request and establishment of the authority - public bodies of the cantons

Most cantonal public authorities do not examine the justification of requests for access to information, nor seek a justification for it. Nevertheless, there are examples of the opposite practice as well.²⁵⁷

If the request for access to information is unclear or insufficiently specified, a number of public authorities require a justification in terms of clarification and concretization of the requested information.²⁵⁸

Received answers show that 15 public authorities at cantonal level had requests for access to information falling out of their remit in which case they had acted in sense of Article 13 LFAI FBIH and referred such requests to a competent public body.²⁵⁹

Cantonal Archives Travnik replied as follows: „Some administrative bodies the archived documents of which are entrusted to us for safekeeping referred to us some requests they received. Depending on a nature of such cases, we either lend requested documents keeping a sign-out sheet or inform the requesting party that we apply the provisions of the Law on Archives in such cases because the requested documents are archived material.“²⁶⁰

a letter no. 09-49-2227/19 dated 12 August 2019, Government of the Federation of BiH, a letter no. 04-05-763/2019 dated 03 September 2019, Federal Administration for Inspections Affairs, a letter no. 01-49-1-03850/2019 of 21 August 2019, Energy Regulatory Commission in the Federation of BiH, a letter no. 04-01-836-05/19 of 28 June 2019, Federal Ministry of Education and Science, a letter no. 01-49-3277-1/19 of 30 August 2019, Federal Prosecutor's Office, a letter no. A-398/19 of 13 September 2019, Federal Ministry of Energy, Mining and Industry, a letter no. 04-49-1365/19 of 13 August 2019

²⁵⁵ Federal the Ministry of Health, a letter no. 01-10-4715/19 of 05 August 2019

²⁵⁶ Federal Hydro-Meteorology Institute, a letter no. 07-49-1-954-1/19 of 09 August 2019

²⁵⁷ Cantonal Privatization Agency of Tuzla Canton, Ministry of Construction, Landscaping and Environment of Una-Sana Canton, Ministry of Veterans of Tuzla Canton, Ministry of Economy of Zenica-Doboj Canton, Ministry of Labor, Social Policy and Refugees of Zenica-Doboj Canton, Ministry of Veterans of Herzegovina-Neretva Canton, Ministry of Justice and Administration of Central Bosnia Canton, Ministry of Agriculture, Water Management and Forestry of Central Bosnia Canton, Ministry of Veterans of Sarajevo Canton, Cantonal Administration for Civil Protection of Sarajevo Canton, Ministry of Justice and Administration of the Posavina Canton, Inspections Administration of West Herzegovina Canton, Ministry of Interior of Central Bosnia Canton, Ministry of Health, Labor and Social Welfare of Herzegovina-Neretva Canton

²⁵⁸ Ministry of Justice and Administration of West Herzegovina Canton, Ministry of Labor, Social Protection and Refugees of Canton 10 and Ministry of Economy of Central Bosnia Canton

²⁵⁹ Ministry of Trade, Tourism and Environmental Protection of Herzegovina-Neretva Canton, a letter no. 10-02-36-369/19 of 30 August 2019, Cantonal Administration for Inspections of Tuzla Canton, a letter no. 17/1-05-007567/19 of 16 August 2019, Ministry of Interior of Sarajevo Canton, a letter no. 01-5-49-4298 of 16 August 2019, Ministry of Interior of Una-Sana Canton, a letter no. 05-01-05-61/19 of 08 August 2019, Ministry of Interior of Herzegovina-Neretva Canton, a letter no. 02-03/1-1-04-741/19 of 11 September 2019, Ministry of Interior of Central Bosnia Canton, a letter no. 01/2-49-1-1097/19 of 27 August 2019

²⁶⁰ Cantonal Archives Travnik a letter no. 05-48.11-126/19 of 09 August 2019

6.8.3 Examination of justification and/or reasoning of a request and establishment of the authority - public bodies of Brčko District of BiH

Asked whether, in deciding on a request for access to information, they examine the justification or ask for the request to be reasoned, the Police of Brčko District of BiH and the Government of Brčko District of BiH – Public Registry Department submitted a reply that they examine the justification of a request.²⁶¹

Securities Commission of Brčko District of BiH in its reply suggest that they did not have examples of such requests, but in case that they receive a request for access to information of this kind, they would take care of justification of it and, if necessary, ask for reasoning to be provided.²⁶²

Assembly of Brčko District of BiH – Expert Service of the Assembly and Judicial Commission of Brčko District of BiH indicate in its reply that they do not examine justification of a request, but, the Judicial Commission of Brčko District of BiH adds in its reply *„as it comes to reasoning, we insist on it only to the extent necessary to establish the nature or content of information sought in order for us to assess whether or not we possess such information.“*²⁶³

In respect of a question on requests for information falling out of the scope of their mandate, all surveyed public bodies of Brčko District of BiH replied that they had no such requests.

6.9 Information Officer

6.9.1 Information Officer – public authorities of Bosnia and Herzegovina

*„A public authority is obliged to appoint an Information Officer who shall process requests made under this Act. Upon the appointment of the Information Officer, his or her name and contact information shall be submitted to the Ombudsman.“*²⁶⁴

Received replies showcase that most public authorities met their obligation and appointed the information officer, except for the State Appellate Board of BiH, which provided an answer²⁶⁵ according to which they do not have appointed information officer.

Although they have appointed the information officers, some public authorities failed to inform the Institution of Human Rights Ombudsman of Bosnia and Herzegovina about it under Article 19 of LFAI BiH.²⁶⁶

²⁶¹ Police of Brčko District of BiH, a letter with no number, received on 15 August 2019, Government of Brčko District – Public Registry Department, a letter without number, received on 09 August 2019

²⁶² Securities Commission of Brčko District of BiH a letter no. 05-15.02-595/19 of 29 July 2019

²⁶³ Judicial Commission of Brčko District of BiH, a letter no. SuPK-1337/19 of 02 August 2019

²⁶⁴ Article 19 of the Law on Free Access to Information of Bosnia and Herzegovina, Article 19 of the Law on Free Access to Information of Republika Srpska, Article 19 of the Law on Free Access to Information of the Federation of Bosnia and Herzegovina

²⁶⁵ BiH State Appeals Board, a letter no. 01-1-12-1-130-2/19 of 09 August 2019

²⁶⁶ Indirect Taxation Authority of BiH, Personal Data Protection Agency of BiH, Institute for Standardization of BiH, Agency for Anti-Doping Control of BiH, Agency for Medicines and Medical Devices of BiH, Directorate for Civil Aviation of BiH, Institute for Metrology of BiH and Postal Traffic Agency of BiH

6.9.2 Information Officer – public authorities of Republika Srpska

Analysis of submitted replies show that most public authorities at the level of Republika Srpska have met their obligation to appoint the information officer, while some public bodies²⁶⁷ failed to meet this obligation so far.

Banja Luka Town Administration replied as follows „...*Processing of requests for access to information ...is done within the organizational unit Department for Communication with Citizens -Office for Citizens, and there are multiple officers processing such requests...*“²⁶⁸

6.9.3 Information Officer – public authorities of the Federation of Bosnia and

Submitted replies show that most public authorities met their obligation and appointed the information officer in sense of Article 19 LFAI FBiH, while some public bodies failed to honor this obligation.

There are public authorities that have appointed the information officer, but failed to inform the Institution of Human Rights Ombudsman of Bosnia and Herzegovina about it.²⁶⁹ Some public authorities did not appoint information officers.²⁷⁰

6.9.3.1 Information Officer - Cantonal Public Authorities

Analyzing the responses received from the cantonal level public authorities, it was found that most public authorities have an information officer who handles requests in terms of the FBiH LFAI.

Out of the total number of responses submitted, 13 cantonal public authorities have not so far appointed an Information Officer.²⁷¹

The Ministry of Internal Affairs of the West Herzegovina Canton stated in its reply: “... *However, it is emphasized that the new Rulebook on the Internal Organization of the Ministry ... systematizes the position of a public information officer, namely a senior expert associate for information, who, in the job description, treats the above laws, that is, in the future to make decisions on requests for access to information. Also, we state that in accordance with the aforementioned Ordinance, one of the civil servants will be reassigned these days ...*“²⁷²

²⁶⁷ Republika Srpska Helicopter Service, Ministry of Justice- Free Legal Aid Center, Republic Secretariat for Displaced Persons and Migration, Ministry of Justice- Seized Property Agency, Republic Pedagogical Institute, State Board of Appeals, Laktaši Municipality, Ministry of Justice, Gender Center - Center for Equality and Gender Equality of the Government of Republika Srpska, Government of Republika Srpska - Joint Affairs Service

²⁶⁸ Banja Luka Town Administration, a letter no. 23-059-1066/2019 of 03 December 2019

²⁶⁹ FBiH Joint Affairs Service, FBiH Constitutional Court, Federal Ministry of Physical Planning, Federal Ministry of Energy, Mining and Industry, Federal Ministry of Education and Science, FBiH Energy Regulatory Commission, Federal Ministry of Justice and Federal Ministry of Health

²⁷⁰ FBiH Public Institution Judges and Prosecutors Education Center, Federal Ministry of Environment and Tourism, FBiH Insurance Surveillance Agency, Federal General Attorney’s Office and Federal Agro-Mediterranean Institute

²⁷¹ Ministry of Health, Labor and Social Welfare of Posavina Canton, Office for Common Affairs of Cantonal Administration Bodies, Ministry of Economy of Una-Sana Canton, Ministry of Labor, Health, Social Protection and Displaced Persons of Cantons 10, Ministry of Justice and Administration of Central Bosnia Canton, Roads Administration of Canton 10, Civil Protection Directorate of West Herzegovina Canton, Ministry of Internal Affairs of West Herzegovina Canton, Cantonal Institute for Legal Aid of West Herzegovina Canton, Ministry of Internal Affairs of Central Bosnia Canton, Inspection Directorate of West Herzegovina Canton, Cantonal Agency for Privatization of Tuzla Canton, Ministry of Internal Affairs, Goražde;

²⁷² Ministry of the Interior of the West Herzegovina Canton Act No. 02-3/1-1073/19-1 of 26 August 2019;

A similar response was given by the Ministry of Internal Affairs of the Central Bosnia Canton, which states in its act that: "... in the draft new Rulebook on Internal Organization, they envisaged the said position."²⁷³

The Cantonal Office for Legal Aid of the West Herzegovina Canton states in its reply: "... The specificity of our business is such that the users of our services stay and are informed about all the regulations of the West Herzegovina Canton. Therefore, we have not even appointed a special information officer, and if there is a need for them in the future, these jobs will be carried out by an employed civil servant of this Institute."²⁷⁴

For the purposes of Article 19 of the FBiH LFAI, after the appointment of the Information Officer, the public authorities are obliged to submit to the Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina information on the Information Officer. Of the total number of responses received, 18 cantonal public authorities, including the surveyed cities and municipalities, fulfilled this obligation.²⁷⁵

6.9.1 Information Officer - Public Authorities of the Brčko District of BiH

The obligation to appoint information officers in the public bodies of the Brčko District of BiH, according to the submitted answers, was fulfilled by the Assembly of the Brčko District of BiH, the Judicial Commission of the Brčko District of BiH and the Police of the Brčko District of BiH. The response of the Judicial Commission of the Brčko District of BiH states "*Information Officer for all judicial institutions of the Brčko District of BiH, is determined by the provision of Article 23 of the Law on the Judicial Commission of the Brčko District of BiH and is Assistant Secretary - spokesman of the Judicial Commission of the Brčko District of BiH.*"²⁷⁶

Only the Brčko District Police has fulfilled the obligation to provide information on the Information Officer to the Human Rights Ombudsman Institution of Bosnia and Herzegovina.

Government of the Brčko District of BiH, the Department/Public Registry responds by stating that there is no designated information officer, but that "*there is an established position of that name within the Mayor's Office*".²⁷⁷

²⁷³ Ministry of the Interior of the Central Bosnia Canton Act No. 07-0102-3492/19 of 19 August 2019;

²⁷⁴ Cantonal Office for Legal Aid of West Herzegovina Canton Act No. 20-49-157-1/19 of 19.8.2019;

²⁷⁵ Cantonal Administration for Inspection Affairs of Sarajevo Canton, General Administration Service and BIZ of Travnik Municipality, Ministry of Economy of Herzegovina-Neretva Canton, Ministry of Trade, Tourism and Environmental Protection of Herzegovina-Neretva Canton, Cantonal Privatization Agency of Sarajevo Canton, Ministry of Health, Labor and Social Policy Una-Sana Canton, Ministry of Internal Affairs of Zenica-Doboj Canton, Ministry of Construction, Physical Planning and Environment of Una-Sana Canton, Ministry of Economy of Zenica-Doboj Canton, Ministry of Labor, Social Policy and Refugees of Zenica-Doboj Canton, Ministry for Defense of Herzegovina-Neretva Canton, Cantonal Administration for Civil Protection of Sarajevo Canton, Ministry of Justice and Administration of West Herzegovina Canton, Ministry of Economy of Central Bosnia Canton, Cantonal Administration for Civil Protection of Tuzla Canton, Ministry of Justice and Administration of Una-Sana Canton and the Ministry of Justice and Administration of Sarajevo Canton;

²⁷⁶ Judicial Commission of the Brčko District of BiH Act No. SuPK-1337/19 dated 2 August 2019;

²⁷⁷ Government of the Brčko District of BiH - Department for Public Register Act No: (no number), received on 09.08.2019;

6.10 Information Access Guide and Index Information Register

"Each public authority shall publish and submit:

*a) A **guide** allowing each person access to information under the control of a public authority, including, but not limited to, information required to contact the public authority and its information officer, essential elements of the application process, together with a sample request in writing, category information exceptions, the procedure for access to information, the cost of duplication, access to remedy, and all relevant deadlines. The guide also refers to the index register, as defined in paragraph 1 item b) of this article, as well as the way to access the register. The guide is provided to the Ombudsman, every public and legal library in Bosnia and Herzegovina and, where possible via the Internet, and is available upon request. This guide is free.*

*b) **Index** register of the types of information controlled by a public authority, the form in which the information is available, as well as information on where that information can be accessed. This index register shall be made available within the meaning of the obligation to provide, as specified in paragraph 1 item a) of this Article..²⁷⁸*

6.10.1 Guide to Access to Information and Index of Information Register - Public Authorities of Bosnia and Herzegovina

An analysis of the responses received from public authorities at the level of Bosnia and Herzegovina shows that almost all public authorities surveyed have a Guide to Access to Information and an Index of Information Register. Contents of the reply from the Common Affairs Service of the Institutions of Bosnia and Herzegovina²⁷⁹ and Civil Service Appeals Board of Bosnia and Herzegovina,²⁸⁰ show that these public authorities have not yet fulfilled this obligation.

6.10.2 Guide to Access to Information and Index of Information Register - Public Authorities of the Republika Srpska

Out of the total number of responses submitted, the largest number of public authorities stated that they had a Guide for access to information and an index of information register and that they were published on the official website, while a certain number of public authorities in their response stated that no documents were prepared and published.²⁸¹

²⁷⁸ Article 20, Paragraph 1, Items a) and b) of the Law on Freedom of Access to Information of Bosnia and Herzegovina, Law on Freedom of Access to Information of the Republika Srpska, Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina;

²⁷⁹ Office for Common Affairs of the Institutions of Bosnia and Herzegovina Act No. 06/I-50-1-1709-1/19 of 7 August 2019;

²⁸⁰ Civil Service Appeal Board of Bosnia and Herzegovina Act No. 01-1-12-1-130-2/19 of 09.08.2019;

²⁸¹ Republican Secretariat for Displaced Persons and Migration, Republican Pedagogical Institute of the Republika Srpska, Civil Service Board of Appeals, Government of the Republika Srpska-Common Affairs Service, Ministry of Education and Culture-Institute for Adult Education, Republican Center for Research on War, War Crimes and Missing Persons, Han-Pijesak Municipality;

6.10.3 Guide to Access to Information and Index of the Register of Information at the Federation of Bosnia and Herzegovina level

The responses received from the surveyed public authorities from the level of the Federation of Bosnia and Herzegovina show that almost all public authorities have a Guide to Access to Information and an Index of Information Register drawn up and published.

The Federation Attorney's Office has not yet fulfilled this obligation, while the Federation Ministry of Labor and Social Policy in its response stated that it has developed and published a Guide for access to information, while the Index of Information Register is being prepared.²⁸²

6.10.4 Guide to Access to Information and Index of the Register of Information - Public Authorities in Cantons

Responses from the surveyed public authorities at the cantonal level, including submitted responses from cities and municipalities, show that most public authorities have developed a Guide to Access to Information and an Index of Information Register.

The public relations service of the Municipality of Orašje stated in its reply: *"..The official website of the Posavina Canton Government does not contain the Information Access Guide and the Index Register of Information. Their production is ongoing."*²⁸³

The Office for General Administration, Social Affairs, Veterans and Disabled Persons and Displaced Persons of the City of Živinice and the Government Office for European Integration of the West Herzegovina Canton also state in the reply that the documents in question are being drafted, after which they will be published on the official website.

Some public authorities have not yet fulfilled their obligation to develop Access to Information Guide and the Index of Information Register.²⁸⁴

6.10.5 Access to Information Guide and Index of Information Registry - Public Authorities of Brčko District of BiH

The Assembly of the Brčko District of BiH and the Judicial Commission of the Brčko District of BiH reported that they had created and published a Guide to Access to Information with an Index of Information Registry, while a response was provided by the Police of the Brčko District of BiH stating that a Guide to Access to Information with an Index of Information Register drafted, but in preparation for posting to the official website.

The Brčko District Judicial Commission, in its response, states *"on the Judicial Commission website (www.pkbd.ba) under - Access to information - there is a Guide to access to information and an index register relating to all judicial institutions of the District (Basic and Appellate Courts , The Prosecutor's Office, the Legal Aid Office, the Attorney General's Office and the Judicial Commission)."* ²⁸⁵

²⁸² Federation Ministry of Labor and Social Policy Act No. 01-49/1-1955/19NM dated 07.08.2019;

²⁸³ Public Relations Service of the Municipality of Orašje Act No. 01/VI-10-64-1/19 of 08/08/2019;

²⁸⁴ Cantonal Archives Travnik, Ministry of Education, Science, Culture and Sports of West Herzegovina Canton, Ministry of Justice and Administration of Posavina Canton, Ministry of Economy of Canton Sarajevo, Roads Administration of Livno, Ministry of Justice and Administration of Central Bosnia Canton, Ministry of Economy of Una-Sana Canton and Common Affairs Service cantonal administration bodies of the Bosnia-Podrinje Canton Goražde;

²⁸⁵ Brčko District Judicial Commission Act No. SuPK-1337/19 dated 2 August 2019;

The Government of the Brčko District-Department of the Public Registry and the Securities Commission of the Brčko District of BiH has not fulfilled this legal obligation.

6.11 Production and submission of statistical data

Each public authority shall publish and submit:

*c) Statistical data, on a quarterly basis, which relate to, but are not limited to, the number of requests received, the type of information requested, the exceptions identified, as well as the decisions made during the procedure and the final decisions. These statistics are provided to the Parliamentary Assembly of Bosnia and Herzegovina and the Ombudsman and are available upon request*²⁸⁶

6.11.1 Production and submission of statistical data at the level of Bosnia and Herzegovina

When the public authorities asked whether they act in accordance with the provisions of Article 20, paragraph 1, item c), or whether they submit statistical data, on a quarterly basis, to the Parliamentary Assembly of Bosnia and Herzegovina and to the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, less than half of the public bodies examined in its replies stated that they provided the information regularly.²⁸⁷

The Central Election Commission of Bosnia and Herzegovina emphasized that it regularly submits these statistics to the Parliamentary Assembly of Bosnia and Herzegovina and the Ombudsman Institution.²⁸⁸

6.11.2 Production and submission of statistical data - public authorities of the Republika Srpska

An analysis of the responses received from public authorities of the Republika Srpska shows that a number of public authorities do not fulfill the obligation to submit statistical data, according to the quarterly report. The lack of legal regulation on this issue is cited as a reason for not submitting. In this regard, it should be noted that Article 20, paragraph 1, item c) of the LFAI RS stipulates that public authorities submit statistical data, according to a quarterly report to the National Assembly of the Republika Srpska and the Ombudsman of the Republika Srpska, and are available upon request.

²⁸⁶ Article 20, Paragraph 1 c) of the Law on Freedom of Access to Information of Bosnia and Herzegovina, Article 20, Paragraph 1 c) of the Law on Freedom of Access to Information of Bosnia and Herzegovina, Article 20, Paragraph 1, Item 3 of the Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina;

²⁸⁷ Agency for Personal Data Protection in BiH, Directorate for Civil Aviation of BiH, Agency for Protection of Foreign Investments in BiH (FIPA), Agency for Public Procurement of BiH, Administration of Bosnia and Herzegovina for Plant Health Protection, Institute for Intellectual Property, Agency for Prevention of Corruption and Anti-corruption Coordination in BiH, BiH Insurance Agency, BiH Complaints Review Office, BiH Return Fund, BiH Ministry of Finance and Treasury, BiH Veterinary Office, BiH Mine Action Center, BiH Ministry of Defense, Directorate for European Integration BiH, BiH Public Administration Reform Coordinator's Office, BiH Civil Service Agency, BiH Ministry of Transport and Communications and Transport and BiH Ministry of Civil Affairs;

²⁸⁸ Central Election Commission of Bosnia and Herzegovina Act No. 04-12-561-2/19 of 01.08.2019;

The responses received show that the City of Gradiška, the City of Zvornik and the Pension and Disability Insurance Fund of the Republika Srpska fulfill the obligation prescribed by Article 20, paragraph 1, item c) of the LFAI.

6.11.3 Production and submission of statistical data - public authorities of the Federation of Bosnia and Herzegovina

Analysis of the responses received from public authorities of the Federation of Bosnia and Herzegovina shows that a number of public authorities produce and submit statistics to the Federation Parliament and the Ombudsman Institution of Bosnia and Herzegovina.²⁸⁹

6.11.3.1 Production and submission of statistical data - public authorities of the cantons

The analysis of the responses received from the public authorities in the cantons, including the responses of cities and municipalities, shows that very few public authorities fulfill the obligation to produce and submit statistical data in the sense of the FBiH LFAI.²⁹⁰

The Cantonal Administration of Civil Protection of Sarajevo Canton states that in the previous period they did not provide the above mentioned data, however, the new management of the administration has taken the necessary measures and activities on the organization of work of the employees of this Administration, so that in the forthcoming period the statistical data will be submitted on a quarterly basis regularly.²⁹¹

The Ministry of Internal Affairs of Zenica-Doboj Canton states in its reply "... *From your question under ordinal number 15 it is evident that it refers to public authorities which, when deciding on requests for access to information, do not apply entity laws on freedom of access to information but Law on Freedom of Access to Information in BiH.*"²⁹²

The Cantonal Directorate for Inspection Affairs of the Sarajevo Canton states that an electronic database is kept of the requests for access to information and the manner of deciding upon them. Data is always available on request. The database contains statistics on the number of requests received, the type of information requested by organizational units of this body, identified exceptions and decisions made during the procedure, as well as a separate segment of the media relations report as part of public relations with statistical indicators. The said report is submitted annually to the Ombudsman Institution of Bosnia and Herzegovina and the Parliament of the Federation of Bosnia and Herzegovina.²⁹³

A certain number of public authorities in their replies point out that all information and data on procedures for requests for access to information can be obtained on request.²⁹⁴

²⁸⁹ Federation Hydrometeorological Institute, Federation Administration for Geodetic and Property Legal Affairs, Federation Ministry of Transport and Communications, Office of Public Relations of the Government of FBiH, Federation Prosecutor's Office and Public Institution Center for Education of Judges and Prosecutors of FBiH;

²⁹⁰ Cantonal Inspectorate Administration of Sarajevo Canton, Ministry of Construction, Physical Planning and Environmental Protection of Una Sana Canton, Ministry of Justice and Administration of Canton Sarajevo, Ministry of Internal Affairs of Canton Sarajevo and Mayor of the City of Goražde;

²⁹¹ Cantonal Administration of Civil Protection of Sarajevo Canton Act No. 03-05-248/19 of 31 July 2019;

²⁹² Ministry of the Interior of the Zenica-Doboj Canton Act No. 08-01-01/1-02-1-3933-1/19 dated 2 August 2019;

²⁹³ Cantonal Administration for Inspection Affairs of Sarajevo Canton Act No. 14-03-49-03273/17 dated 12 July 2019;

²⁹⁴ The Inspection Directorate of the West Herzegovina Canton, the Ministry of the Interior of Goražde, the Ministry of Economy of the Central Bosnia Canton and the Service for General Administration, Social Affairs, Veterans' Disability Protection and Displaced Persons of the City of Živinice;

6.11.4 Production and submission of statistical data - public bodies of the Brčko District of BiH

According to the replies received from the public authorities of the Brčko District of BiH, the Judicial Commission of the Brčko District and the Police of the Brčko District of BiH regularly produce and submit statistics to the Ombudsman Institution of Bosnia and Herzegovina.

The Assembly of the Brčko District, the Government of the Brčko District of BiH - Department of the Public Registry and the Securities Commission of the Brčko District of BiH do not produce or submit statistical data.

6.12 Information officers education

6.12.1 Education of information officers at the level of Bosnia and Herzegovina

Submitted responses from the level of Bosnia and Herzegovina indicate that just over half of the public authorities surveyed believe that information officers are not sufficiently educated to effectively comply with the BiH LFAI.²⁹⁵

The Central Election Commission of Bosnia and Herzegovina considers that the Information Officer has been partially educated to act effectively within the meaning of the provisions of the said Law.²⁹⁶

In response, the Ministry of Communications and Transport of Bosnia and Herzegovina states: *"... If possible, further education of information officers. Also insist on changing the name of the clerk, because in most cases this work is done by spokespersons or expert information advisers, not lawyers who are better governed by the matter.."*²⁹⁷

The Center for Information and Recognition of Documents in the Field of Higher Education of Bosnia and Herzegovina states in its response *"... We believe that officials informed about the effective implementation of the law on freedom of access to information has been educated, but due to a lack of staff and obligations in other papers, they are unable to pay greater attention to the work of free access to information and require additional training."*²⁹⁸

6.12.2 Education of Information Officers at the level of the Republika Srpska

When asked whether public authorities consider information officers to be sufficiently educated to effectively apply the law on freedom of access to information, the largest number of public

²⁹⁵Postal Agency of BiH, Ministry of Communications and Transport of BiH, Office of the Coordinator for Public Administration Reform in BiH, Directorate for European Integration of BiH, Ministry of Defense of BiH, Anti-Corruption and Co-ordination Agency, Administration of Bosnia and Herzegovina for Plant Health Protection, BiH Public Procurement Agency, BiH Civil Aviation Directorate, BiH Attorney General's Office, BiH Ministry of Human Rights and Refugees, BiH Food Safety Agency, BiH Council of Competition, BiH Market Surveillance Agency, BiH Audit Office and BiH Standardization Institute;

²⁹⁶ Central Election Commission of Bosnia and Herzegovina Act No. 04-12-561-2/19 of 01.08.2019;

²⁹⁷ Ministry of Communications and Transport of Bosnia and Herzegovina (act without number) received on 06.06.2019;

²⁹⁸ Center for Information and Recognition of Documents in the Field of Higher Education of Bosnia and Herzegovina Act No. 04-12-1228-2/2019 dated 29.08.2019;

authorities has expressed a positive opinion. The exception is the six public authorities who consider that further education is always desirable.²⁹⁹

6.12.3 Education of information officers at the level of the Federation of Bosnia and Herzegovina

When asked whether institutions consider information officers to be sufficiently educated to effectively enforce the law on freedom of access to information, most public authorities have answered yes.

In response, the Federation Ministry of Labor and Social Policy state that the information officers are partially educated, while the Federation of Hydro-meteorological Institutes considers the information officers' education to be solid.

Few public authorities believe that information officers are not educated enough to act effectively within the meaning of the FBiH LFAI.³⁰⁰

The Government of the Federation of Bosnia and Herzegovina states in response that: “... *Continuous training of civil servants for the effective implementation of the Law on Free Access to Information is necessary. In this respect, the acquisition of practical knowledge is important, as it will thus contribute to creating a quality framework in the field of free access to information and addressing challenges in its implementation, which will ultimately enable this right to be exercised more effectively. Of particular importance is the resolution of the doubts regarding the practical application of the Law on Free Access to Information and the Personal Data Protection Act.*”³⁰¹

6.12.3.1 Education of Information Officers - Public Authorities in Cantons

Most of the public authorities in cantons, cities and municipalities provided answers indicating that the information officers were sufficiently educated to apply the FBiH LFAI.

The Ministry of Veterans Affairs of the Tuzla Canton, the Ministry of Economy of the Canton of Sarajevo and the Ministry of the Interior of the Una-Sana Canton, in their replies, emphasize that information officers have been partially educated to handle requests for access to information.³⁰²

The replies also pointed to the fact that a very common case that arises as a problem in the work of the information officer in the institutions is that the official does another job, and in this

²⁹⁹ City Administration of the City of Bijeljina Act No. 02/8-052-3-49/19 of 01.08.2019. Nevesinje Municipality Act of 07.08.2019, the Republika Srpska Helicopter Service No. 116/19 of 31.07.2019, City of Gradiška Act of 05.08.2019, Ministry of Finance-Republika Srpska Tax Administration Act No. 06/01/0103-052.4-13014/2019 of 08.08.2019, Ministry of Finance Act number 06.01/059-1925/19 of 08.08.2019;

³⁰⁰ Federation Inspection Directorate, Federation Agro-Mediterranean Institute, Federation Ministry of Culture and Sports, Public Institution Center for Education of Judges and Prosecutors of FBiH, Federation Civil Protection Administration and Federation Institute for Agropedology;

³⁰¹ FBiH Government Act No. 04-05-763/2019 dated 16.08.2019;

³⁰² Cantonal Archives Travnik, Ministry of Justice and Administration of Posavina Canton, Common Affairs Office of Cantonal Bodies of Administration of Bosnian-Podrinje Canton, Ministry of Labor, Social Policy and Refugees of Zenica-Doboj Canton, Ministry of Economy of Zenica-Doboj Canton, Cantonal Inspectorate Administration Tuzla Canton Affairs, Ministry of Labor, Health, Social Welfare and Displaced Persons of Canton 10, Cantonal Administration for Civil Protection of Tuzla Canton, Cantonal Administration for Civil Protection of Canton Sarajevo, Government Office for European Integration of West Herzegovina Canton, Public Relations Office of the Municipality of Orašje, General Administration Office, social activities, veterans' disability protection and displaced persons of the City of Živinice and the Ministry of Construction, Physical Planning and Environmental Protection of the Una Sana Canton;

regard the Cantonal Inspection Directorate states in reply that "... In KUIP has one employee processing the request for access to information, which at the same time performs the duties of a spokesman. In order to implement the Law as efficiently as possible and to master the mechanisms of public involvement in the decision-making process and to strengthen the integrity of the administrative bodies, the KUIP Information Officer has participated in various trainings related to the application of the Law ..."³⁰³

6.12.4 Education of Information Officers - Public Authorities of the Brčko District of BiH

Asked if the institutions consider that information officers are sufficiently educated to effectively implement the law on freedom of access to information, the Brčko District Assembly - Expert Service states that there is a necessary level of education of information officers for effective law enforcement, but given the small number, basically simple requirements, would be useful training in dealing with more complicated requirements.

In response, the Securities Commission of the Brčko District of BiH stated that the officers were not sufficiently informed, although in their response they emphasized that no information officer was appointed in this public body.

The Brčko District Police consider that the information officers are partially educated, but that additional training is needed on practical examples.

6.13 Obstacles in practice

6.13.1 Obstacles in Practice - Public Authorities of Bosnia and Herzegovina

In their replies, public authorities have presented in various ways the obstacles they face in practice in the application of the LFAI BiH.

Special attention was given to the problem of inaccurately defined individual provisions of the LFAI BiH, such as provisions of Article 8 (privacy exception).³⁰⁴ In this context, the public authorities have stated that the biggest obstacle is the application of the Law on Protection of Personal Data in the context of the LFAI, as well as the application of Article 9 of the LFAI in the sense of public interest, and the benefits and damages that could result from the publication of information for which is an exception found.³⁰⁵

Thus, the Ministry of Finance and Treasury of Bosnia and Herzegovina responds by stating that the main obstacles are ambiguity or imprecision in the Law, precisely in Articles 7, 8 and 9 of the Law, as it is left to the discretion of the Information Officer or the head of the institution to decide what is the exception, what privacy, what commercial interest. The same reply also states that: "... Applicants may ask questions where nominees and elected persons are having lunch,

³⁰³ Cantonal Inspection Directorate of Sarajevo Canton Act No. 14-03-49-03273/17 of 12 July 2019;

³⁰⁴ Food Safety Agency, Act No. 03-3-12-1001-3/19 of 08/19/2019. BiH Return Fund, Act No. 03-12-1-392-2/19 of 6 August 2019; the Directorate for European Integration, Act No. 01-50-MT-1021-2/19 of 01.08.2019;

³⁰⁵ Public Attorney' Office of Bosnia and Herzegovina, Act number 04-29-1-PBiH-300/19 of 04.09.2019;

*with which diplomats and what they are having lunch at, and what information published on the website is being requested to be provided in print or in the form table.*³⁰⁶

The Agency for the Prevention of Corruption and Coordination of the Fight against Corruption in Bosnia and Herzegovina stressed the importance of establishing a harmony between the BiH LFAI and the Law on the Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina.³⁰⁷

The Ministry of Defense of Bosnia and Herzegovina points to a lack of understanding by the organizational units of the importance of the request and compliance with legal deadlines, as well as a lack of legal assistance in drafting the response.³⁰⁸

The Center for Information and Recognition of Documents in the Field of Higher Education is of the opinion that the Law should be changed in order to adapt to the needs of the citizens of Bosnia and Herzegovina and to more clearly specify its implementation in practice.³⁰⁹

The Veterinary Office of Bosnia and Herzegovina pointed out the problem of uncertainty in the wording of the issue (requesting further clarification), as well as determining the competence to address the requirements.³¹⁰

The Office of the Public Administration reform coordinator has specified the obstacle in the following way:

- Clearly defined test of public interest, it would be good to specify how to spend the test of public interest (three parts of the test), and to prescribe that public authorities, if they reject the request on the basis of the LFAI BIH, must elaborate on how they spent the test of public interest;
- Non-definition of whether an officer can/or should, by the authority of the manager, sign the solutions to the LFAI BIH (different solutions in institutions);
- Non-definition through legislation acting on LFAI BIH if the official in charge of LFAI BIH calls the same;
- Undefined obligations of compliance and modification of the Law on Index registry (e.g. some institutions are extended competencies, have some new data that is not described in the index or the payment expense decisions of the information that are changed and they need to be written in the guide);
- The LFAI BIH is reactive and not proactive. The provisions for which the information under the control of the public authority should always be available to the public are missing;
- LFAI BIH does not talk about the need to analyze the law, but the need for review of performance is not a clear framework for analyzing;
- Insufficient education of the employees for the LFAI BIH;

³⁰⁶ Ministry of Finance and Treasury of BiH, Act number 01-16-1-5491-2/19 of 02.08.2019;

³⁰⁷ The Agency for Corruption Prevention and co-ordination of the Fight Against Corruption, Act number 03-12-1-382-2/19/19 (S. S) of 05.08.2019;

³⁰⁸ Ministry of Defence, Act number 14-03-1-335-25/19 of 26.08.2019;

³⁰⁹ The Centre for information and recognition of documents from higher education area in BiH, Act No: 04-12-1228-1/2019 of 29.08.2019;

³¹⁰ Office of Veterinary of BiH Act No. 01-7-50-8-582-1/19 of 06.08.2019;

- LFAI BiH has no deadline for delivering reports with statistical data, and the purpose of the penal provisions is lost;
- Legally, it did not solve the issue of data openness, which also affect the operation of the LFAI BiH;
- Unclear how the demands of citizens, journalists relating to information not requested by LFAI BiH, should be required to keep the register.³¹¹

Similarly, the barriers were defined by the Agency for Civil Service of Bosnia and Herzegovina, which among other things include:

- Incompleteness and imprecision of requests;
- Delivery of requests via e-mail, no information about the applicant;
- The request for access to personal information is without distinction in relation to the request for personal information, does not contain the purpose (although the LFAI BiH does not prescribe the purpose, in accessing personal data of other persons, it would be necessary to indicate the purpose of such an approach, taking into account the provisions of the Law on Protection of personal data);
- Searching for information according to LFAI BiH, and such information is already available on the official web site or are available through regular requests;
- Not recognizing the difference between the information officer and the public relations officer;
- The relation of the LFAI BiH according to the Law on Personal Data Protection, and possibly the law on protection of secret data.

The Agency pointed out that even if the information is published in its existing form or is directed to access the same (in the form in which it exists on the website or official gazette, etc.), most of the applicants are not satisfied, then the attempt is made to obtain the information in another way, in a form appropriate to the applicant.³¹²

The Audit Office of the Institutions of Bosnia and Herzegovina also pointed to the problem of seeking information that is publicly and readily available in reports and audits without having previously consulted the information source of public data sources. This is especially pronounced when seeking information into the possession of which the Office has come secondary, through the audit process, while bypassing the primary producers or processors of data.³¹³

Also, the data analysis of the Central Election Commission of BiH is very often required, which by law the Commission is not be obliged to submit.³¹⁴

The Ministry of Human Rights and Refugees of Bosnia and Herzegovina has indicated:

- Insufficient education of the staff of LFAI;
- Different treatment in practice with the manner in which the request for access to information is allowed, as it proves that the request was filed personally or by a certified representative, especially when it comes to requests coming through the electronic E-mail

³¹¹ Office of the Public Administration reform Coordinator (BiH) Act No. 06-29-1-56-5/17 of 16.09.2019;

³¹² Civil Service Agency of BiH Act No. 03-50-28-1/19 of 09.08.2019;

³¹³ Audit Office of BiH Institutions, Act number 01/4-12-832-2/19 of 07.08.2019;

³¹⁴ Central Election Commission of BiH, act number 04-12-561-2/19 of 01.08.2019;

- Applicants are increasingly delivering inquiries that require analysis-usually financial, those copies of the case or more, with the required comparalization or legal interpretation;
- All more frequent requirements for development of financial press and analysis as the submission of data that is already public and are located on the Web page.³¹⁵

Administration for Indirect Taxation of Bosnia and Herzegovina has indicated the non-compliance with the law in terms of giving the parties the opportunity to demand additional detailed analytical and synthetic data processing, increased engagement of human capacities from different of organizational units, the engagement of significant administrative resources for the purposes of printing, scanning, reproduction, etc., which leads to violations of regular work activities in the final.³¹⁶

The public authorities also pointed out the problem of preparing some information (items found) due to lack of personnel and volume of cases.³¹⁷

A certain number of institutions in the requirements for free access to information has not encountered obstacles.³¹⁸ Some public authorities allege that even when obstacles arise, they are mainly related to non-specificity and noncompliance in the requirements.³¹⁹

Administration of Bosnia and Herzegovina for the health protection of herbs and the Agency for promotion of foreign investments in BiH has not submitted an answer to this issue.

6.13.2 Obstacles in practice – public authorities of the Republika Srpska

When asked what are the obstacles faced in practice when dealing with requests for free access to information, the responses of public authorities at the Republika Srpska level are different.

The Republika Srpska Helicopter Service stated that *"one of the many problems in the application of the LFAI is the unclear definition of the second instance appeal body, the inaccurate definition of the type of decision act on requests for access to information in public bodies (the Law prescribes to be decided in the form of letter, although it is clear that the administrative bodies make administrative acts when deciding, which is certainly not a letter), the issue of the cost of duplication of materials is regulated in the Instruction on the cost of*

³¹⁵ The Ministry of Human Rights and Refugees of BiH, act number 05-12-1-1819-2/19 of 06.08.2019;

³¹⁶ Administration for Indirect Taxation, act number 01/3-14-1-1632-1/19 of 13.08.2019;

³¹⁷ Appeals Review Board of BiH, act number 01-12-1-5-2/19 of 14.08.2019;

³¹⁸ Personal Data Protection Agency of Bosnia and Herzegovina Act No. 05-1-34-16-712-2/19 of 13.08.2019, Institute of Metrology of Bosnia and Herzegovina Act No. 02.1-12-1-1564-2/19 of 19.08.2019, Ministry of Foreign Trade and Economic Relations Act No. 05-50-2-516-2/19 of 26.08.2019, Committee of the Civil Service of Appeals Act No. 01-1-12-1-130-2/19 of 09.08.2019, Postal Transport Agency Act No. 01-03-1-50-4-474-5/19 of 08.08.2019, Directorate of Civil Aviation Act No. 1-2-250-2-538-2/19 of 08/05/2019, Service for Common Affairs of the Institutions of BiH Act No. 06/I-50-1-1709-1/19 of 07.08.2019, Office for Harmonization and Coordination of the Payment System in Agriculture, Food and Rural Development of BiH Act No. 02-9-50- 3-1882/19 of 01.08.2019, Ministry of Communications and Transport of BiH act without number, received on 06.08.2019, Institute for Intellectual Property act number 05-12-1-554-2/19SD of 30.07.2019, Council of Competition of BiH act number 01-12-1-213-3/19 of 01.08.2019, BiH Agency for Medicinal Products and Medical Devices act number 10-02.3-3784-1/19 of 01.08.2019, BiH Insurance Agency act number 02-12-233-2/19 of 06.08.2019, Communications Regulatory Agency BiH act without number, received on 05.08.2019, BiH Public Procurement Agency act number 02-12-2125-2/19 of 31.07.2019, BiH Market Surveillance Agency act number 02-12-368-2/19 dated 08.08.2019 and the Institute for Standardization of BiH act No. 04-50.1-45-957-2/19 dated 01.08.2019;

³¹⁹ BiH Anti-Doping Agency Control, act without number and date;

duplication of materials, but it does not define how public authorities can charge for photocopies
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The Republika Srpska Inspectorate stated that *"through practice, they have noticed that citizens are still not sufficiently familiar with the competencies of different institutions at the entity level of BiH."*³²¹

The Ministry of Transport and Communications of the Republika Srpska considers that *"the most common problem is the lack of knowledge of the applicant in the line jurisdiction, incomplete requests, unclear information about the applicant, as well as the lack of a sanction for misuse of the information provided."*³²²

The Government of the Republika Srpska-Republic Secretariat for Displaced Persons and Migration responded *"as they encounter the problem of data centralization in common institutions, primarily the BiH Ministry of Human Rights and Refugees, since the parties contact the Secretariat directly for specific situations, to which they cannot give specific answers."*³²³

The Government Board of Appeal of the Republika Srpska states: *"In the event of amendments to the Law, the provisions relating to the filing of an appeal should be specified and the dispute as well as the jurisdiction of the court and the deadline for filing a lawsuit may be brought against final decisions."*³²⁴

Other answers most often relate to the lack of knowledge of the parties and incomplete requests, while most institutions claim that they have no barriers to handling requests for free access to information.

6.13.3 Obstacles in Practice - Public Authorities of the Federation of Bosnia and Herzegovina

The most common obstacles encountered by public authorities at the level of the Federation of Bosnia and Herzegovina in handling requests for free access to information relate, inter alia, to incomplete requests and lack of knowledge of the applicant.³²⁵

A number of public authorities, as the biggest obstacle, see the conflict between the provisions of the Law on Protection of Personal Data and the Law on Free Access to Information.³²⁶

The Federation Ministry of Health pointed out that the biggest obstacle in handling requests for free access to information was: *"... that the Law is not sufficiently defined as in Article 9, or in*

³²⁰ Helicopter Service of the Republika Srpska act number 116/19 of 31 July 2019;

³²¹ Inspectorate of the Republika Srpska Act No. 24.2004/054-101-2/19 dated 6 August 2019;

³²² Ministry of Transport and Communications of the Republika Srpska act no 13.02-053-1421/19 of 8 August 2019;

³²³ Government of the Republika Srpska-Republic Secretariat for Displaced Persons and Migration Act No. 26.05-07-882/19 of 12 August 2019;

³²⁴ Government Board of Appeal of the Republika Srpska Act No. 052-326/19 of 6 August 2019;

³²⁵ Federation Office for Geodetic and Property Affairs Act No. 01-02-123372019 dated 29 July 2019, Federation Civil Affairs Agency Act No. 03-05/18-457-1/19 of 08/08/2019, Office for Common Affairs of the Authority and FBiH Bodies Act No. 03-05-2288/19 of 7 August 2019, Government of the Federation of BiH - Public Relations Office Act No. 49-88/19 of 02 August 2019, Federation Administration for Inspection Affairs Act No. 01-49-1-03850/2019 of 21 August 2019. FBiH Energy Regulatory Commission Act No. 04-01-836-02/19 of 28 June 2019; Federation Ministry of Energy, Mining and Industry Act No. 04-49-1365/19 of 13 August 2019.

³²⁶ Federation Ministry of Education and Science Act No. 01-49-3277-1/19 of 30 August 2019, Public Institution Center for Education of Judges and Prosecutors of FBiH Act No. 01-38-348-02/19 of 03 September 2019, Government of the Federation of Bosnia and Herzegovina Herzegovina act number 04-05-763/2019 of 3 September 2019;

the public interest examination. The number of requests that do not have the character of access to information in the sense as defined by the Law is negligible, and in such cases the Ministry takes all possible steps to enable access to information."³²⁷

Other institutions surveyed state that, so far in practice, there have been no major obstacles in handling requests for free access to information.

6.13.3.1 Obstacles in practice - public authorities in cantons

The Ministry of Internal Affairs of the Herzegovina-Neretva Canton in response states that the FBiH LFAI is unclear and imprecise, and there are many doubts about the application of individual articles and the interpretation of the terms themselves specified in the Law. The Ministry further states that the FBiH LFAI is in conflict with the Law on Protection of Personal Data, under which this Ministry acts so that a legal basis and purpose for access to personal data is sought.³²⁸

In response, the Ministry of Justice and Administration of the Sarajevo Canton emphasizes the need to amend the FBiH LFAI, since some of the provisions in the Law are unclear and some are contradictory. As an example, they cite Article 14 of the FBiH LFAI, which regulates a party's right to object to a decision on access to information, and in the rest of the Law refers to a regular remedy, i.e. the right to appeal.³²⁹

In the application of the FBiH LFAI, officers are confronted with issues of public interest inquiry when processing the request. The Ministry of Internal Affairs of the Central Bosnia Canton sees as an obstacle the contradiction in the application of the FBiH LFAI and the Law on Personal Data Protection, as exceptions to the application of mentioned laws.³³⁰

The Ministry of Justice and Administration of the Posavina Canton states in response that the number of requests for free access to information submitted to this Ministry on an annual basis is an average of four requests, and that the Information Officer had no obstacles in practice in handling requests.³³¹

The main obstacles to the Ministry of Construction, Physical Planning and Environment of the Una-Sana Canton, in response, cite too little time to devote to these requests, because information officers process requests for access to information in addition to their regular jobs. Also, the same Ministry points out that certain provisions of the FBiH LFAI and the Law on Personal Data Protection are inconsistent, and that it is necessary to specify more precisely the FBiH LFAI provisions.³³²

One of the obstacles for the Ministry of Veterans Affairs of Tuzla Canton is the ignorance of the applicant for access to information when it comes to natural persons who do not know how to properly formulate the request, which complicates the procedure. Given the frequency of requests for access to information, they believe it would be advisable to hold educational meetings more often. The response of the same Ministry points out that the Law on Protection of Personal Data greatly complicates the application and treatment of the Law on Freedom of

³²⁷ Federation Ministry of Health Act No. 01-10-4715/19 of 05/08/2019;

³²⁸ Ministry of Internal Affairs of Herzegovina-Neretva Canton Act No. 02-03/1-1-04-741/19 of 11 September 2019;

³²⁹ Ministry of Justice and Administration of Sarajevo Canton Act No Number, received on 08/19/2019;

³³⁰ Ministry of the Interior of the Central Bosnia Canton Act No. 01/2-49-1-1097/19 of 27 August 2019;

³³¹ Ministry of Justice and Administration of Posavina Canton Act No. 03-05-204/19 of 01 August 2019;

³³² Ministry of Construction, Physical Planning and Environment of Una-Sana Canton Act No. 11-10-8737-2/19 of 7 August 2019;

Access to Information, which is quite liberal in relation to the Law on Protection of Personal Data.³³³

The Cantonal Inspection Directorate of Sarajevo Canton states that it is evident that in addition to the information officers, other employees and civil servants of public bodies should be involved in the education process in order to raise their awareness of the importance of acting in the public interest through the application of Law on Free Access to Information, especially because of frequent dilemmas related to the application of this Law, as well as the Law on Protection of Personal Data of BiH.³³⁴

Cantonal Privatization Agency of Tuzla Canton, as the most common problem, emphasizes the search for documentation, not originally prepared by the Agency, which was obtained in the process of preparing the privatization company.³³⁵

In response, the City of Živinice cites several obstacles, including the interpretation of the terms "third party privacy" and "commercial interest". Exceptionally, the implementation of the public interest test is also a problem. Also, the same public authority in response proposes to clearly define what information is provided in application of the FBiH LFAI, in relation to the information required for litigation, enforcement, etc. court proceedings or for the purpose of drawing up a lawsuit by attorneys who frequently refer to this law.³³⁶

The Travnik Cantonal Archives, in response, points out that the Law on Free Access to Information does not in any article treat relations with archival material, which creates ambiguities on several issues that need to be addressed. Otherwise, it is necessary to harmonize and strictly restrict the provisions of the FBiH LFAI, the Law on Protection of Personal Data and the Law on Archival Material and the Archive of Bosnia and Herzegovina, which are often in conflict.³³⁷

The Ministry of Education, Science, Culture and Sports of the Canton of West Herzegovina states that the obstacle is created by inquiries from individuals who refer to the FBiH LFAI, although they are published in print or electronic media, in which way that information becomes widely available.³³⁸

The Ministry of Economy of the Sarajevo Canton cites the need to train the request processing officers, as well as obstacles, and that the requests are imprecisely defined and submitted or requested by telephone. A very common case is that the request does not indicate the identity of the applicant, so no response can be provided, and it is not uncommon that applicants seek information that the authority does not have.³³⁹

The Ministry of the Interior of Zenica-Doboj Canton also cites the problem of insufficient education of entities submitting requests for access to information.³⁴⁰

The Ministry of the Interior of Una-Sana Canton cites obstacles when requesting the submission of investigation records, records of taking of a suspect's statement, and various types of information pertaining to information made in the police body during the investigation. One of

³³³ Ministry of Veterans Affairs of Tuzla Canton Act No. 15/1-05-015702/19 dated 31 July 2019;

³³⁴ Cantonal Administration for Inspection Affairs of Sarajevo Canton Act No. 14-03-49-03273/17 of 12 July 2019;

³³⁵ Cantonal Privatization Agency of Tuzla Canton Act No. 01-06-372/2019 of 8 August 2019;

³³⁶ City of Živinice act number 02/3-05-4386/19 of 19 August 2019;

³³⁷ Cantonal Archives Travnik Act No. 05-48.11-126/19 of 9 August 2019;

³³⁸ Ministry of Education, Science, Culture and Sports of the West Herzegovina Canton Act No. 07-01-49-423-2/19 of 1 August 2019;

³³⁹ Ministry of Economy of Sarajevo Canton Act No. 07-01-10-29781-2/19 dated 5 August 2019;

³⁴⁰ Ministry of the Interior of the Zenica-Doboj Canton Act No. 08-01-01/1-02-1-3933-1/19 dated 2 August 2019;

the dilemmas is whether the information on the address of residence of registered motor vehicles, JMBG, can be filed under the FBiH LFAI or are these facts from official records.³⁴¹

The Travnik Municipality and the Ministry of Internal Affairs of the Sarajevo Canton, in response, state that abuse of the Law on Free Access to Information by journalists and lawyers is one of the obstacles to its implementation.³⁴²

6.13.4 Obstacles in practice at the level of the Brčko District of BiH

When asked what are the obstacles in practice faced in dealing with requests for free access to information the answers are different. The expert service of the Assembly of the Brčko District of BiH considers that there were no specific obstacles.³⁴³

The main obstacle to handling requests for access to information for the Brčko District Judicial Commission is the inaccurate and incomplete LFAI of BiH, which as such leaves some doubts as to the application of specific cases, especially when determining exceptions and examining the public interest.³⁴⁴

The Brčko District Police cites obstacles in practice: “Incomplete requirements and Article 10 of the Brčko District Police Law, because it is too broad, it is difficult to find a measure and a way to comply with the Law on Freedom of Access to Information in Bosnia and Herzegovina.”³⁴⁵

7 CONCLUDING CONSIDERATIONS

Legislation of Bosnia and Herzegovina regulating the issue of freedom of access to information is based on the principle of ensuring maximum disclosure of information, where public authorities are obliged to publish key information, and they should also play an active role in promoting open government, including openness of meetings of public authorities for the public. Exemptions from disclosure must be clearly and explicitly stated, and requests for information must be promptly and fairly processed, ensuring that any rejected request is considered by a second-instance authority outside the public authority that decided the claim in the first instance. Citizens should not be discouraged by the excessive cost of the application processing process. Laws that do not comply with the maximum disclosure principle should be amended, while individuals who post information about a breach or failure to comply with the procedure must be protected.

³⁴¹ Ministry of the Interior of the Una-Sana Canton Act No. 05-01-05-61/19 dated 8 August 2019;

³⁴² Travnik Municipality act number 03-05-14-21-157/19 dated 12 August 2019, the Ministry of the Interior of the Sarajevo Canton Act No. 01-5-49-4298 dated 16 August 2019;

³⁴³ Assembly of the Brčko District of BiH Act No. 02-05-828/19 dated 7 August 2019;

³⁴⁴ Judicial Commission of the Brčko District of BiH Act No. SuPK-1337/19 dated 2 August 2019;

³⁴⁵ Article 10 (Confidential Documents) of the Law on the Police of the Brčko District of BiH (Official Gazette 31/2009, 60/2010, 31/2011 and 14/2019):

(1) Documents produced or kept by the police are considered confidential and are used only for police purposes.

(2) Documents produced by the police during the conduct of a criminal investigation or of persons in custody shall be made available to the public in accordance with the law.

(3) Documents to be used in court proceedings are forwarded to the competent prosecutor's office or courts, in accordance with the law.

(4) Access to other police documents or documents kept by police shall be made available for inspection by court order.

7.1 Legislation

The right to free access to information in Bosnia and Herzegovina is governed by the laws adopted at the level of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska. Since the adoption of the LFAI, BiH has been partially amended several times; FBiH LFAI has undergone one change, while no changes have been made to the LFAI in BiH so far.

The inconsistency of existing legislation regulating the issue of the right of access to information in Bosnia and Herzegovina with international human rights documents and the fact that its deficiencies are obstacles to its implementation in practice are the reasons why procedural actions have been initiated to amend the law at the level of Bosnia and Herzegovina.

Although the Ministry of Justice of Bosnia and Herzegovina in 2016 opened the process of public consultations on the new Law on Freedom of Access to Information of Bosnia and Herzegovina, the procedure has not been completed by the date of drafting this report.

In period from 7 to 9 February, 2018, *Taiex - IPA, ENI -Taiex Expert Mission* on Improving the Right of Access to Information in Bosnia and Herzegovina was held on February 19, 2018, which contains an assessment of the compliance of the legal framework of Bosnia and Herzegovina with international standards governing the issue of freedom of expression and freedom of access to information and clear recommendations on how the competent authorities of the State should regulate the issue of freedom of access to information.

In addition, the Joint Initiatives of the Organization for Economic Co-operation and Development (OECD) and the European Union (SIGMA) - Support to Governance Improvement and Governance - published in January 2019 a document entitled "Improving the Legislative Framework for Access to Public Information in Bosnia and Herzegovina". It contains a comprehensive analysis of the legislation on access to public information in Bosnia and Herzegovina at the level of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District of BiH, recommendations on possible amendments that increase transparency of public authorities and harmonize standards of access to information across the country.

7.2 Exemption from disclosure to protect the privacy of third parties

An analysis of the actions of public authorities, when applying for access to information relating to the privacy of third parties, requires, first of all, a consideration of what public authorities mean by the term "*third party privacy*".

There is a diversity of answers to this question. Public authorities in Bosnia and Herzegovina by this formulation mean data that represents all kinds of information that can in any way reveal the privacy of a third party, that is, any information relating to a third party - a natural person upon which it was identified or may be determine the identity of the person. There are also views that this is information that encroaches on the personal interests of third parties, and in determining

what that information is, the institution uses the provisions of the Law on Personal Data Protection of BiH and/or the Law on Freedom of Access to Information.

When defining the term: "*privacy of third parties*", some public authorities referred to the provision of Article 3 of the Law on Protection of Personal Data, while a smaller number of institutions defined the term privacy of a third party with the help of the Law on Freedom of Access to Information, referring to Article 3 (4) defining the meaning of "personal information". By personal data, public authorities refer to any information or information by which an individual can be identified.

A significant number of public authorities consider these to be personal interests related to the privacy of third parties as prescribed by Article 8 of the LFAI, that is, they are personal interests and data of third parties, while some public authorities state that this is personal information and data, which include third party privacy, personal and business, identification number, physical identity, economic and ethnic identity, genetic and physical information, mail privacy, telephone conversations and other forms of communication, racial, national or ethnic origin, political opinion or affiliation or trade union membership, religious, philosophical or other beliefs, health status, sex life, criminal convictions, biometrics, bank accounts, etc, personal data of employees as well as personal data of stakeholders with which the public authority cooperates, payment information based on judgments, out-of-court settlements, payments from the budget to individuals, based on a one-off solution humanitarian assistance, in part data from employment relationships, information covered by official secrecy or treated by the Law on Personal Data Protection.

Under term personal information public authorities also include public funds allocated for social benefits, health care and unemployment protection, as well as any information on the exercise of public office and any court decisions not included in the restricted list of information.

Freedom of access to information laws in Bosnia and Herzegovina provide that the competent public authority will establish an exception when it reasonably determines that the requested information includes personal interests related to the privacy of a third party. A significant number of public authorities have cited the aforementioned legal provision without providing information on the procedure to be followed in these cases. Very few public authorities have responded in what way and in accordance with freedom of information laws, it is possible to allow access to information containing third party data. Certain institutions, when making their decision, refer to both the Personal Data Protection Act and the Public Procurement Law. Such access is justified by the fact that information involving the privacy of third parties is a human right guaranteed by conventions and domestic constitutional and legal provisions. It can be concluded that in these cases the dominant conduct of the institutions is directed towards the protection of the right of a third party, without consideration of issues of public interest, given the fact that the information is a public good.

There are also practices to consult with organizational units for legal issues within a public body, which raises the question of the role of the information officer, i.e. his/her ability to make decisions independently on the request for freedom of access to information. In this case, it is unclear, then, who is the first-instance authority deciding the claim.

The practice of obscuring personal data, that is, anonymizing personal data, raises the question of the conduct of public authorities in accordance with Article 8 of the Law on Free Access to Information.

Although there is a possibility of separating information into parts, within the meaning of Article 10 of the Law on Free Access to Information, it is noticeable that public authorities make little use of this possibility. Separation of information into parts, among other things, involves the obscuring of personal data of natural persons, for which there is no public interest in being made available to the public (address, bank account number, identity card number, data from health records and the like).

It is worrying that the decisions of certain public authorities also depend on whether the request contains the purpose and legal basis for communicating the requested information, or seeking the assistance of other institutions in deciding on a specific request, indicating the lack of staffing capacity to apply Law on Free Access to Information.

When it comes to the handling of archives in Bosnia and Herzegovina, based on the responses received, it can be concluded that the archives act within the meaning of the Law on Archival Material. In the responses of individual archives³⁴⁶ this issue is said to pose major challenges and attention in archival circles following the adoption of EU regulation 2016/679 (EU GDPR). The protection of personal data in the archival service creates major problems because it is very difficult to separate the notion of "*privacy*" of third parties in acts arising from the activities of public administration, and the archive legislation allows the right to use archival material for a maximum of 30 years from its creation. So, all but certain archival holdings should be available to the public after 30 years. Archivists believe that democratic rights are extinguished in this way, because archives as institutions were created in the French Revolution as an expression of the democratic right of the people.

Previous practice of the Ombudsman of Bosnia and Herzegovina has shown that there are expressed ambiguities regarding the relationship between the applicable laws on freedom of access to information and the Law on Personal Data Protection in Bosnia and Herzegovina. In this regard, we emphasize that the above regulations are complementary to one another. The aim of Law on Free Access to Information of Bosnia and Herzegovina is to enable access to information held by public authorities, but only if the communication is in the public interest, and, among other things, the fact whether the requested information contains personal data is appreciated. On the other hand, the purpose of the Law on Personal Data Protection in Bosnia and Herzegovina is to ensure in the territory of Bosnia and Herzegovina all persons, regardless of their citizenship or place of residence, protection of human rights and fundamental freedoms, and in particular the right to privacy and data protection regarding the processing of personal data relating to them.

³⁴⁶ The Cantonal Archives of Travnik and the Archives of the Federation of BiH;

7.3 Public interest test

The Laws on Freedom of Access to Information in Bosnia and Herzegovina are based on the principle that information is a public good, therefore, the property of all citizens, and that public authorities are only controllers of that information. According to this principle, all information should be made available to the public, unless they are specified by law as exceptions, as they contain certain information regarding the functions of public authorities (Article 6); confidential commercial information (Article 7); protection of privacy (Article 8). Conducting a public interest test practically means that the restrictions prescribed by the Act are enforced because of the need to protect against a serious breach of an overriding interest; which is prescribed by law. Conducting a public interest test involves the following actions:

1. Checking whether the requested access to information is being denied in order to protect the exceptions/interests listed by law;
2. If so, whether providing the requested access would seriously undermine that interest in the particular case;
3. Is it necessary to deny access to information by the standards of a democratic society?

In relation to proportionality, it is important to point out the following steps: (1) determining whether a measure of restriction on access to information is adequate to achieve the objective to be achieved, (2) determining whether that measure is necessary to achieve the objective in question, or is there any less a restrictive measure that can achieve the same goal. This is a crucial step in the application of the principle of proportionality because, unless the measure passes the necessity test, there is no need to continue the test, (3) establishing proportionality, because although the measure is adequate and necessary, it will still not be allowed if it distorts the equilibrium.

Thus, the public interest test assesses whether the interest in disclosing information or withholding it prevails, since the requested information is within the scope of relative limitations that may or may not be denied access. The refusal of a request for the exercise of the right of access to information is not justified unless the public authority proves that the information has been subjected to a strict "three-part test" which justifies it being exempted from publication, and the burden of proof of justification of the restriction always falls on the holder of the information. Mainly in the assessment of proportionality, the key element is whether the information requested indicates any wrongdoing, injustice, abuse of power, negligence in the exercise of official duty, failure to comply with a legal obligation, unauthorized spending of public funds, and danger to the health or safety of the individual, society and the environment.

If one compares the responses of public authorities to the questions in the questionnaire regarding the application of exceptions to the publication in practice and the conduct of the public interest test, it can be concluded that there is a high degree of misunderstanding, both on the basis of the exceptions and on the procedure.

Most public authorities consider that the mere presence of facts considered by the Law to be exceptions, is sufficient basis to reach a decision refusing access to information without conducting a public interest test.

At the same time, a significant number of public authorities replied that in practice they did not have cases in which they would apply Article 9 of the Freedom of Information Act relating to the obligation to conduct a public interest test, and at the same time replied that they had submitted requests for access to information that relating to commercial interests and / or protection of third party privacy. This very fact indicates that these requests were largely rejected.

Very few authorities responded that they acted in accordance with Article 9 of the Law, providing a copy of the decision containing the reasoning, while some of the interviewed authorities indicated that they would publish the requested information, regardless of the exceptions set out in the Act, if they find this was justified by the public interest. This takes into account any benefits and harms that may arise from the communication of the information. Particular consideration shall be given to whether the information contains any evidence of non-compliance with a legal obligation, unauthorized spending of public funds, danger to the health or safety of the individual, etc.

7.4 Circumstances for excluding information from publication

Most of the public authorities involved in the survey stated that when making a decision to exclude certain information from disclosure, it takes into account all the circumstances, including the benefits and harms that may arise from communicating the information.

7.5 Deciding upon a request for access to information

The BiH LFAI, which is applicable in both the Brčko District of BiH and the FBiH LFAI, has determined that a decision is made in the form of a decision on the request for access to information, while the RS LFAI stipulates that it is decided in the form of a letter on the request. Practice shows that in most cases at the level of Bosnia and Herzegovina, the Federation of BiH, the cantons and the Brčko District of BiH, decisions are taken by public authorities, but the practice of deciding and concluding is also present.

In the Republika Srpska, the request notification is sent in the form of a letter, which is in accordance with the applicable Law on Freedom of Access to Information of the Republika Srpska, with the exception of the public decision-making bodies.

The Laws stipulate the obligation of the public authority to indicate in the decision the instruction on the right of appeal, the address of the body to which the appeal is lodged, the deadline and costs for filing the complaint, and the instruction on the right to address the Ombudsman, indicating the necessary information for contacting the Ombudsman.

The research has shown the presence of different practices in fulfilling this obligation, from giving instruction on the right of appeal to the decision-maker, the second-instance body within the public body, most often the head of the body, the Appeals Council of the Council of Ministers of Bosnia and Herzegovina, the Appellate Commission of the Brčko District of BiH, to the extent that no remedy is provided. In some cases, guidance on the right to address the Ombudsman for Human Rights of Bosnia and Herzegovina is also provided, while in a number

of cases public authorities fail to fulfill this obligation. As noted earlier, the Banja Luka County Court took the view that an administrative dispute could be instituted against notices or letters issued on requests for access to information, and that, despite not being made in the form of a ruling, they were administrative acts.

7.6 Examining the justification of the request or seeking a justification

Access to information by a public authority should be ensured without an assessment of the reasonableness of the request. Unfortunately, research shows that there are still practices in place that public authorities, when deciding on a request for access to information, examine its justification or require a justification for the request. There is also a different practice in dealing with a request for which the public authority is not competent. A number of public authorities return the request to the applicant by providing information on the competent authority, while forwarding the other request to the competent authority and informing the applicant thereof.

7.7 Information Officer

Freedom of access to information laws requires public authorities to appoint information officers. Most public authorities at all levels of government have fulfilled this obligation, however, there are also a number of public authorities that have not yet fulfilled this obligation even 19 years after the adoption of the Law. Appointments in some public authorities alone have certain disadvantages, as most of duties and tasks of the information officer are attributed to some other and tasks assigned to the employee in accordance with the general act on internal organization and systematization, and the tasks performed by the information officer are not included in this systematization but are considered to be some additional business which as such is not separately valued. The most common practice is for a public authority spokesperson to be considered as an information officer.

According to the submitted answers, the public authorities involved in the survey have a divided opinion regarding the question of whether the information officers are sufficiently educated for the effective implementation of the law on freedom of access to information in Bosnia and Herzegovina. A significant number of public authorities believe that education is desirable, not only by information officers, but by all civil servants and persons exercising public authority who are in possession of information.

7.8 Information access guides and index of information registers

A significant number of public authorities have complied with the design and publication of information access guides and indexes of information registers. However, public authorities do not make regular updates, especially when referring to index of information register, given the changes in competencies, actions or other circumstances affecting the list of information that should be made available to the public. This is particularly significant when it comes to activities to introduce proactive disclosure of information within the Government system. The second part of the legal obligation concerning the submission of guides and indexes of registers is less

frequently performed by public authorities, which also prevents the Ombudsman Institution from systematically monitoring the situation in this area.

7.9 Submission of statistical indicators

Most public authorities in Bosnia and Herzegovina, at all levels of government, do not submit statistical indicators on submitted requests for access to information to legislative bodies and the Ombudsman Institution. Generally, the methodology of record keeping is questionable, in the sense that records on submitted requests for access to information are kept separate from other requests.

7.10 Obstacles to law implementation

Public authorities have presented in various ways the obstacles they face in practice regarding the application of the Law on Free Access to Information. The problem of inaccurately defined individual provisions of the Law on Free Access to Information, such as e.g. the provisions of Article 8 (exception to the protection of privacy), the obligation to apply the Law on Protection of Personal Data, in particular the relationship between the Law on Freedom of Access to Information and the Law on Protection of Personal Data. The Ombudsman's experience gained through working on individual complaints and through educational content leads to the conclusion that obstacles to the implementation of the law can be categorized into two categories, those of the public authority and the applicant.

Obstacles on the part of public authorities:

- High level of uneducated staff in public bodies;
- Misunderstanding of the law on freedom of access to information;
- A lack of understanding of the relationship between the public body and citizens and that public authorities are citizens' services;
- The structure of public law enforcement bodies has not been established, no guides have been adopted, no information index, no information officer has been appointed and they are often considered to be media relations officers;
- Poor reasoning for decisions made on requests for access to information;
- Failure to ensure a balance between the public interest and the protection of individuals' privacy interests;
- Failure to take decisions within the deadlines set by law;
- Non-compliance with the legal provision on the form of decision-making (written decision with all elements in accordance with the provisions of the law on (general) administrative procedure);
- The decision act does not contain provisions on the possibility of appealing and the name of the second-instance decision-making body;
- Rejected requests for access to information often do not contain a statement of reasons for refusal or justification for a public interest test, but most often contain only the statement that in order to protect the privacy of third parties, they refuse to provide information;
- Failure to submit statistics to the Ombudsman Institution;

- Most public authorities do not keep separate statistics on requests that are solely referred to in the LFAI;
- There is a problem of a lack of distinction between a person, a public relations officer or an expert and an information officer;

Applicant-side obstacles:

- Inaccuracy of the application and lack of knowledge of the application procedure;
- Non-use of instruments established by law, especially when it comes to appeal;
- Due to some gaps in media legislation, the media are forced to use freedom of information laws as an instrument, which due to a clearly prescribed procedure, including deadlines, is slow and media needs information in the short term;
- Seeking personal information relating to a third party;
- An application for access to personal information must be made only by the natural person to whom it relates, or by the applicant's legal representative or by a person authorized by the applicant in writing to access the information.

8 RECOMMENDATIONS

In accordance with the powers set out in Article 32. of the Law on Human Rights Ombudsman of Bosnia and Herzegovina, the Ombudsmen for Human Rights of Bosnia and Herzegovina make the following recommendations:

1. **To the Ministry of Justice of Bosnia and Herzegovina, Ministry of Justice of the Republika Srpska and Ministry of Justice of the Federation of Bosnia and Herzegovina:**

- To, bearing in mind the findings of the Special Report on the Implementation of the Law on Free Access to Information of Bosnia and Herzegovina, prepared by the Ombudsman of Bosnia and Herzegovina and the Expert Report "Improving the Right of Access to Information in Bosnia and Herzegovina" of 19 February 2018. Taiex - IPA, ENI -Taiex expert missions, take procedural steps to adopt new laws on free access to information, which will be fully in line with international standards.

2. **To Civil Service Agency of Bosnia and Herzegovina, Civil Service Agency of the Republika Srpska, Civil Service Agency of the Federation of Bosnia and Herzegovina and the Government of the Brčko District of BiH - Section for Professional and Administrative Affairs, in cooperation with the Institution of Human Rights Ombudsman of Bosnia and Herzegovina:**

- To develop training programs for information carriers for employees related to the application of the law on access to information and organize practical trainings.

3. The Ministry of Justice of Bosnia and Herzegovina, the Ministry of Justice of the Republika Srpska, the Ministry of Justice of the Federation of Bosnia and Herzegovina, the Ministries of Justice of all cantons and the Judicial Commission of the Brčko District of BiH to:

- Develop guidelines to be distributed to the information carriers regarding the application of the law on access to public information;
- Establish cooperation with representatives of civil society and the media, who, within the framework of their activities, have the possibility of informing the public about the right to free access to information, as well as the correct way of addressing information holders.

4. Public authorities at the level of Bosnia and Herzegovina, the Republika Srpska and the Federation of Bosnia and Herzegovina, the Brčko District of Bosnia and Herzegovina, cities and municipalities to ensure:

- Unconditional application of international standards regarding the right of access to information, and provisions of existing legislation on freedom of access to information;
- Proactive publication of information of public importance and maximum transparency in work;
- Professional training and continuous training of information officers;
- Development of guides for access to information and index of information registers;
- Appointment of information officers, in terms of the provisions of Law on Free Access to Information of Bosnia and Herzegovina;
- Regular submission of statistical data within the meaning of the provisions of Law on Free Access to Information of Bosnia and Herzegovina.

Ombudsmen of Bosnia and Herzegovina

Prof. Dr. Ljubinko Mitrović

Dr. Jasminka Džumhur

Nives Jukić

ANNEX I

QUESTIONNAIRE DESIGNED FOR PRODUCTION OF SPECIAL REPORT ON EXPERIENCES IN APPLICATION OF LAW ON FREE ACCESS TO INFORMATION IN BOSNIA AND HERZEGOVINA

1. Please indicate in what way, when deciding on a request for access to information, do you act in accordance with Article 7 of the Act (exception regarding confidential commercial information)?
 - Give one example of a decision explaining the application of this article.
2. When deciding on a request for access to information, how do you treat information that involves the privacy of third parties?
3. What do you mean /what information /by the term "third party privacy"?
4. Please indicate in what way, when deciding on a request for access to information, do you comply with Article 9 of the Law?
 - Provide one copy of the decision explaining the application of this article.
5. When deciding on a request for access to information, do you consider the benefits and harms that may arise from communicating the information?
6. Are all the circumstances in which particular information should be exempted from communication made in the decision?
7. In practice, have you in practice had a case where part of the requested information was identified as an exception (partial decision on access to information)?
 - How did you act in this case (provide a copy of the solution)?
8. In what form do you make a decision on a request for access to information (decision, memo, conclusion)?
 - What parts of the decision to access information contain?
9. What do you cite in the remedy lesson (provide a copy of the solution)?
10. When deciding on a request for access to information, do you examine the justification or request a justification for the request?
11. Have you received requests to access information that has been requested for information that you are not responsible for?
 - How did you handle these situations?
12. Have you appointed an Information Officer in accordance with the provisions of Article 19 of the Law?
13. Have you provided the information officer's name and information to the Ombudsman Institution of Bosnia and Herzegovina and when?
14. Do you have a Guide to Access to Information and an Index of Information Register compiled and published on your website in accordance with Article 20 of the Law?
15. Do you act in accordance with Article 20, paragraph 1, item c) of the Law, in the sense that you submit statistical data, on a quarterly basis, to the Parliamentary Assembly of Bosnia and Herzegovina and to the BiH Ombudsman Institution?

16. Do you consider that your information officers are sufficiently educated to effectively implement Law on Free Access to Information?

17. What obstacles do you face in practice when dealing with requests for free access to information?

ANNEX II

**OVERVIEW OF THE RECOMMENDATIONS FROM THE TAIEX - IPA, ENI - TAIEX
PROFESSIONAL MISSIONS ON "IMPROVING THE RIGHT TO ACCESS TO
INFORMATION IN BOSNIA AND HERZEGOVINA"**

RECOMMENDATIONS

The recommendations made by experts here are the result of an assessment of relevant legal texts and other documents, which have been shared and followed by concise discussions with representatives of relevant authorities in Bosnia and Herzegovina.

The recommendations have three main objectives, all of which are interlinked to ensure the proper implementation of the law on access to information and respect for international obligations to uphold and respect the right of the public to know;

Ensure that safeguards are in place in Bosnia and Herzegovina to protect the right of access to information;

Ensure that there are clearer, simpler and more efficient procedures for exercising rights;

Establish necessary additional functions related to promotion (training, public awareness), monitoring (gathering data on the implementation of the Act) and reporting.

The recommendations we make are designed to ensure compliance with international standards. Recognizing that in some cases it is easier to reach a political solution in the current context in Bosnia and Herzegovina, in some cases we have provided both our proposal and alternative options. Please note that a strong recommendation from us as experts is to follow our proposals in order to avoid inconsistencies with international and European standards.

Recommendation no. 1: Adopt a new law on the right to free access to information with clear and well-structured text.

LAW FORMAT

There were several amendments to the existing Law (28/2000, 45/2006, 45/2006, 102/2009, 62/2011, 100/13)

Suggestion: In order to ensure that the Law is easy to read and understand, as well as to be implemented and enforced, it is advised to adopt a new law instead of amending the existing one (6th Amendment).

Alternative: Adopt amendments that include all recommendations in this document (expanded list of amendments) with a provision in the final section of the Act introducing the obligation to draft and publish a consolidated version of the Act.

Technical advice: the provisions should not be too long and should be addressed (e.g. principles, proactive publication, deadlines, transfer of requests, etc.)

Note: As we point out below, it is recommended that the Act incorporate the provisions of the EU Directive on the re-use of information in the public sector, as well as the provisions of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, which is in fact an EU Acquis, included in EU Directive 2003/4/EC on public access to environmental information.

Given that it is necessary to adopt a final, plain text resulting from the inclusion of these elements, we strongly recommend that this be done with a new law rather than a series of amendments.

Recommendation no. 2: Introduce and define the principles on which the Law is built

PRINCIPLES OF LAW

The draft amendment introduces some principles in proposed Article 2.

Suggestion: To ensure the protection of the right of access to information and to provide clear guidance to public authorities in interpreting the law, we propose that the basic principles are clearly stated and

defined in the article

The principle of transparency and openness: to keep all information by public authorities open and public, unless non-disclosure is fully justified and based on legitimate grounds for applying exceptions. The right to access to information (the principle of freedom of information) as the right of the user to receive information either through proactive disclosure or request.

The principle of open government - in order to promote good governance, ensure public participation and fight corruption, public authorities will carry out their duties and provide services as openly as possible.

Principle of Beneficiary Equality - There will be no discrimination between beneficiaries of rights;

The principle of free distribution of information and re-use of information received by the user;

Public authorities will guarantee easy, fast and efficient access to information;³⁴⁷

Principle of accurate, timely and complete information.

Please note that in many countries, the law does not specify a language that can be used to apply. In addition, given that this is a fundamental right that applies to all persons, not just citizens and residents of Bosnia and Herzegovina, international best practice is an effort to respond to requests that come in all other languages. In practice, many countries across the European Union are accepting requests in English. Nothing should be included in the law to limit this possibility, though it may not be an obligation to do so.

Recommendation no. 3: Remove the provisions on requests for personal information from the Act, as they are covered by the data protection regulation.

PERSONAL REQUESTS

In the absence of data protection laws, first-generation information access laws often include provisions that permit a request for personal information. A clear standard across the EU and in many other parts of the world is that they have separate legal instruments for personal data and public information. This is something that needs to be amended in Bosnia and Herzegovina, especially given the validity of the law on personal data protection which is in line with the EU Directive. The current provision of Article 17 is therefore outdated and should be excluded from the Act, and therefore rules such as Article 1 (c), 3 (d), 11 (3), 14 (3) (2a).

What should remain in the Act and should be clearly marked is the provision on how to process requests for information contained in documents containing personal data; this should be addressed by accurately labeling the relevant exceptions, which we include in the exception provisions below.

Recommendation no. 4: Ensure that proactive disclosure of information is the main way of information distribution

PROACTIVE PUBLICATION

Regarding proactive publication, we recommend the following:

The principle of proactive disclosure should be highly placed among the principles of the Act (see recommendation 1).

All information regarding work, organization and operation, as well as decision-making, financing and spending should be automatically proactively published.

³⁴⁷ UN Human Rights Committee General Comment 34 on Article 19: Freedom of expression;

The obligation to create special documents, guides and index registers should be abandoned. Instead of adding this additional burden to public authorities, it is imperative that information on ways and modalities of exercising the right of access to information be available online. There is no need for every public authority to make a guide, when a guide should be prepared by the supervisory authority for all state bodies. However, all public authorities should publish on their websites user-friendly information on how to exercise this right. Also, instead of creating an index register, public authorities should simply follow the provision of the Act on what information to proactively publish. Public authorities should list their main competences and the documents they issue (and often change) in the descriptive part of their mission, vision and role. In addition, too demanding proactive publication can lead to a lower implementation rate (it is hard to believe that all government bodies have prepared their guides and sent them to all public libraries in the country, as now required by Article 20 (1) of the Act).

Proactive disclosure should follow several key rules, developed as international standards.

The information should be relevant. Relevant information is all information related to the work, organization, decision making and financing of public bodies. This is also information that is often requested by users and often depends on the scope of work of public authorities.

The information should be understandable. This means that information should be presented in a way that is easy to understand for the general public, as well as certain groups (eg language groups, minorities, people with disabilities).³⁴⁸ Comprehensive information can accompany original information and present information in an easy-to-understand manner (e.g., budget guides, statistics visualization, long summary reports, etc.). This principle applies to the principle of equal access, which means that proactive publishing is not limited to the internet, but also includes other appropriate means of sharing information so that it reaches all relevant sections of the population (e.g. print guides, reports, statistical bulletins, etc.). This could be available from public bodies (reading rooms, bulletin boards) or from public libraries. These means of providing information are even more important in societies and communities (local units, especially in rural areas), where the population does not predominantly use the Internet.³⁴⁹ In addition, using the Internet does not automatically mean that users are able to search information on public authority websites.

Information must be available. This means that information must be easily accessible on a website that is structured in a clear and simple way. The rule of three clicks should be respected as much as possible (eg the user should be able to easily access any information in up to three mouse clicks). EU public bodies websites should comply with accessibility standards as defined by Directive EU / 2016/2102. Also, many countries have central portals in place, which is good and recommended practice. However, users are mainly focused on public bodies in which they have an interest, and therefore portals cannot replace the websites of these public bodies.

The information should be free, timely and up to date. Information should be published proactively as soon as possible after its creation. Proactively published information will be updated frequently; the public will be clearly informed of the date of creation and release of all proactively published information, as well as the frequency with which it will be updated.

In terms of *formats*, proactively published information should be published in a way that can access various technology platforms, such as computers and mobile phones, using all common operating systems. The ability to reuse information requires that information be available in machine-readable and open format (see section on reusing information). To this end, information should be available in

³⁴⁸ The EU requires Member States (and potential members) to develop website standards that promote equal and easy access. See *the Directive on the accessibility of websites and mobile applications of public sector bodies (EU / 2016/2102)* <https://ec.europa.eu/digital-single-market/en/web-accessibility>

³⁴⁹ e.g. according to Eurostat (2016), just over 80% of EU citizens use the internet. According to the Internet World Stat, in 2014 in BiH, 67.9% of citizens use the Internet.

forms that are not restricted by ownership, and care should be taken when introducing information, designing databases or purchasing software to anticipate public access, including the establishment of future contractual clauses publication and use of information created or stored on media created through the use of public funds.

In order to fulfill all the requirements of proactive disclosure, the supervisory authority should be empowered to verify compliance with proactive disclosure, to receive regular reports, to ex officio investigate, and to receive complaints from the public, and should be empowered to take appropriate action to ensure compliance. In addition, public authorities should provide sufficient resources (financial, human resources) to organize, prepare and publish information and maintain active publication for an extended period.

As far as the content of the information is concerned, international standards have evolved. The following groups of information are expected to be available online:³⁵⁰

Institutional information: legal basis of the institution, internal regulations, function and authorities;

Organizational information: organizational structure including information on staff, names and contact information of public officials (including salary information);

Operational information: strategy and plans, policy, activities, procedures;

Decisions and acts: decisions and formal acts, especially those that directly affect the public;

Public service information: description of services provided to the public, guides, copy of forms, information on fees and time limits;

Budget information: projected budget, actual revenues and expenses and other financial information, audit and evaluation reports;

Open Meeting Information: Meeting information including open meetings and how to attend these meetings;

Decision-making and public participation: information on decision-making procedures including mechanisms for consultation and public participation in decision-making;

Subsidy information: information on subsidy beneficiaries, objectives, amounts and implementation;

Procurement information: detailed information on procurement processes, criteria and decision-making outcomes of tendering applications; copies of contracts and reports on contract completion;

Lists, registers, databases: information on lists, registers and databases held by a public authority;

Information on whether these lists and registers and databases are available on the Internet and / or for access by the public; Database information available on the Internet;

Possession Information Information: An index or register of documents / information stored including information about information stored in databases;

Publication information: Information about published publications, including whether the publications are free or priced, if purchased;

Right to information information: information about the right of access to information and how to seek information (a guide created by the supervisory authority), including contact information for the responsible person in each public body.

In order for information to be proactively published, public authorities should ensure that information is produced first and foremost. For example, minutes of all meetings held should be made to allow them to be published proactively (as access as requested). It is recommended that the supervisory authority be aware of the obligation to proactively publish and make recommendations on the record.

³⁵⁰ Access Info Europe Proactive Release Recommendations: <https://www.access-info.org/pub-and-toolkits/17400>;

Recommendation no. 5: Define information in accordance with international standards

DEFINITION OF INFORMATION

It is essential that there is a clear and comprehensive definition of information, something that is now clearly set out in international standards. This requires a minor amendment to the laws of Bosnia and Herzegovina.

Proposed definition of information:

“Information” means all content recorded in any form, compiled or received and held by public authorities, regardless of when it was created or classified.

Source: Definition of information in the Council of Europe Convention on Access to Official Documents, European Union Regulation 1049/2001 and various laws on access to information across Europe.

Recommendation no. 6: Compile an exception list and establish harm and public interest tests in accordance with international standards

EXCEPTIONS AND PUBLIC INTEREST TEST

Overall, the exceptions contained in the Act are in line with international standards, as they appeared at the time of drafting the Act. However, there is a need to bring the Law closer to current standards, including those of the Council of Europe Convention on Access to Official Documents, which has also been ratified by Bosnia and Herzegovina.

The amendments tabled follow the current structure of the Act. However, we do recommend that the Act be amended so that the application process is set before the exemption section. This makes the reading of the law more logical for both users and public officials who need to implement it.

Provision of information and exceptions

As for the old Article 5, we recommend adding a text stating that the applicant will be provided with all the requested information or documentation, except in the event of an exception ("exemption"):

Compile a list of exceptions in accordance with international standards

We recommend that the possible list of exceptions be revised in line with the Council of Europe Convention on Access to Official Documents. This provides a broader list of exceptions, which, however, must be closely applied and always subject to the public interest test, and can only be invoked when a public authority can demonstrate that significant harm will result from the disclosure of certain information and that there is no overriding public interest in becoming aware of information.

Regarding the new provision (j) for consideration, the clear intention here, supported by comparative law and substantial jurisprudence, is to protect a limited "space for reflection" in decision-making by public authorities. The previous term was too broad, protecting as it did "an opinion, advice or recommendation from a public authority, its employee or any person acting for or on behalf of a public authority" where such opinions, advice or recommendations did not "include" fact, statistical, scientific or technical data. "The problem is that policy advice is separated from factual or technical information, contains advice and opinions, and yet it is very important that it is made available to the public. Also, this limitation does not correspond to the way in which the decision-making exception is understood in

2018, that is, it must be proven damages to the ongoing decision-making process in a way that would undermine the possibility of case-by-case discussion and decision-making, with relevant documents and discussions frequently they publish after the decision has been made. Hence the need to include a time item in the new Article below.

Consultation with third parties when the exemption of commercially confidential information applies

We recommend a clearer mechanism for consultation with third parties.

In accordance with international standards and basic principles of the right of access to information, the final decision on whether or not to publish information must always be by the requesting public authority. Third parties, especially non-governmental bodies, should never have the final say as to whether or not information is published.

These third parties, however, should have the right to appeal to the Commissioner/ Information Commissioner and/or the court when they wish to challenge any information being released.

Protection of privacy

Protection of privacy and personal data is absolutely essential, and it is a fundamental right. At the same time, it is important that the application of this exception is not so broad as to prevent the public from getting the names of those involved in the work of public bodies, including those who work as public officials, as well as external actors (such as lobbyists and representatives of civil society organizations) who participate in meetings).

As a general rule, access will be provided to personally identifiable information, such as their name and professional name and affiliation, when that information relates to their involvement in the organization, operation and / or activities of a public body.³⁵¹

Spending on public funds relating to public servants should also be made public unless an exception applies in exceptional cases. This includes salaries and other income, as well as funds spent on activities involving a public servant, such as entertainment and travel expenses.

Public interest test

The public interest test is one of the most important provisions of the Access to Information Act. The original law of Bosnia and Herzegovina had a firm provision to that effect. We have proposed here to clarify terms in order to be in line with international standards which clearly state that on the one hand there is harm to a particular interest and on the other hand to balance whether the public interest is knowledge of information. The starting point is the presumption of openness and only when damage and public interest tests have been applied and justified can limited information be withheld from publication.

Separation and partial access

The initial access to information in Bosnia and Herzegovina contains a provision on the separation of exempt information and partial access, which is positive. On the other hand, the law allowed that if newsrooms rendered information "incomprehensible" then the information would not be published. The experience of many court judgments has shown that, in many cases, even redacted documents have some value: they may contain a date, a sentence, a reference number that can be the basis of an appeal in order to achieve wider access. Therefore, documents should always be published, even if most of the information in it is redacted.

Please note that the original article was titled "Separation", although the common term used in many laws is "Partial Access."

When partial access to the documentation is granted, the editing is done by stating which elements have

³⁵¹ Source: Spanish Transparency Law, 2013, Article 15.2. This is a provision approved by the Spanish Personal Data Protection Agency during the process of passing the Act.

been removed under which exception or exceptions. This shall be stated in the text in a manner consistent with the guidelines to be drawn up and issued by the supervisory authority.

Recommendation no. 7: Make the process more efficient and include effective protection of user rights

EFFICIENT AND QUICK USER PROTECTION PROCEDURES

The specific objectives of this proposal are to include mechanisms to improve the efficiency of the application process to ensure that decisions on the right of access to information are made without delay and to ensure that the protection of the right of access to information is effective, as part of an efficient process.

We emphasize that procedural norms are vital to the enjoyment of citizens' rights and require special attention. They should therefore be guided by the principles of efficiency, speedy procedure and appropriate safeguards.

The procedural norms of the applicable Law (e.g. Article 9, Paragraph (3), Articles 11-14) are assessed as being, in some parts, too complicated and ambiguous, and also do not provide the correct and clear procedural steps defined in terms of time, jurisdiction (e.g. the provision of Article 14, paragraph (4) vaguely defines which body is designated to decide the appeal), obligations and rights. The draft amendment covers only two provisions (amendments to Articles 11 and 12), which improve legal certainty but are not sufficient.

The application process

The basic obligation under the right of access to information is to ensure that the application process is as simple and clear as possible for the applicant.

UN Human Rights Committee in General Comment no. 34 summarizes this obligation as follows: "In order to exercise the right of access to information ... Member States should make every effort to ensure easy, prompt, efficient and practical access to such information." means that the application process should be as easy and simple as possible.

The law of Bosnia and Herzegovina is already more in line with international standards, but some improvements are needed to ensure a clear procedure.

The proposed revision includes the ability to request information or documents in the request. If the applicant requests specific documents, then this must be respected when the application is processed.

In line with best practices across Europe, requests can be submitted in a variety of submission formats, including digital media such as email. This provision has remained open to other digital means that could be identified by public authorities, given that some public authorities across Europe are researching or even testing public communications through platforms such as Twitter, WhatsApp, etc.

It is crucial that, in order to enable all members of society to exercise their right of access to information, requests can be made verbally with the obligation of state authorities to comply in writing. Acceptance of oral requests also provides an opportunity for the public official to clarify the request if it is not clear and to which the applicant and the public authority also benefit. This option is followed by notification that the request be granted in writing and recorded in the register.

It is essential to establish a special procedure in cases where a public authority needs to clarify a request or complete a request that is to some extent incomplete or not sufficiently precise to allow the

public authority to identify relevant information or documents.

One positive provision in BiH, the law is to determine that applicants do not have to give reasons for seeking information. This is an essential provision, which goes to the heart of the law: since a fundamental right is linked to freedom of expression, the applicant should never be asked why he is seeking information or what he plans to do with it.

What the law does not specify, however, is that the applicant is not specifically required to state that he is using the law on access to information. This has been added.

The amended provisions also include precise mechanisms for registering a request, defining the information to be provided so that the user is fully aware of his / her rights, including the timeframe established by law and the right to appeal against administrative silence.

Registration and request register:

Most countries have introduced an obligation on national authorities to keep a separate register of requests for access to information, which should contain a unique reference number for each request, together with the follow-up of the main procedural steps (transfer of request, notification of users, decision, appeal, decision on appeal, etc.). This practice helps information officers manage their claims work, report to the competent authority, and effectively inform the public of the status of the request. In some countries, there is an obligation to periodically publish a register ("FOI Diaries").

The existing Law on Access to Information of Bosnia and Herzegovina does not require the maintenance of a register of requests, and such an obligation is not foreseen in the draft amendments.

Transfer of request

It is very common for users to make their requests to a public body that does not have the information. It should be clear that in these cases, bodies should help users exercise their rights, bearing in mind that they do not need to know who holds/owns the information, which is something that public authorities should be able to assist them with.

The transfer provision is contained in section 13 of the existing Act, which contains the main procedural safeguards. However, the current provision does not guarantee that the process will be urgent or that the rights of users will be protected. It also relies on the notion of a "competent" body, rather than a body with information, which is an international standard.

The timeframe for the transfer process should be limited and the procedure should either be accompanied by a substantive procedure or be completed by the issuance of a formal act including the possibility of an appeal. Also, for the sake of due process and decision, in the case of a transfer, the time limits should start from the moment the request is received by the competent authority. In addition, the user must be informed of all key steps in the process.

Time frame for deciding

It is of the utmost importance that the deadlines for decision-making are strictly set and appropriate to ensure a fast and efficient procedure.

According to Article 14, paragraph (5) of the current Law, there is a 15-day deadline, but since it is not reasonable to respect the deadline in all cases, especially when the requirements are more complex, this

could, when necessary and justified, be extended. In accordance with international standards, it would be appropriate to set a general deadline and to allow extension in strictly limited circumstances, with mandatory notice to the user. The proposal is to maintain a 15-day general deadline (this is in line with both good practices; it is an average across Europe and is a timeframe in EU access regulation), but a maximum of 15 days should be allowed for certain reasons. These reasons may include that this is necessary because the request relates to a very lengthy document that needs editing (for example, the removal of personal data from extensive documentation), to a large number of documents, or when information is sought and collected from multiple administrative units. There may be cases where the application of exceptions and the execution of a public interest test are particularly complex due to the nature of the information requested, such as classified information or the need to consult with other authorities or third parties to carry out a detailed assessment of the likely harm and public interest in disclosure. In such cases, the user should be notified immediately, or at least within 8 days, explaining the reasons for the extension and notifying the right of appeal and the appeal mechanism to challenge the extension.

In addition, in accordance with international standards and comparative access to information, if a public authority does not meet the deadline, complaints about the silence of the administration should be possible - for this reason it is important that when confirming the receipt of the request, the public authority informs the user at the receiving number, as well as appeal options after a 15-day deadline or a 15-day extension.

Decision on request

The first instance procedure, carried out by a public body, can be performed in several ways. However, it is imperative that each of these possible solutions include the ability for users to protect their rights and to be sure which remedy is available for use.

Possible decisions of the first instance body include:

Request accepted and information provided to the user. In this case, the decision is positive for the user and the body is not obliged to make a formal decision. However, to ensure that the information provided is accurate and fully complies with the request, the user should be entitled to request a correction.

The request is partially granted - this will happen mainly in cases where, after applying the exceptions followed by the damage and public interest test, the public authority concludes that access to certain parts of the document (information) should be restricted. However, if the request relates to more information (eg 1, 2, 3,), it is possible that access to information may be allowed in some parts, denied in some parts, and in some parts (eg a certain piece of information) public authority may not have information and is not familiar with a public body that might contain the information.

The request was rejected (in full) - the outcome of this procedure is the decision to refuse access to the information in its entirety.

In case of rejection of the request or partial access, the decision is made in the form of an administrative act (decision) which contains, among other things, the reasoning of the decision and the possibility of appeal, and is sent to the user within (15 days for a regular deadline, 30 days if extended). In the case of partial access, the decision and the information that is partially available should be sent along with the decision.

In the event that the public authority decides to give full access to the requested information, it sends the information to the user in a manner determined by the user (by e-mail, mail, providing information to the user on the premises of the public body) and does not make a decision (decision).

The same applies when information is already publicly available - informs the user that the information

is accessible by providing an internet link, unless the user has requested a copy of the information and he/she is not an Internet user (this condition should prevent abuse of the right to inform those users who can obtain the information online, but insist that the public body consume its resources by securing hard copies).

In case the user considers the obtained information incomplete or incorrect, the user should have the opportunity to protect the right and request correction or supplementation of the information within a reasonable time (15 days), and the public authority should decide within a maximum of 15 days (without the possibility of extension) .

In short, if the public authority considers the request justified, it will provide the information. Otherwise, it will issue an act (ruling), stating the reasons and the possibility of appeal.

Recommendation no. 8: Regulate costs in a specific provision and ensure by a by-law that this is done in detail

COSTS

Under current law, information is published at the lowest price (Article 2), the beneficiary must be informed of the costs (Article 14, paragraph (2b)), and the costs are determined by the Council of Ministers (Article 16). There is a rule that the first 20 pages are free of charge.

Cost policy review should be carried out. Consideration should be given to whether the responsibility for determining costs should be vested in the Council of Ministers or the Ministry of Justice or the oversight body. The question is whether the Council of Ministers should be asked to decide on such a trivial issue (the cost of copies).

We propose that a separate provision covers all cost issues. It should be determined what costs are eligible, which body determines the costs, limits and procedural steps related to costs.

A key principle to be respected is that the public authority should not generate additional revenue by securing copies, scanning documents or submitting information, or spending time or human resources to prepare information at material costs. This is also a rule of the PSI Directive, which is very strict on this matter - a public body can only charge material costs and cannot under any circumstances make a profit. Therefore, costs should be determined according to market rules.

The law and/or implementing regulation should also clearly indicate that if the applicant has expressed a preference for receiving information in digital format and provided that the information can be provided in that format then that appeal should be respected and no copying fees should be incurred. . Please note that it is common practice across Europe to (a) scan documents free of charge so that they can be delivered electronically, and (b) charge for photocopying, even when exceeding the 20-page limit.

Recommendation no. 9: In order to improve the handling of requests and to ensure the application of other provisions of the Act, the role of information officer should be strengthened.

INFORMATION OFFICER

Information officers are the key persons with whom citizens interact in the process of exercising their right. They are also key institutional points that ensure that the Law is fully implemented. They receive, register and process requests, respond to citizens, coordinate and gather information, and report and inform management about the implementation of the Act. Therefore, in order to perform their function, these functions should be legally defined and a mechanism for developing skills and knowledge should be established.

Also, in accordance with the practice in other countries, a list of state bodies and information officers (with addresses and e-mail contacts) should be published in order to inform citizens about public bodies that are in compliance with the law and details of contact persons (information officer) who will be responsible for processing their request. The same list has other purposes, such as training and reporting.

It is proposed to improve the current provision on information officers (Article 19) by specifying:

Duties of Information Officers (ensuring proactive disclosure of information, handling requests, assisting users, keeping a register of requests, reporting with a possible obligation to access information training).

The obligation of public authorities to appoint an information officer, to publish their contacts on the website and other appropriate sites (e.g. on premises) and to send a decision or information to the information officers of the supervisory authority that should publish and regularly update this list on the Internet.

In practice, information officers should have sufficient experience and knowledge of the administrative process. A person designated as an Information Officer should work in an appropriate position, for example, in the General Secretariat or the Ministerial Cabinet. Information officers should be assisted by other relevant civil servants, such as IT support and legal staff. Training should be provided by the oversight body, possibly in partnership with a civil service training institution, but should also be supported by training provided by other training partners (such as NGOs under training programs funded by international organizations).

Recommendation no. 10: Guaranteeing the protection of rights PROTECTION AND INSTITUTIONAL FRAMEWORK

International standards and comparative legal frameworks uniquely provide for the possibility of protecting the right of access to information by an appeal decided by an independent body. Unlike other regular cases of second-instance decision-making in an administrative procedure in which the second-instance authority has no particular interest in the substance of the decision, when it comes to access to information, since it often touches on issues of political power, corruption, illegality, accountability and general policy, to make the second-instance authority neutral, impartial and independent of key political power, especially the executive (government, administration).

The first generation of information access laws (including the law we are analyzing here) delegated the function of protection to the courts, with the possibility of internal appeal (to the head of the body) and the general jurisdiction of the Ombudsman (as for protection in other cases affecting human rights). Conversely, given the increased demand for information and, consequently, the greater resistance of public authorities to disclose information, as well as the development of an information society that allows information to be published on the Internet proactively, the European and global trend is the establishment of an independent decision-making body. Appeals, investigates cases, monitors proactive disclosure, issues guidance and provides training, reports to Parliament, and performs other functions necessary to ensure law enforcement and greater transparency.

The supervisory authority's competences typically include:

Appeal procedure,

Investigations / inspections (on request and ex officio),

Monitoring and reporting - gathering information on information officers (registry of officers), monitoring and collecting information on law enforcement and reporting to Parliament through a special report exclusively related to access to information,

Promotion - education, guidance, public awareness, decision making, etc.

Current state-level regulation provides for several institutions that perform supervisory functions. These include:

Appeal (Appellate Body) - Complaints Board of the Council of Ministers; the text of the law is not clear which creates many problems in practice,

Petition and short report as part of the general report (Ombudsman),

Complaint to the Inspectorate (Ministry of Justice),

Council of Ministers - determination of costs,

Training - some training provided by an institution in charge of general training, but not specifically in access to information,

Guidelines, promotion - not implemented (although some guidelines and public awareness activities are implemented by civil society).

The problem of protection and the institutional framework are particularly visible when it comes to complaints. There are two "appellate" items in the Act (although it seems unnecessary to state the possibility of petitioning the Ombudsman, given his general authority). In addition, there is not much to say about a complaint in a law or an administrative dispute, although these remedies are central elements of the Free Access to Information Act. It is not clear which appellate body, which court decides the administrative dispute cases, who can initiate the administrative dispute, time limits for appeal, etc. Moreover, there is no provision in the Act to indicate that, in the absence of a separate rule, the general administrative procedure applies.

According to Article 14, paragraph (4), the user has the possibility to appeal to the head of the second-instance body. The law does not specify which body it is and, in practice, complaints often end up at internal review. Moreover, given the fact that at the entity level internal appeals are possible, both users and bodies are often uncertain about the appeal body. This creates legal uncertainty, reduces the level of protection and allows public authorities to prolong the process. In addition, the Appeals Board, although generally well-equipped and professional, is generally responsible for all complaints at the "central" level, which does not allow for priority access to case information or specialization. In addition, he cannot be considered a strictly independent body (professional, plus named on merit and integrity in a transparent and open procedure). By contrast, such authorities have been established in all countries in the region and in most other European countries. In addition, the transposition of the Directive on the re-use of information in the public sector requires that an independent body decide on appeals against decisions on requests for the re-use of information.

In Article 9, paragraph (3), 14 (3), there is also the possibility of petitioning the Ombudsman, but this is not a complaint in terms of administrative procedure, but a petition that may lead to a recommendation (not binding) to a public body. Therefore, the decision is not legally binding. Current statistics show that only about 44% of the Ombudsman's recommendations are respected, but the overall number of cases is low, compared to the number of complaints in other countries, which increase to several hundred a year.

Article 22, paragraph (b), inspection is in the hands of the Ministry of Administration, which is a good choice, given the current institutional framework underpinning this Law. However, the provision provides only the basic elements of control and does not allow the institution of an ex officio inspection procedure.

Submission of a report on the implementation of the Law to Parliament is a key instrument for ensuring the implementation of the Law and raising the issue of the Law in public debate (in Parliament and among the public). Currently, there is an obligation for the Ombudsman to report, but reporting is done within the Ombudsman's general report, which is in line with their role and mandate (4-5 pages are

dedicated to accessing information, with comments on selected cases, but without specific statistical and other data) . Therefore, we propose to introduce a provision on the obligation to submit reports on the implementation of the Law regardless of the institutional model.

In short, there are obvious problems regarding the ineffectiveness of the appeal process, the absence of an independent and specialized body, the ambiguity between the roles of the bodies involved; promotion and education are extremely weak, no monitoring and reporting, etc. In short, users cannot be sure how to protect their rights, and the system cannot ensure its general transparency. This prevents public awareness, greater exercise of rights, development of practice, legal certainty, specialization and knowledge development.

The new legal framework should include the following instruments:

Independence of the Appellate Body,

Clear provision on the body of appeal and the time limit for lodging and deciding on appeal,

A clear provision on the administrative dispute and the time limit for initiating the dispute and the length of the court proceedings,

Clear provision for the application of general administrative law,

Specific inspection rules, including ex-officio inspections,

Obligation to report on the application of the Law to Parliament,

Obligation to issue guidance and continuous training,

The obligation to create a list of public bodies in accordance with the Law and information officers.

Recommendation no. 11: Establishment of a supervisory authority according to an international standard

SUPERVISORY BODY

The functions of the supervisory authority are currently shared among several institutions or do not apply at all (training, guidance, comprehensive reporting).

In European countries, it is possible to distinguish between three models of supervisory authorities and functions (see table below).

Type 1 is similar to the current system in Bosnia and Herzegovina. The main statutory control is exercised by the court with the general authority of the Ombudsman to issue non-binding recommendations. In addition, the second-instance administrative proceedings are conducted as an internal review or, possibly, by a separate appeal body. Other oversight functions, such as inspection, reporting and promotion, are usually shared between the Ombudsman and the executive department in charge of public administration or human rights (ministries of administration, interior, justice). This type of surveillance is found in countries that have adopted first generation laws, such as the Scandinavian countries (Sweden, Norway, Finland, Denmark) and some CEE countries (Poland, Bulgaria, Romania, Bosnia and Herzegovina). In order for such oversight to succeed in protecting the rights of citizens, it is necessary that the political, legal and administrative cultures are democratically and legally oriented.

Type 2 countries have established a specialized law enforcement oversight body that performs all or most of the oversight functions, usually called the Information Commissioner, or the Information Committee or Council (if collective body)³⁵². It has been shown that such an authority can significantly improve law enforcement and public awareness. This model exists in countries with a French

³⁵² Croatia: www.pristupinfo.hr; France; <http://www.cada.fr/>

Scotland <http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.aspx>

administrative tradition (France, Spain, Italy, Belgium) and some countries in the region (Croatia, Macedonia), as well as in Ireland and Scotland. The office of the Commission / Information Committee or the Commissioner for Information is an autonomous and independent public authority, for the sake of efficiency and effectiveness, public image and already proven competence. In some countries, commissions or commissioners are appointed by function from existing high-level institutions, which include administrative judges in France, and the current president is a national advisor specializing in administrative law; or the Ombudsman in Ireland. A good model for Bosnia and Herzegovina could be the Irish case³⁵³ where the person acting as Ombudsman is also the Information Commissioner with a specific function - while the Ombudsman's office performs the regular Ombudsman's functions (promotion of human rights, recommendations, anti-discrimination, etc.), the Office of the Commissioner for information performs supervisory functions of access to information such as complaints, investigations (inspections), monitoring and reporting on law enforcement, promotion (training, awareness raising, guidance, etc.). In the case of Ireland, the two offices are legally separate and have separate budgets, with common support services (human resources management, financial services, public procurement, etc.). This model allows for the establishment of a specialized, publicly visible and competent authority, but takes into account efficiency and fiscal constraints.

In the Type 3 model, oversight functions are performed by the data protection authority (Information Commissioner, which combines both functions - data protection and access to information), as are most countries in the region (Slovenia, Serbia, Montenegro, Albania)³⁵⁴ and in other EU countries (UK, Germany, Hungary). This model has many advantages, such as the development of information law enforcement bodies, specialization in information rights, balancing rights and cost-effectiveness (one institution). However, in practice, reorganizing an existing agency into a jurisdiction that gives equal attention to both rights has proven to be a challenge (as in Croatia, which abandoned this model after two years). The spirit of an institution more prone to protection prevails, the more difficult it is to overcome the more authority is involved in data protection. If this model is adopted, it will be necessary for the existing data protection agency to change its name, to reflect two rights within the internal organization and to recruit people who are already qualified and trained in accessing information. In Slovenia, a subtype of this model is being established where the Information Commissioner is in charge of the complaints process, while inspection and reporting are delegated to the Ministry of Administration.

In conclusion, practice has indicated that the existing institutional setting for the protection and promotion of the right of access to information (Model 1) is not effective and does not improve the exercise of the right of access to information. We propose that Bosnia and Herzegovina (at the state level) adopt one of the recognized institutional models for protecting access to information. It may be either an independent information access institution solely responsible for accessing information (model 2, such as Croatia, France, Spain, Ireland, Scotland) or a data protection agency in charge of protecting, monitoring and promoting rights. - the right of access to information and protection of personal data (model 3, such as in Serbia, UK, Germany). Between the two models, two subtypes are also acceptable, especially from a financial point of view - the Irish model (2a) of a separate institution for access to information, which combines all supervisory functions but exchanges support services and management with the Ombudsman's office; or the Slovenian model (3a) with a data protection authority conducting complaints and investigations, with other responsibilities being exercised by the ministry responsible for public administration.

³⁵³ Ireland <http://www.oic.ie/>

³⁵⁴ Serbia <https://www.poverenik.rs/sr-yu/>; Slovenia <https://www.ip-rs.si/>; Montenegro <http://www.azlp.me/me/agencija/>; Albania <http://www.idp.al/?lang=en>; Germany

https://www.bfdi.bund.de/DE/Home/home_node.html sa saveznim državama, npr. <http://www.lida.brandenburg.de/>; UK <https://ico.org.uk/>

Regardless of which model is selected, it is important to ensure that existing human resources are used in the establishment process (civil servants working on information access issues at the Ombudsman's office, the Ministry of Justice's inspection, well-trained and experienced information officers) and that The support of “exit (transforming)” institutions (organization, human resources, budgeting) was secured in the year. The head of the institution should be appointed in a transparent and open merit procedure, and the institution should have sufficient budgetary resources.

With regard to the institutional setting of the entity level, and in order to ensure the protection of the right of access to information for all citizens, regardless of political entity, we suggest that the entity levels should also establish their own institutions (eg as in Germany or the US, or Scotland). It may also be considered that the State-level information access supervisory authority is considered as an adequate institution for oversight of the entity's information access laws. The model for this is Spain, where although autonomous regions can set up their own government, many have opted for agreements with the National Transparency Council to act as an instance of appeal.

Table A: POSSIBLE CONTROL MODEL

Disclaimer: The proposed models are for state level implementation (suggestions for entity level are in last column)

	Appeal	Inspection	Monitoring and reporting	Promotion	Pros	Cons	Effects by entity level
<p>Model 1. STATUS QUO</p> <p>(similar: Sweden, Finland, Norway, Denmark, Poland, Slovakia Bulgaria, Romania, Ukraine)</p>	<p>External appeal (such as the Board of Appeal of the CoM BiH) (or internal review)</p>	<p>Ministry of Justice - Inspection</p>	<p>Ombudsman, but limited</p>	<p>No</p>	<p>No additional cost</p>	<p>There is no independence in the complaint procedure, deployed functions, protection is not effective, it is only one of the functions (not a priority); There is no public awareness of this;</p>	<p>There are no formal effects, but the Ombudsman is currently empowered to issue recommendations to all authorities (including the Entity and Cantonal levels); Data Protection Authority also;</p>
<p>Model 2: Independent specialized body for access to information (examples: Croatia, Macedonia, France, Italy, Spain, Scotland, Ireland)</p>	<p>Yes</p> <p>Second instance procedure;</p>	<p>Yes / or within general administrative inspection;</p>	<p>Yes</p> <p>Monitoring and data collection; reporting;</p>	<p>Yes (guides, forms, education, publications etc.).</p>	<p>More efficient protection; Specialization; Independence and integrity (must be ensured by an open and transparent appointment process); Knowhow; Public image and trust, public awareness;</p>	<p>The question of cost</p>	<p>There are no formal effects</p> <p>Entities could:</p> <p>A - establish its own independent information commissioners (German institutional model);</p> <p>B - to include a provision in its laws designating a state body as a second-tier independent body for the implementation of entity law (issue - political support);</p>
<p>Model 2a: Independent specialized body (Irish model)</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>As above - independence and specialization with a combination of three key functions (protection, monitoring, promotion); public image; trust; cost-effectiveness (shared services, one director for two offices);</p>	<p>The question of cost</p> <p>Organization takes time (approximately 6-9 months to be fully functional)</p>	<p>There are no formal effects</p> <p>Entities could:</p> <p>A - establish its own independent information commissioners (German institutional model);</p> <p>B - to include a provision in its laws designating a state body as a second-tier independent body for the implementation of entity law (issue - political support);</p>
<p>Model 3 Independent specialized body for data protection and access to information (Serbia, Slovenia, Montenegro, Albania,</p>	<p>Yes</p>	<p>Yes / or within general; administrative inspections</p>	<p>Yes</p>	<p>Yes</p>	<p>Specialization; Independence (relative); Public image; Agency Knowledge (promotion, monitoring, information rights in the digital age);</p>	<p>Introducing new values into existing ones; an institution; More financially viable (more data protection resources);</p>	<p>There are no formal effects</p> <p>Entities could:</p> <p>A - establish its own independent information commissioners (German institutional model);</p> <p>B - to include a provision in its laws designating a state body as a second-tier independent body for the implementation of entity law (issue - political support);</p>

Germany, United Kingdom);					Balancing rights; Cost effectiveness;		
Model 3a Special appeal body with only appeal function; other functions performed by other bodies (deployed functions as in Slovenia);	Independent Complaints Office (smaller appeal office) must be independent and appointed by Parliament	Independent office and Ministry of Justice/Administration (as part of general administrative inspection)	Ministry of Justice/Administration	Ministry of Justice/Administration (Training) and Appeals Authority (Guidelines)	Closer to the status quo-similar to Option 1, but with an independent appeal body;	No specialization, function deployed, coordination issues;	

ANNEX III

OVERVIEW OF THE RECOMMENDATIONS FROM THE DOCUMENT "IMPROVEMENT OF THE LEGISLATIVE FRAMEWORK ON ACCESS TO PUBLIC INFORMATION IN BOSNIA AND HERZEGOVINA"

Proactive transparency

(1) The need to publish information from the catalog shown below applies to all holders of information, except for private entities performing certain public functions and companies in which a state or other public body appears as a shareholder.

(2) This catalog should contain at least the following information:

- Basic organizational information, ie. the legal basis for the work; functions established by legislation, governing bodies, a list of organizational units with names and contact details of the heads of these units, as well as lines of responsibility (organigram); postal and email address of the authority; business hours; accessibility information for people with disabilities;
- Strategies, programs, plans and reports developed by the institution;
- Financial information, ie. budget (financial plan) and report on its implementation, salaries of members of administrative bodies and heads of organizational units (including allowances), information on subsidies, grants (including allegations of beneficiaries and amounts);
- Register of contracts concluded by the authority for the procurement or disposal of goods, services and property, containing at least the necessary minimum information on the value of the contract, the date of conclusion and duration of the contract, as well as the contractor and the subject of the contract.
- Information on services offered to citizens, ie. a list of services describing the services, the procedure for obtaining access (including documents and information requested from applicants), information on fees charged for accessing services, standards related to the provision of services (time and form of service provision), as and the right to lodge a complaint regarding the quality or integrity of the service;
- Information on public consultation regarding the acts of the authorities;
- Information on access to information on request, including information on the right to request information, the form of the request, the time limit for processing the request, the appeal measures and the fees charged when accessing it;
- Contact information (at least the first and last name and email address) of the person responsible for storing the information on the website of the competent authority.

A higher standard of transparency may be laid down in government regulations that specify other types of information that are published on public authorities' websites.

(3) The information should be available on the websites of the competent public authority or through a single eGovernment portal, if any. These Internet sites should comply with the Guidelines for Ensuring Accessibility to Online Content (WCAG) 2.0 AA (ISO 40500).

(4) The information must be published or updated within 7 days from the date of occurrence of the relevant event.

(5) Each authority required to publish information should designate an official responsible for maintaining the website containing the above information. It is the responsibility of the Head of the Authority to ensure that this officer receives prompt access to all the above information.

Institutional oversight framework

Based on international practice and an analysis of the current situation in BiH, three solutions could be considered regarding the allocation of responsibilities for monitoring the implementation of standards for access to public information:

Regardless of the model chosen, the authority's catalog and oversight function should be similar. The catalog should cover at least the following responsibilities grouped into three categories:

Data collection

- Keeping a register of information carriers (private bodies with public functions may be excluded), which contains basic information: a) the name of the institution; b) the contact details of the officer responsible for public information matters; c) the address of the information carrier's website.
- Collecting, aggregating and analyzing basic statistics on access to public information, including the number of requests for public information, fees charged, number of accepted/rejected/discarded requests, reasons for refusal, average time taken to process requests, appeals filed with courts and their outcomes (court decisions). The data should be compiled on the basis of statistical reports submitted by the data carrier on an annual basis. The format of the report should be determined by a Government regulation adopted on the basis of the Freedom of Information Act. The law should set a mandatory deadline within which information bearers must submit annual reports to the supervisory authority (e.g. end of March), with sanctions for not acting on this issue.

Education and awareness raising

- Developing a training program for information carriers regarding the implementation of legislation on access to public information and organizing training;
- Development of guidelines and documents with explanations for the holders of information regarding the application of the legislation on access to public information;
- Conducting public campaigns to raise citizens' awareness of the right to information;
- Collaboration with civil society organizations and international partners to raise citizens' awareness of the right to information;
- Promoting the best practices of information carriers regarding securing the right to information.

Inspection controls

- Inspection of holders of information related to the implementation of legislation on access to public information. Inspection should be initiated ex officio or following complaints from interested parties. An inspection program should be prepared and published annually, including an inspection checklist (requirements to be reviewed). Inspections should focus on two main topics: a) checking the compliance of information carriers' websites with the legal requirements for proactive transparency (see previous section); b) reviewing the practice of processing requests for public information, in particular analyzing the pattern of decisions refusing access to public information and assessing the timeliness of processing requests.

- Publication of inspection reports and annual reports on the most significant problems encountered in exercising the right of access to public information;
- Sanctions: 1) Filing a request with the competent inspectorate (or court) to impose sanctions in case of breach of legal conditions regarding access to information; or 2) the imposition of sanctions on selected violations of the right to public information, which should be specified in the laws on the exercise of the right of access to information. It should also be noted that if the Ombudsman Institution is designated as a supervisory authority, this institution should not be charged with imposing sanctions, since such a function is generally incompatible with the current understanding of the Ombudsman's mission.
- Joining the rights of the party (including the right of appeal), at the request of the applicant, administrative and judicial procedures regarding access to public information.

With regard to inspection activities, the supervisory authority should be given the necessary investigative powers, which include the following:

- Unrestricted access to information and documents held by the relevant public authority;
- Unlimited access to the premises of public bodies;
- The right to ask public authorities to provide explanations and information.

The lack of cooperation with the supervisory authority should be subject to criminal liability..

Procedure for accessing information on request

(1) It should be explicitly stated that requests for public information may be submitted via email or other electronic channel used by the holder of relevant information for communication with citizens. The applicant should not be required to use a separate application form or to submit any identification documents.

(2) The applicant should be able to specify the requested format related to the information to be received: a) access to documents on the premises of the information carrier; b) receipt of copies by mail; c) receipt of documents by email or other electronic channel; d) publication of information on the information carrier's website. The access to documents on the premises of the information carrier and publication on the website should always be free of charge. Fees could be charged solely for the making/scanning of copies up to the amounts specified by Government regulations.

(3) The rejection/discarding of the request should always be made in the form of an administrative act (ruling/decision), as regulated by the relevant regulations on general administrative procedure. This is especially true of RS legislation, where rejection takes the form of a letter.

(4) The wording of the public interest inquiry should be improved to ensure a more rigorous and proactively transparent interpretation. The public interest test should consist of two conditions imposed on the information carriers: 1) Determining whether the disclosure of the information would cause substantial harm to any interest (s) designated as a basis for exemption from disclosure; 2) Measuring this damage in relation to the public interest that is satisfied when releasing relevant information. In other words, the relevant authority must demonstrate this significant harm and prove that the public interest in the disclosure of information does not outweigh the harm. that it has no greater significance than her. For both

elements of the public interest inquiry, the burden of proof should lie with the information carrier.

(5) Holders of information should be required to keep a register of requests for public information, which shall contain: a) information on the applicant; b) the filing date; c) the subject of the filing (requested information); d) date of reply; e) the content of the response.

In addition, the possibility of reforming the internal administrative appeal process could be considered to improve access to information upon request. The following two scenarios could be considered:

1) An appeal regarding denial of access or silence of the administration could be brought directly to the court. An internal administrative appeal would be eliminated as a process that slows access to judicial revision/review; or

2) If a specialized body is set up to deal with this access to information, one of its functions could be to act as a second-instance authority.

ANNEX IV

COMPARATIVE ANALYSIS OF SELECTED ASPECTS OF LEGISLATIVE FRAMEWORK FOR ACCESS TO INFORMATION FROM THE DOCUMENT "IMPROVEMENT OF LEGISLATIVE FRAMEWORK FOR ACCESS TO PUBLIC INFORMATION IN BOSNIA AND HERZEGOVINA"

I. Independent supervisory authorities in the field of access to public information

State	Authority status (appointment, reporting lines, autonomy)	Powers of the Authority
Albania [access to information and data protection]	<p>The Commissioner is elected by the Assembly at the proposal of the Council of Ministers for a term of five years, with the possibility of one re-appointment.</p> <p>It is an independent state body and a legal entity.</p> <p>The Commissioner in charge of the right to information and protection of personal data shall submit a report to the Assembly or parliamentary committees at least once a year, or as often as they require.</p>	<p>The Commissioner is authorized to:</p> <ol style="list-style-type: none"> 1) consider appeals against decisions of public bodies violating the rights provided by this Law; 2) propose to take disciplinary action against those responsible; 3) approve and distribute models of transparency programs for different categories of public authorities; 4) establish standards regarding the format and content of the register of requests and responses of public authorities; 5) promote the right of free access and perform other tasks established by this and other law.
Croatia [access to information]	<p>The Commissioner is elected by the Croatian Parliament for a term of five years with possibility of one re-appointment.</p> <p>The Commissioner is independent and independent in his work, and is responsible for his work to the Croatian Parliament.</p>	<p>The Commissioner is authorized to:</p> <ol style="list-style-type: none"> 1) performs the tasks of the second-instance body in resolving complaints about the exercise of the right of access to information and the right to re-use of information; 2) supervise and inspect the implementation of the right to information law; 3) monitor the implementation of this Law and regulations governing the right of access to information and the right to reuse information, and inform the public of its implementation; 4) propose to the state authorities to take measures to improve the exercise of the right of access to information and the right to re-use of information regulated by the Law on the Right to Information; 5) inform the public on the exercise of the user's right of access to information; 6) propose the possibility for training and production of official information in the organs of public authorities and their obligations regarding the application of this Law; 7) propose the possibility for training and production of official information in the bodies of public bodies and their obligations regarding the application of this Law; 8) initiate the adoption or adoption of amendments to regulations to realize and improve the right of access to information and the right to re-use of information; 9) submit to the Croatian Parliament a report on the implementation of this Law and other reports when it deems it necessary; 10) file a motion for a misdemeanor and issue a misdemeanor warrant for established misdemeanors.

<p>FYR Macedonia [access to information]</p>	<p>Commission for the Protection of the Right to Free Access to Public information is an independent government body. The Commission shall be composed of the President, his deputy and three members, who shall carry out their duties professionally for a term of five years, with the possibility of one re-appointment. The president, deputies and members of the commission are appointed and dismissed by the Assembly at the proposal of the Commission for Election and Appointment. The Assembly announces a public competition for the election of the President, Deputy and Commission members. The Selection and Nomination Committee of the Assembly prepares a draft list of candidates. The Commission prepares a joint report on the implementation of this Law based on the information collected from the reports it receives from the holders of information, and submits it to the Assembly Of the Republic of Macedonia until 31 March of the current year.</p>	<p>The Commissioner is authorized to:</p> <ol style="list-style-type: none"> 1) decide on appeals against the decision by which the holder of the information refused the request for access to information; 2) take care of the implementation of the provisions of this Law; 3) prepare and publish a list of information carriers; 4) give opinions on draft laws governing free access to information; 5) undertake activities in the field of education of information carriers; 6) cooperate with the holders of information regarding the exercise of the right of free access to information; 7) adopt rules of procedure for its work; 8) promote the right to free access to information and carry out other tasks established by this Law and other laws.
<p>Montenegro [access to information and data protection]</p>	<p>Agency for Personal Data Protection and Free Access the information is an independent state body. The bodies of the Agency are the Council and the Director of the Agency. The Agency Council has a chair and two members. The Chairman and the members of the Council of the Agency are appointed by the Parliament of Montenegro, at the proposal of the competent working body. The Council of the Agency shall decide by an absolute majority of the votes of its members. Upon request, but at least annually, the Agency shall submit to the Parliament of Montenegro a report on the state of access to information.</p>	<p>The Agency is authorized to:</p> <ol style="list-style-type: none"> 1) supervise the legality of administrative decisions that decide on requests for access to information and take the measures provided for by law; 2) manage the information access information system; 3) monitor the situation in the area of access to information; 4) supervise the implementation of this Law in terms of drafting and updating the Guide for access to information, proactively publishing information and submitting acts and data necessary to maintain the information system for access to information; 5) file requests for initiating misdemeanor proceedings for violations of this Law relating to the drafting and updating of the Guide for access to information, proactive publication of information and submission of acts and data necessary for running the information system for access to information; 6) perform other tasks prescribed by this Law.

<p>Serbia³⁵⁵ [access to information and data protection]</p>	<p>The National Assembly of the Republic of Serbia appoints the Commissioner by a majority vote of all deputies, at the proposal of the National Assembly Committee responsible for information, for a fixed term of seven years, with the possibility of one re-appointment.</p> <p>The Commissioner shall be independent and autonomous in the exercise of his / her powers. Legal entity - independent state body.</p> <p>Within three months of the end of each financial year, the Commissioner shall submit to the National Assembly an annual report on the activities undertaken by public bodies in the implementation of this Act and on its own activities and costs.</p>	<p>The Commissioner is authorized to:</p> <ol style="list-style-type: none"> 1) monitor whether public authorities fulfill the obligations envisaged by this Law and inform the public and the National Assembly thereof; 2) make proposals for drafting or amending and supplementing regulations with the aim of realizing and promoting the right of access to information; 3) propose to state bodies to take measures for improving their business, which are regulated by this Law; 4) take the necessary measures to train the employees of state bodies and advise them on their duties regarding the right of access to information; 5) consider appeals against decisions of public bodies that violate the rights provided by this Law; 6) communicate to the public the content of this Law and the rights established by this Law; 7) publish instructions for the creation and publication of directories, advise the state authorities to ensure the correct, complete and timely fulfillment of the obligation to publish directories; 8) perform other tasks in accordance with this Law and other laws
<p>Slovenia [access to information and data protection]</p>	<p>The Commissioner for Information is appointed by the National Assembly of the Republic of Slovenia at the proposal of the President of the Republic of Slovenia, for a term of five years, with the possibility of one re-appointment.</p> <p>The Commissioner is independent in his work. In addition, the Commissioner may submit to the Constitutional Court of the Republic of Slovenia a request for review of the constitutionality of a law, other regulations and general acts adopted for the exercise of public authority, in the case of questions of constitutionality and legality in relation to the procedure under consideration.</p>	<p>The Commissioner is authorized to:</p> <ol style="list-style-type: none"> 1) act on an appeal against a decision rejecting or rejecting an applicant's request for access or violating the right of access or legal re-use of public information in another way, and within the appeal procedure also for monitoring the implementation of the law governing access public information and regulations adopted thereunder; 2) inspecting compliance with the norms from legal regulations.

³⁵⁵ The proposal for a more extensive revision of the Law on Access to Information is under parliamentary procedure.

II. Legal provisions for the proactive disclosure of public information

State	Catalog of information published proactively	Publication form
Albania	<p>Categories of ex officio information published by public sector bodies:</p> <ol style="list-style-type: none"> 1) a description of the organizational structure, function and task of public sector bodies; 2) complete texts: Convention ratified by the Republic of Albania; laws; by-laws; codes of conduct; each policy document; a manual or other document related to the assumption of functions of public sector bodies; 3) information on the procedures to be followed when submitting a request for information, postal and e-mail address for submitting a request for information, as well as appeals against the decision/ruling in question; 4) information on the location of public sector bodies' offices, working hours, first name, last name and contacts of the coordinator for exercising the right to information; 5) information on the education, qualifications and salaries of officials who are otherwise subject to the obligation to state their property in accordance with the law, the structure of salaries for other civil servants, as well as a description of the selection procedures, powers and tasks of senior officials in public sector bodies; 6) monitoring and control mechanisms that operate beyond the purview of the public authority, including strategic work plans, audit reports from the State Audit Institution or other entities, as well as entities that contain performance indicators for public sector bodies; 7) data on the budget and expenditure plan for the current financial year and the previous year, as well as each annual budget execution report; 8) information on procurement procedures or procedures for public competition for the award of concessions/PPPs, 9) information on the services made available to the public by the public authority, including quality standards; 10) any mechanism or procedure for filing claims and complaints, regarding the acts or omissions of the statement body, etc. 	<p>In accordance with the transparency programs approved for them, prepare in advance and in an easily understandable and accessible format on their website.</p>

<p>Croatia</p>	<ol style="list-style-type: none"> 1) laws and other regulations pertaining to their field of work; 2) general acts and decisions taken by these bodies which have an impact on the interests of the beneficiaries, with a justification supporting their adoption; 3) draft laws and other regulations and general acts for which public consultation procedure is conducted; 4) annual plans, programs, strategies, instructions, performance reports, financial statements and other relevant documents pertaining to the field of work of public bodies; 5) registers and databases or information on registers and databases within their jurisdiction and the manner in which data are accessed and reused; 6) information on public services provided by a public authority, in a prominent place, with a link to those services provided electronically; 7) data on the source of financing, budget, financial plan or other relevant document determining the revenues and expenditures of the public body, and data and reports on the execution of the budget, financial plan or other relevant document; 8) information on grants, sponsorships, donations or other forms of assistance, including a list of beneficiaries and the amount of such amount; 9) information on public procurement procedures, tender documentation, information on contract performance and other information for which there is an obligation to publish in accordance with the law governing public procurement; 10) notices of tenders, documentation necessary for participation in the tender procedure and notification of the result of the tender procedure; 11) information on the internal organization of public bodies, with the names of heads of bodies and heads of organizational units, and their contact information; 12) conclusions from official sessions of public bodies and official documents adopted at those sessions, as well as information on the work of formal working bodies within their competence to decide on the rights and interests of users; 13) informing on the manner and conditions of exercising the right of access to information and the right to re-use the information in a visible place, with the contact information of the information officer, the necessary forms or links to those forms, as well as the amount of the fee for the achieved access to information and re-use of information; 14) answers to the most frequently asked questions about the manner of submitting requests from citizens and the media, as well as other information (news, press releases, activity data), with the aim of informing the public about their work and exercising their rights and fulfilling their obligations.. 	<p>Public authorities have the obligation to publish information on web pages in an easy-to-search and machine-readable format</p>
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<p>FYR Macedonia</p>	<p>The holder of the information is obliged to provide the public with information on the following:</p> <ol style="list-style-type: none"> 1) basic contact information about the information carrier, ie first and last name, address, telephone number, fax number, email address and website address; 2) the method of applying for access to information; 3) regulations relating to the competence of the holder of the information related to the register of regulations published in the Official Gazette; 4) suggestions regarding programs, strategies, positions, opinions, studies and other similar documents, related to acts within the competence of the information carrier; 5) all public announcements in the public procurement procedure and the tender documentation established by law; 6) information from their jurisdiction established by law; 7) organization and operating costs, as well as provision of services to citizens in the administrative procedure and in connection with their activities; 8) publishing newsletters and other types of information, 9) Internet sites used to publish decisions, acts and measures that affect the life and work of citizens; 10) other information arising from the competence and work of the information carrier; 11) other information that arises from the competence and work of the information carrier. 	<p>Information carriers are obliged to publish the list of information available to them in a manner accessible to the public (website, bulletin board, etc.).</p>
<p>Montenegro</p>	<p>The public authority is obliged to publish the following information</p> <ol style="list-style-type: none"> 1) a guide to accessing information; 2) public registers and public records; 3) work programs and plans; 4) reports and other documents on work and situation in the areas within their competence; 5) drafts, proposals and final texts of strategic documents, plans and programs for their implementation; 6) drafts and proposals of laws and other regulations, as well as opinions of experts presented in relation to drafts and proposals of laws; 7) individual acts and contracts on the use of financial resources deriving from public revenues and state property; 8) a list of civil servants and state employees with the names of their functions; 9) a list of public officials and their payroll, as well as a list of other revenues related to the exercise of public office; 10) decisions and other individual acts relevant to the rights, duties and interests of third parties; 11) information that has been granted access on request more than three times. 	<p>The public authority shall publish information on their website.</p> <p>Depending on the nature and type of information, the information must be released within 15 days of the date it was created or adopted.</p>

<p>Serbia</p>	<p>Types of information ex officio published by a public authority:</p> <ol style="list-style-type: none"> 1) a description of his authority, duties and internal organization; 2) information on the budget and resources for work; 3) information on the types of services directly provided to stakeholders; 4) the procedure for submitting an application to the competent state authority or the procedure for lodging an appeal against its decisions, actions or omissions; 5) reviewing requests, complaints and other direct measures taken by interested parties, as well as decisions taken by the state authority concerned on requests and complaints received; 6) and / or responses to other direct actions taken by interested parties; 7) information on the manner and place of storage of information media, the type of information it possesses, the type of information it gives access to and the procedure for filing a request; 8) names of heads of state administration bodies, descriptions of their powers and duties and procedures for their decision-making; 9) rules and decisions of the state body regarding the transparency of its work (working hours, address, contact telephones, logo, accessibility for persons with special needs, access to sessions, admissibility of audio and video recording, etc.), as well as any authentic interpretation of these decisions; 10) regulations on exemptions or limitations and transparency of the work of the state authority, with appropriate justifications 	<p>The authority publishes a directory containing key facts about its business at least once a year, and the directory is published as a printed directory or published on its website..</p>
<p>Slovenia</p>	<p>Types of information ex officio published by a public authority:</p> <ol style="list-style-type: none"> 1) consolidated texts of regulations pertaining to the field of work of bodies, related to the State Register of Regulations on the Internet; 2) programs, strategies, positions, opinions and instructions that are of general interest or relevant to the work of bodies with natural or legal persons or to decide their rights or obligations, studies and other similar documents related to the field of work of that body; 3) proposals for regulations, programs, strategies and other similar documents pertaining to the field of work of the body; 4) documentation in the field of public procurement and public tenders for allocation of funds, subsidies, loans and other forms of co-financing from the state or municipal budgets; 5) information on its activities and administrative, judicial and other services; 6) all information of a public nature requested by the applicants on at least three occasions; 7) other public information. 	<p>The information should be published on the website of the competent authority.</p>

ANNEX V

**OVERVIEW OF PUBLIC AUTHORITIES SUBMITTED THE QUESTIONNAIRE WITH
PURPOSE OF MAKING A SPECIAL REPORT ON THE APPLICATION OF LAW ON FREE
ACCESS TO INFORMATION IN BOSNIA AND HERZEGOVINA**

I-Public Authorities of Bosnia and Herzegovina:

1. Parliamentary Assembly of Bosnia and Herzegovina;
2. The Presidency of Bosnia and Herzegovina;
3. Ministry of Defense of Bosnia and Herzegovina;
4. High Judicial and Prosecutorial Council of Bosnia and Herzegovina;
5. The Constitutional Court of Bosnia and Herzegovina;
6. Attorney General's Office of Bosnia and Herzegovina;
7. Bosnia and Herzegovina Public Administration Reform Coordinator's Office;
8. Council of Ministers of Bosnia and Herzegovina;
9. Directorate for European Integration of Bosnia and Herzegovina;
10. Ministry of Foreign Affairs of Bosnia and Herzegovina;
11. Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina;
12. Foreign Investment Promotion Agency of Bosnia and Herzegovina;
13. Veterinary Office of Bosnia and Herzegovina;
14. Srebrenica Memorial Center;
15. Council of Competition of Bosnia and Herzegovina;
16. Ministry of Communications and Transport of Bosnia and Herzegovina;
17. Directorate for Civil Aviation of Bosnia and Herzegovina;
18. Communications Regulatory Agency of Bosnia and Herzegovina;
19. Ministry of Finance and Treasury of Bosnia and Herzegovina;
20. Indirect Taxation Authority of Bosnia and Herzegovina;
21. Ministry of Human Rights and Refugees of Bosnia and Herzegovina;
22. Unit for implementation of the project of construction of the Bureau for Execution of Criminal Sanctions, Detention and Other Measures;
23. Ministry of Justice of Bosnia and Herzegovina;
24. Ministry of Security of Bosnia and Herzegovina;
25. State Agency for Investigation and Protection of Bosnia and Herzegovina;
26. Border Police of Bosnia and Herzegovina;
27. Ministry of Civil Affairs of Bosnia and Herzegovina;
28. Agency for Identification Documents, Records and Data Exchange in Bosnia and Herzegovina;
29. Bosnia and Herzegovina Mine Action Center;
30. Common Affairs Service of the Institutions of Bosnia and Herzegovina
31. Audit Office of the Institutions of Bosnia and Herzegovina;
32. Central Election Commission of Bosnia and Herzegovina;
33. Commission to Preserve National Monuments of Bosnia and Herzegovina;
34. Civil Service Agency of Bosnia and Herzegovina;
35. Agency for Statistics of Bosnia and Herzegovina;
36. Institute for Standardization of Bosnia and Herzegovina;
37. Institute of Metrology of Bosnia and Herzegovina;
38. Institute for Intellectual Property;
39. Institute for Accreditation of Bosnia and Herzegovina;
40. Archive of Bosnia and Herzegovina;
41. Intelligence and Security Agency of Bosnia and Herzegovina;
42. Directorate for Plant Health Protection of Bosnia and Herzegovina;
43. Market Surveillance Agency of Bosnia and Herzegovina;
44. Food Safety Agency of Bosnia and Herzegovina;
45. Return Fund of Bosnia and Herzegovina;
46. Agency for Labor and Employment of Bosnia and Herzegovina;
47. Office for Harmonization and Coordination of Payment Systems in Agriculture, Food and Rural Development;

- 48.Foreign Affairs Service of the Ministry of Security of Bosnia and Herzegovina;
- 49.Board of Appeal of Civil Service of of Bosnia and Herzegovina;
- 50.Commission for Concessions of Bosnia and Herzegovina;
- 51.Legislation Office of Bosnia and Herzegovina;
- 52.Public Procurement Agency of Bosnia and Herzegovina;
- 53.The Complaints Review Office of Bosnia and Herzegovina;
- 54.Institute for Missing Persons of Bosnia and Herzegovina;
- 55.Insurance Agency of Bosnia and Herzegovina;
56. Directorate for Economic Planning of Bosnia and Herzegovina;
- 57.Institution of Consumer Ombudsman of Bosnia and Herzegovina;
- 58.Postal Agency of Bosnia and Herzegovina;
- 59.Agency for Development of Higher Education and Quality Assurance of Bosnia and Herzegovina;
- 60.Agency for Preschool, Primary and Secondary Education of Bosnia and Herzegovina;
- 61.Agency for Personal Data Protection of Bosnia and Herzegovina;
- 62.Center for Information and Recognition of Documents in the Field of Higher Education of Bosnia and Herzegovina;
- 63.State Regulatory Agency for Radiation and Nuclear Safety of Bosnia and Herzegovina;
- 64.Agency for Medicinal Products and Medical Devices of Bosnia and Herzegovina;
- 65.Anti-Doping Control Agency of Bosnia and Herzegovina;
- 66.Agency for Forensic Testing and Expert Evaluation of Bosnia and Herzegovina;
- 67.Agency for Training and Professional Development of Personnel of Bosnia and Herzegovina;
- 68.Central Harmonization Unit of the Ministry of Finance and Treasury of Bosnia and Herzegovina;
- 69.Agency for Prevention of Corruption and Coordination of Anti-Corruption of Bosnia and Herzegovina;
70. State Aid Council of Bosnia and Herzegovina;

II-Public authorities of the Republika Srpska:

1. The President of the Republika Srpska;
2. National Assembly of the Republika Srpska;
3. Council of Peoples of the Republika Srpska;
4. Republic Commission for Conflict of Interests in Government Bodies in Republika Srpska;
5. Ombudsman for Children of the Republika Srpska;
6. The Board of Appeal of the Republika Srpska;
7. Republican Election Commission;
8. Fiscal Council of the Republika Srpska;
9. Constitutional Court of the Republika Srpska;
- 10.The Government of the Republika Srpska;
- 11.Aviation Service of the Republika Srpska
- 12.Republic Administration for Geodetic and Property Legal Affairs of the Republika Srpska;
- 13.Republic Secretariat for Legislation of the Republika Srpska;
- 14.Agency for Public Administration of the Republika Srpska;
- 15.State Appeal Board of the Republika Srpska;
- 16.Gender Center of the Republika Srpska;
- 17.Office of the Legal Representative of the Republika Srpska;
- 18.Republic Administration for Inspection Affairs of the Republika Srpska;
- 19.Common Affairs Service of the Government of the Republika Srpska;
- 20.Helicopter Service of the Republika Srpska;
- 21.Republic Administration of Civil Protection of the Republika Srpska;
- 22.Ministry of Education and Culture of the Republika Srpska;
- 23.Pedagogical Institute of the Republika Srpska;

24. Republic Institute for the Protection of the Cultural, Historical and Natural Heritage of the Republika Srpska;
25. Archives of the Republika Srpska;
26. Secretariat for the Faith of the Republika Srpska;
27. Institute for Adult Education of the Republika Srpska;
28. Ministry of Finance of the Republika Srpska;
29. Tax Administration of the Republika Srpska;
30. Republic Foreign Exchange Inspectorate of the Republika Srpska;
31. Republic Bureau of Statistics of the Republika Srpska;
32. Gambling Administration of the Republika Srpska;
33. Ministry of Justice of the Republika Srpska;
34. Supreme Court of the Republika Srpska;
35. Public Prosecutor's Office of the Republika Srpska;
36. Attorney General's Office of the Republika Srpska;
37. Center for Free Legal Aid of the Republika Srpska;
38. Republican Center for Investigation of War, War Crimes and Search for Missing Persons;
39. Agency for Management of Confiscated Property of the Republika Srpska;
40. Ministry of Administration and Local Self-Government of the Republika Srpska;
41. Ministry of Science and Technology of Republika Srpska;
42. "Dr. Milan Jelić";
43. Ministry of Health and Social Welfare of the Republika Srpska;
44. Ministry of Industry, Energy and Mining of the Republika Srpska;
45. Republic Bureau for Standardization and Meteorology of the Republika Srpska;
46. Republic Institute for Geological Surveys of the Republika Srpska;
47. Ministry of Agriculture, Forestry and Water Management of the Republika Srpska;
48. Republic Hydro-meteorological Institute of the Republika Srpska;
49. Agrarian Payments Agency of the Republika Srpska;
50. City of Banja Luka;
51. Ministry of Transport and Communications of the Republika Srpska;
52. Traffic Safety Agency of the Republika Srpska;
53. Ministry of Trade and Tourism of the Republika Srpska;
54. Ministry of Physical Planning, Construction and Ecology of the Republika Srpska;
55. Republic Directorate for Reconstruction and Construction of the Republika Srpska;
56. Ministry of Labor and Veterans-Disability Protection of the Republika Srpska;
57. Pension and Disability Insurance Fund of the Republika Srpska;
58. Ministry of Economic Relations and Regional Cooperation of the Republika Srpska;
59. Ministry of Refugees and Displaced Persons of the Republika Srpska;
60. Main Public Sector Audit Service of the Republika Srpska;
61. Ministry of Family, Youth and Sports of the Republika Srpska;
62. Municipality of Nevesinje;
63. Ministry of Science and Technology Development, Higher Education and Information Society of the Republika Srpska;
64. City of Zvornik;
65. Government-Republic Secretariat for Displaced Persons and Migration of the Republika Srpska;
66. City of Gradiška;
67. Han Pijesak Municipality;
68. City of Bijeljina;

III - Public authorities of the Federation of Bosnia and Herzegovina:

1. Parliament of the Federation of Bosnia and Herzegovina;
2. The Government of the Federation of Bosnia and Herzegovina;
3. Constitutional Court of the Federation of Bosnia and Herzegovina;
4. Supreme Court of the Federation of Bosnia and Herzegovina;
5. Federation Prosecutor's Office;
6. Federation Attorney's Office;
7. Federation Ministry of Justice;
8. Federation Ministry of Finance;
9. Federation Ministry of Energy, Mining and Industry;
10. Federation Ministry of Transport and Communication;
11. Federation Ministry of Labor and Social Policy;
12. Federation Ministry of Displaced Persons and Refugees;
13. Federation Ministry for the Issues of Veterans and Disabled Veterans of the Liberation War;
14. Federation Ministry of Health;
15. Federation Ministry of Education and Science;
16. Federation Ministry of Culture and Sports;
17. Federation Ministry of Commerce;
18. Federation Ministry of Physical Planning;
19. Federation Ministry of Agriculture, Water Management and Forestry;
20. Federation Ministry of Development, Entrepreneurship and Crafts;
21. Federation Ministry of Environment and Tourism;
22. Federation Surveying and Property Administration;
23. Federation Bureau of Statistics;
24. Meteorological and Hydrological Service of the Federation;
25. Archive of the Federation of Bosnia and Herzegovina;
26. Federation Institute for Development Programming;
27. Federation Directorate of Commodity Reserves;
28. Federation Civil Protection Administration;
29. Federation Inspection Directorate;
30. Federation Institute for Agropedology;
31. Federation Institute of Agriculture;
32. Federation Institute of Geology;
33. Federation Agro-Mediterranean Institute;
34. Federation News Agency;
35. Civil Service Agency of the Federation of Bosnia and Herzegovina;
36. Banking Agency of the Federation of Bosnia and Herzegovina;
37. Privatization Agency of the Federation of Bosnia and Herzegovina;
38. Federation Institute for Pension and Disability Insurance;
39. Federation Institute for Development Programming;
40. Energy Regulatory Commission of the Federation of Bosnia and Herzegovina;
41. Insurance Supervision Agency of the Federation of Bosnia and Herzegovina;
42. Securities Commission of the Federation of Bosnia and Herzegovina;
43. Public Institution Center for the Education of Judges and Prosecutors of the Federation of Bosnia and Herzegovina;
44. Gender Center of the Federation of Bosnia and Herzegovina;
45. Service for Common Affairs of the Organs and Bodies of the Federation of Bosnia and Herzegovina;
46. Public Relations Office of the Government of the Federation of Bosnia and Herzegovina;

IV - Public authorities in the cantons of the Federation of Bosnia and Herzegovina:

1. Ministry of Finance of Herzegovina-Neretva Canton;
2. Ministry of Economy of Herzegovina-Neretva Canton;
3. Ministry of Trade, Tourism and Environmental Protection of Herzegovina-Neretva Canton;
4. Ministry of Construction and Physical Planning of Herzegovina-Neretva Canton;
5. Ministry of Agriculture, Forestry and Water Management of Herzegovina-Neretva Canton;
6. Ministry of Justice, Administration and Local Self-Government of Herzegovina-Neretva Canton;
7. Ministry of Transport and Communications of Herzegovina-Neretva Canton;
8. Ministry of Education, Science, Culture and Sports of Herzegovina-Neretva Canton;
9. Ministry of Veterans Affairs of Herzegovina-Neretva Canton;
10. Ministry of Health, Labor and Social Welfare of Herzegovina-Neretva Canton;
11. Administration for Civil Protection and Fire Protection of Herzegovina-Neretva Canton;
12. Geodetic and Property Administration of the Herzegovina-Neretva Canton;
13. Administration for Displaced Persons and Refugees of Herzegovina-Neretva Canton;
14. Archives of Herzegovina-Neretva Canton;
15. Cantonal Public Attorney's Office of Herzegovina-Neretva Canton;
16. Institute for Education of Herzegovina-Neretva Canton;
17. Pedagogical Institute of Herzegovina-Neretva Canton;
18. Institute for the Protection of the Cultural and Historical Heritage of Herzegovina-Neretva Canton;
19. Ministry of Justice and Administration of West Herzegovina Canton;
20. Ministry of Finance of West Herzegovina Canton;
21. Ministry of Economy of West Herzegovina Canton;
22. Ministry of Physical Planning, Construction and Environmental Protection of West Herzegovina Canton;
23. Ministry of Education, Science, Culture and Sports of West Herzegovina Canton;
24. Ministry of Health, Labor and Social Welfare of West Herzegovina Canton;
25. Ministry of Croatian Defenders of the Defense and Liberation War of West Herzegovina Canton;
26. Government Office for European Integration of West Herzegovina Canton;
27. Expert Service of the Government of West Herzegovina Canton;
28. Legislation Office of the Government of West Herzegovina Canton;
29. Cantonal Office for Legal Assistance to West Herzegovina Canton
30. Department for Geodetic and Property Legal Affairs of West Herzegovina Canton;
31. Cantonal Archives of West Herzegovina Canton;
32. Civil Protection Directorate of West Herzegovina Canton;
33. Inspection Directorate of West Canton;
34. West Herzegovina Canton Road Public Institution;
35. Institute for Agriculture of West Herzegovina Canton;
36. Privatization Agency of West Herzegovina Canton;
37. Employment Service of West Herzegovina Canton;
38. Health Insurance Institute of West Herzegovina Canton;
39. Institute for Public Health of West Herzegovina Canton;
40. Ministry of Finance of Canton 10;
41. Ministry of Economy of Canton 10;
42. Ministry of Construction, Reconstruction, Physical Planning and Environment of Canton 10;
43. Ministry of Agriculture, Water Management and Forestry of Canton 10;
44. Ministry of Justice and Administration of Canton 10;
45. Ministry of Labor, Health, Social Welfare and Displaced Persons of Canton 10;
46. Ministry of Science, Education, Culture and Sports of Canton 10;
47. Office of the Prime Minister of Canton 10;

48. Government Expert Service of Canton 10;
49. Law Office of Canton 10;
50. Inspection Directorate of Canton 10;
51. Veterans Affairs Administration of Canton 10;
52. Roads Administration of Canton 10;
53. Directorate for Geodetic and Property Relations of Canton 10;
54. Civil Protection Administration of Canton 10;
55. Public Relations Service of Canton 10;
56. Directorate for Commodity Reserves of Canton 10;
57. Privatization Agency of Canton 10;
58. Ministry of Justice and Administration of Central Bosnia Canton;
59. Ministry of Finance of Central Bosnia Canton;
60. Ministry of Economy of Central Bosnia Canton;
61. Ministry of Agriculture, Water Management and Forestry of Central Bosnia Canton;
62. Ministry of Education, Science, Culture and Sports of Central Bosnia Canton;
63. Ministry of Health and Social Policy of Central Bosnia Canton;
64. Ministry of Physical Planning, Construction, Environmental Protection-Return and Housing of Central Bosnia Canton;
65. Travnik Cantonal Archives;
66. Civil Protection Administration of Central Bosnia Canton;
67. Directorate for Surveying and Property Affairs of Central Bosnia Canton;
68. Cantonal Directorate for the Defenders of Central Bosnia Canton;
69. Forest Administration of Central Bosnia Canton;
70. Expert Service of the Government of Central Bosnia Canton;
71. Common Affairs Service of Central Bosnia Canton;
72. Office for European Integration, Funds, Public Relations and Quality according to the International Standard of Central Bosnia Canton;
73. Public Procurement Office for the needs of budget users of Central Bosnia Canton;
74. Legislative Office of Central Bosnia Canton
75. Cantonal Institute for Urbanism, Spatial Planning and Protection of the Cultural and Historical Heritage of the Central Bosnia Canton;
76. Municipality of Dobretići;
77. Ministry of Justice and Administration of Posavina Canton;
78. Ministry of Finance of Posavina Canton;
79. Ministry of Transport, Communications, Tourism and Environment of Posavina Canton;
80. Ministry of Health, Labor and Social Policy of Posavina Canton;
81. Ministry of Agriculture, Water Management and Forestry of Posavina Canton;
82. Ministry of Economy and Physical Planning of Posavina Canton;
83. Ministry of Defense of the Posavina Canton;
84. Orašje Municipality Expert and Common Affairs Service;
85. Public Relations Service of Posavina Canton;
86. Posavina Canton Legislation Office;
87. Office for Development and European Integration of Posavina Canton;
88. Institute for Public Health of Posavina Canton;
89. Health Insurance Institute of Posavina Canton;
90. Institute for Legal Aid of Posavina Canton;
91. Cantonal Inspection Directorate of Posavina Canton;
92. Cantonal Administration for Civil Protection of Posavina Canton;
93. Forestry Directorate - Ministry of Agriculture, Water Management and Forestry of the Government of Posavina Canton;

94. Ministry of Economy of Bosnia-Podrinje Canton;
95. Ministry of Justice, Administration and Labor Relations of Bosnia-Podrinje Canton;
96. Ministry of Social Policy, Health, Displaced Persons and Refugees of Bosnia-Podrinje Canton;
97. Ministry of Urbanism, Physical Planning and Environmental Protection of the Bosnia-Podrinje Canton;
98. Ministry of Education, Youth, Science, Culture and Sports of the Bosnia-Podrinje Canton;
99. Ministry of Veterans Affairs of Bosnia-Podrinje Canton;
100. Ministry of Finance of Bosnia-Podrinje Canton;
101. Ministry of the Interior of Bosnia-Podrinje Canton;
102. Office for Free Legal Aid of the Bosnia-Podrinje Canton;
103. Cantonal Directorate of Commodity Reserves of Bosnian Podrinje Canton;
104. Public Relations Office of Bosnia-Podrinje Canton, Goražde;
105. Cantonal Privatization Agency of Bosnia-Podrinje Canton;
106. Common Affairs Service of the Cantonal Bodies of the Administration of Bosnia-Podrinje Canton;
107. Cantonal Inspection Directorate of Bosnia-Podrinje Canton;
108. Cantonal Administration for Civil Protection of Bosnia-Podrinje Canton;
109. Archive of Bosnia-Podrinje Canton;
110. Ministry of Finance of Sarajevo Canton;
111. Ministry of Internal Affairs of Sarajevo Canton;
112. Ministry of Municipal Economy and Infrastructure of Sarajevo Canton;
113. Ministry of Culture and Sports of Sarajevo Canton;
114. Ministry of Justice and Administration of Sarajevo Canton;
115. Ministry of Economy of Sarajevo Canton;
116. Ministry of Physical Planning, Construction and Environmental Protection of Sarajevo Canton;
117. Ministry of Transport of Sarajevo Canton;
118. Ministry of Veterans Affairs of Sarajevo Canton;
119. Ministry of Education, Science and Youth;
120. Ministry of Labor, Social Policy, Displaced Persons and Refugees of Sarajevo Canton;
121. Ministry of Health of Sarajevo Canton;
122. Cantonal Agency for Privatization of Sarajevo Canton;
123. Cantonal Administration for Civil Protection of Sarajevo Canton;
124. Cantonal Inspection Directorate of Sarajevo Canton;
125. Directorate for Geodetic and Property Legal Affairs of Sarajevo Canton;
126. Housing Administration of Sarajevo Canton;
127. Forestry Directorate of Sarajevo Canton;
128. Office for Free Legal Aid of Canton Sarajevo - no reply was provided;
129. Ministry of Finance of Tuzla Canton;
130. Ministry of Culture, Sport and Youth of Tuzla Canton;
131. Ministry of Education and Science of Tuzla Canton;
132. Ministry of Agriculture, Forestry and Water Management of Tuzla Canton;
133. Ministry of Physical Planning and Environmental Protection of Tuzla Canton;
134. Ministry of Trade, Tourism and Transport of Tuzla Canton;
135. Ministry of Justice and Administration of Tuzla Canton;
136. Ministry of Veterans Affairs of Tuzla Canton;
137. Ministry of Economy of Tuzla Canton;
138. Ministry of Health and Social Policy of Tuzla Canton;
139. Ministry of Economy of Tuzla Canton;
140. Ministry of Labor, Social Policy and Return of Tuzla Canton;
141. Ministry of Health of Tuzla Canton;
142. Cantonal Administration for Civil Protection of Tuzla Canton;

143. Cantonal Administration for Inspection Affairs of Tuzla Canton;
144. Institute for Legal Aid of Tuzla Canton;
145. Cantonal Privatization Agency of Tuzla Canton;
146. Attorney General's Office of Tuzla Canton;
147. Pedagogical Institute of Tuzla Canton;
148. Ministry of Internal Affairs of Zenica-Doboj Canton;
149. Ministry of Finance of Zenica-Doboj Canton;
150. Ministry of Economy of Zenica-Doboj Canton;
151. Ministry of Agriculture, Forestry and Water Management of Zenica-Doboj Canton;
152. Ministry of Health of Zenica-Doboj Canton;
153. Ministry of Veterans Affairs of Zenica-Doboj Canton;
154. Ministry of Labor, Social Policy and Refugees of Zenica-Doboj Canton;
155. Cantonal Inspection Directorate of Zenica-Doboj Canton;
156. Cantonal Administration for Civil Protection of Zenica-Doboj Canton;
157. Cantonal Forestry Administration of Zenica-Doboj Canton;
158. Cantonal Office for Legal Aid of Zenica-Doboj Canton;
159. Cantonal Institute for Urbanism and Physical Planning of Zenica-Doboj Canton;
160. Pedagogical Institute of Zenica-Doboj Canton;
161. Ministry of Justice and Administration of the Una Sana Canton;
162. Ministry of Economy of Una-Sana Canton;
163. Ministry of Education, Science, Culture and Sports of Una-Sana Canton;
164. Ministry of Construction and Physical Planning of Una-Sana Canton;
165. Ministry of the Interior of Una Sana Canton;
166. Ministry of Veterans Affairs and War Disabled Soldiers of Una Sana Canton;
167. Ministry of Health, Labor and Social Policy of Una-Sana Canton;
168. Ministry of Agriculture, Water Management and Forestry of Una-Sana Canton;
169. Ministry of Finance of Una-Sana Canton;
170. Cantonal Inspection Directorate of Una-Sana Canton;
171. Cantonal Administration for Civil Protection of Una Sana Canton;
172. Office for Free Legal Aid of Una-Sana Canton;
173. Service for General Administration and BIZ of Travnik Municipality;
174. Mayor of the City of Goražde;
175. Ministry of Labor, Social Policy and Refugees of Zenica-Doboj Canton;
176. Cantonal Administration for Civil Protection of Sarajevo Canton;
177. Department for General Administration, Social Affairs, Veterans-Disability Protection and Displaced Persons of the City of Živinice;
178. Civil Protection Directorate of West Herzegovina Canton;
179. Ministry of the Interior of West Herzegovina Canton;
180. Cantonal Civil Protection Administration of Central Bosnia Canton;
181. Municipality of Domaljevac - Šamac;
182. Office of the Prime Minister of West Herzegovina Canton;
183. Ministry of Internal Affairs of Herzegovina-Neretva Canton;
184. Ministry of the Interior of the Central Bosnia Canton;

V - Public Authorities of the Brčko District of BiH:

1. Assembly of the Brčko District of BiH;
2. Offices of the Mayor of the Brčko District of BiH;
3. Inspectorate;
4. Appellate Commission of the Brčko District of BiH;
5. The Employment Committee of the Brčko District of BiH;
6. Department for European Integration and International Cooperation of the Government of the Brčko District of BiH;
7. Office of the Public Administration Reform Coordinator of the Brčko District of BiH;
8. Brčko District Judicial Commission;
9. Attorney General's Office of the Brčko District of BiH;
10. Brčko District Legal Aid Office;
11. Department of Public Safety of the Government of the Brčko District of BiH;
12. Department for Professional and Administrative Affairs of the Government of the Brčko District of BiH;
13. Directorate of Finance - Tax Administration - Treasury of Brčko District of BiH;
14. Department for Spatial Planning and Property Relations of the Government of the Brčko District of BiH;
15. Department of Agriculture, Forestry and Water Management of the Government of the Brčko District of BiH;
16. Department of Health and Other Services of the Government of the Brčko District of BiH;
17. Department for Education of the Government of the Brčko District of BiH;
18. Department for Displaced Persons, Refugees and Housing of the Government of the Brčko District of BiH;
19. Department of Public Utilities of the Government of the Brčko District of BiH;
20. Department of Public Affairs of the Government of the Brčko District of BiH;
21. Department for Public Register of the Government of the Brčko District of BiH;
22. Securities Commission of the Brčko District of BiH;
23. Office for Public Property Management of the Brčko District of BiH;
24. Office of the Coordinator of the Brčko District of BiH at the Council of Ministers of BiH;
25. Audit Office of the Public Administration and Institutions of the Brčko District of BiH;
26. Brčko District Police;