

**how to apply the access to public information act?**

**handbook for the administration**



**Access to Information Programmes  
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## Introduction (Foreword)

In the fall (autumn) of 2000 a small team of experts from Access to Information Programme (AIP) and the Foundation for Local Government Reform (FLGR) prepared and published a handbook for public officials (working) with the Access to Public Information Act (APIA)<sup>1</sup>. The handbook was printed in a limited number of copies and was quickly exhausted due to the high demand.

Now, five years after the adoption of the Access to Public Information Act, the team of AIP publishes a new handbook for public officials.

The aim of this publication is to reflect on the experience accumulated during the years of the implementation of the law. A few circumstances are important and should be taken into account when drawing conclusions based on this experience.

**On the first place**, this is the legal assistance provided by the legal team of AIP to different groups of information seekers and to many citizens, who are willing to exercise their rights under the APIA. Legal assistance is provided in individual cases when obliged institutions refuse access to public information. All comments, provided by the lawyers of AIP in these individual cases are registered in an electronic database. Statistical reports from the database are useful in identifying the characteristics of bad administrative practices.

**On the second place**, the developing court practices in Bulgaria have been an important foundation for the preparation of the handbook. Many abstract discussions relating to the access to information exemptions were answered through litigation.

**On the third place**, Access to Information Programme is an active member of the Freedom of Information Advocates Network (FOIANet). The discussions among the freedom of information advocates from different countries on a number of specific cases - resolved by the respective courts or freedom of information commissioners – have been exceptionally valuable; and we have tried to take into account all of them.

For example, the usage of the trade secret exemption, or the protection of third party interests to withhold contracts between the state and private companies is something, which is common not only in Bulgaria. (In the summer of 2005) we submitted to the FOIANet mailing list a short description of the case, in which we sought access to the concession contract of the Trakia highway. It turned out that our colleagues from a number of countries gave examples of similar cases reviewed by their freedom of information commissioners. In 2003 the Irish Freedom of Information Commissioner had reviewed a similar case interest<sup>2</sup> and had ruled in favour of the public. A similar ruling had been delivered by the Freedom of Information Commissioner of Slovakia in 2004<sup>3</sup>.

**Last but not least**, we at AIP, have gained a lot of experience during the years of preparing, conducting and drawing conclusions from freedom of information training for central and local government officials.

All these training seminars serve not only for presentation of freedom of information legislation in Bulgaria, and also for reviewing and solving specific cases. These meetings are an important

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1 Full text of the handbook in English, published in the beginning of 2001 is available at: [http://www.aip-bg.org/pdf/man\\_admin.pdf](http://www.aip-bg.org/pdf/man_admin.pdf)

2 [http://www.oic.irlgov.ie/24c2\\_3c2.htm](http://www.oic.irlgov.ie/24c2_3c2.htm)

3 <http://www.dostopdoinformacij.si/index.php?id=311>

information source about the practices of information disclosure in public institutions – how public officials perceive and relate to freedom of information norms.

In many of these training seminars we have relied on the *Freedom of Information Training Manual for Public Officials*<sup>4</sup>, created within the frame of the project *Freedom of Information – a Matter of Public Interest* implemented by NGOs from Albania, Bosnia and Herzegovina, Bulgaria, and Romania, with the leading role of *Article 19: Global Campaign for Free Expression*.<sup>5</sup>

According to the most recent regular report of David Banisar, the vice president of *Privacy International* and head of its Freedom of Information programme, more than 60 countries have adopted access to information legislation; others are in the process of adopting such laws.<sup>6</sup> The right to information access has been guaranteed by the Constitution or a law in most of the member-states of the Council of Europe. At least twenty-two of the twenty-five countries of the European Union have adopted freedom of information laws<sup>7</sup>.

In 1946 the United Nations General Assembly passed one of its very earliest resolutions. It stated this: *Freedom of information is a fundamental human right and ... the touchstone of all freedoms to which the United Nations is consecrated.*

According to Art. 10 of the The European Convention on Human Rights (ECHR), the right to freedom of expression shall also include the right to receive and impart information and ideas without interference by public authority.

During the last decade, a growing number of Council of Europe countries have adopted freedom of information laws. This process has become increasingly dynamic after the adoption of Recommendation 2002 (2) of the Committee of Ministers of the Council of Europe.

Although not a binding document, Recommendation (2002)2 of the Council of Europe<sup>8</sup> develops the standards laid down by Recommendation 81 for access to official documents. Two years after the adoption of Recommendation (2002)2, the group of specialists on access to official information (DH-S-AC) at the Steering Committee for Human Rights (CDDH) published an Access to Official Documents Guide. Access to Information programme translated, published and disseminated the Guide in Bulgarian.<sup>9</sup>

Besides documents of international governmental authorities, there are a number of other texts, which elaborate the basic freedom of information principles. They have been systematized and developed on

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4 <http://www.article19.org/pdfs/tools/foitrainersmanual.pdf>

5 <http://www.aip-bg.org/projects.htm>

6 David Banisar's report is published in the Freedom of Information section of <http://www.privacyinternational.org>; also on <http://www.freedominfo.org>

7 Germany became the 22<sup>nd</sup> EU country to adopt a FOI law in 2005

8 Recommendation R(2002)2 of the Committee of Ministers to member states on access to official documents adopted by the Committee of Ministers on 21 February 2002 at the 784th meeting of the Ministers' Deputies and the Explanatory Memorandum to the Recommendation Rec. (2002) 2 of the Committee of Ministers to member states on access to official documents, can be downloaded from the web-page of AIP: <http://www.aip-bg.org/eurolaw.htm>

9 See: <http://www.aip-bg.org/pdf/coe-guide.pdf>

the basis of comparative legal studies, on discussions and the experience of international non-governmental organizations<sup>10</sup>. *Article 19* has published a Model Freedom of Information Law as part of the *Freedom of Information Training Manual for Public Officials*. Experts from the Council of Europe, Article 19, and Open Society Justice Initiative have participated actively in the discussions of national freedom of information laws, and have evaluated their norms comparing them to international standards.

The Bulgarian Access to Public Information Act was adopted before Recommendation (2002)<sup>2</sup>. The history of its adoption begins with the Constitutional provision from 1991:

*Article 41 (1) Everyone shall be entitled to seek, obtain and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality.*

*(2) Citizens shall be entitled to obtain information from state agencies on any matter of legitimate interest to them which is not a state or official secret and does not affect the rights of others.*

The Environmental Protection Act (EPA) was adopted at the same time as the Constitution. With a separate chapter, the EPA regulates the right of citizens to access environmental information in line with the standards set by EU Directive 313/90 on the freedom of access to information on the environment.

Ruling No. 7 of the Constitutional Court on case No.1 of 1996 is of great significance for the interpretation of the principle and the philosophy of freedom of information in Bulgaria<sup>11</sup>. The ruling is important for a number of reasons:

**First**, it explicitly establishes that the right to information is the principle, while the exemptions are exceptions from the principle;

**Second**, it determines that everyone has the right to access information without having to prove a specific interest<sup>12</sup>;

**Third**, it establishes that the obligations of public authorities should be regulated by a special law.

The Access to Public Information bill was presented for public discussion by the Bulgarian Government in the spring of 1999 and was introduced to Parliament in June of the same year. After the first hearing and a series of dramatic discussions in the Parliamentary committees, the bill spend one

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<sup>10</sup> Those standards are presented in detail in the presentation of the results from *Freedom of Information Monitoring Tool* 2003 on <http://www.aip-bg.org/> and on the web-site of the Open Society Justice Initiative: [http://www.justiceinitiative.org/activities/foifoe/foi/foi\\_aimt](http://www.justiceinitiative.org/activities/foifoe/foi/foi_aimt); the Model Freedom of Information Law is available at <http://www.article19.org/pdfs/standards/modelfoilaw.pdf>; basic principles as international standards are developed in the works of the head of Toby Mendel, the legal team of Article 19 published in 2003 by UNESCO *FREEDOM OF INFORMATION. A Comparative Legal Survey, UNESCO, 2003, available at: http://portal.unesco.org/ci/en/file\_download.php/fa422efc11c9f9b15f9374a5eac31c7efreedom\_info\_laws.pdf*

<sup>11</sup> See Ruling № 7 of 04-Jun-1996 of the Constitutional Court of Bulgaria on Constitutional case No. 1 of 1996 available in English at: <http://www.aip-bg.org/documents/ruling.htm>

<sup>12</sup> The establishment of this principle by the Constitutional court is of crucial importance in order to avoid the ambiguity of art. 41, para. 2 of the Bulgarian Constitution, and to overcome the opinion of the public, including professional groups before the adoption of the APIA, that information seekers should prove their interest. Such views can still be noticed among some of the obliged authorities (See the results of results of the practice monitoring in the latest report of AIP: [http://www.aip-bg.org/l\\_1\\_reports.htm](http://www.aip-bg.org/l_1_reports.htm)).

full year in Parliament before being adopted on June 22, 2000. The Act came into force when it was published in issue 55 of the State Gazette (SG) of July 7, 2000. Since then the APIA has been amended twice – with the adoption and promulgation of the Personal Data Protection Act (SG, issue 1 of 04-Jan-2002) and with a adoption of the Protection Of Classified Information Act (SG, issue 45 of 30-Apr-2002). The two latter laws, adopted in 2002, brought some clarity with regard to the exemptions from the right to information access.

After the 2001 parliamentary elections in Bulgaria, some members of Parliament from the majority introduced amendments to the APIA, basing their motives on the recommendations made by AIP in our annual report on access to information in Bulgaria. This amendments passed the first hearing in Parliament and were discussed in three parliamentary committees, but never reached the second hearing.

An important international document, regulating access to information is the *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* done at Aarhus, Denmark, on 25 June, 1998, which has become known as the *Aarhus Convention*. The Convention was ratified by Bulgaria and an Aarhus Convention Ratification Act was published in issue 91 of the State Gazette of 14-Oct-2003. Before that, in 2002, the Bulgarian Parliament adopted a new Environmental Protection Act, which also contained a chapter regulating access to information. With the ratification of the *Aarhus Convention* the Bulgarian Parliament firmly established the approach towards of the exemptions as exceptions from the principle. Besides, it was clearly determined that public interest from disclosure should be considered when interpreting and applying the exemptions from the right to information.<sup>13</sup>

Meanwhile, the practices of information provision and litigation practices under the Access to Public Information Act have been developing. A quick search in the web-site of the Supreme Administrative Court (SAC) shows that this court has delivered 135 rulings and decisions on access to information cases.

Reflecting on this experience, the team of AIP has made an attempt to describe the principles to be followed by public officials when they implement the obligations formulated within the Access to Public Information Act. The most complicated and, at the same time, most interesting part of the freedom information legislation is the exemptions from the right to information access. The Bulgarian law is not very clear in this respect; and this is why we have relied mainly on European standards to serve as a prism, clarifying some of the ambiguities of the Bulgarian legislation. For example, the public interest test is not stipulated by the Access to Public Information Act. However, it should obviously be applied in specific cases, when a balance of interests should be made.

With this handbook we have made an attempt to present the different steps (of information provision), stipulated by the Bulgarian Access to Public Information Act, all of them accompanied with specific practical examples.

## Purpose, basic principles and elements of access to information legislation

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<sup>13</sup>See the text of the Convention: “The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure...” - art.4, item 4 , promulgated in SG, issue 33 of 23-Apr-2004; in force from 16-Mar-2004.

The clear understanding about the purpose of this legislation is usually expressed when formulating the the purpose of access to information laws. In Bulgaria, the purpose of the law has been formulated in two ways. One of them is in the legislative memorandum introduced to Parliament with the draft law: “The purpose of the proposed draft for an Access to Public Information Act is to establish the procedures and conditions for exercising the constitutional right of the citizens to seek, receive, and impart information about the social life in the Republic of Bulgaria. The effective exercise of this right would give the members of the society an opportunity to form their own opinion about the activities of the government agencies and other authorities, which perform public functions.”

Once again, the purpose of creating an opportunity for the “formation of an awn opinion” is repeated in the definition of the concept of “public information”.<sup>14</sup>

The clear understanding of the purpose of a law is crucial for rationalizing the procedure of information disclosure and when interpreting the exemptions from the right to information access. Usually, the purpose of the access to information laws is clearly formulated within them.

A resume of the purpose and the meaning of access to information legislation can be found in Recommendation (2002)2 of the Committee of Ministers of the Council of Europe to the member states. According to the text of the Recommendation, access to information laws:

1. Allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live.
2. Encourages informed participation by the public in matters of common interest.
3. Fosters the efficiency and effectiveness of administrations.
4. Helps maintain the integrity of the administrations.
5. Avoids the risk of corruption.
6. Contributes to affirming the legitimacy of administrations as public services.
7. Strengthens the public's confidence in public authorities.

As we have already noted, the Bulgarian Access to Public Information Act was adopted before Recommendation (2002)2. The purpose of the APIA was indeed formulated in the legislative memorandum, but it has been incorporated into the text of the APIA quite cautiously and inconsistently<sup>15</sup>.

The decision of the Bulgarian Constitutional Court from 1996<sup>16</sup>, and all international documents, which establish freedom of information standards, endorse the principle that:

**“Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.”**

The regulation of the right of **everyone to access information created or held by public authorities** is one of the fundamental elements of freedom of information legislation. Access to information laws establish the procedures for the implementation/exercise of the right of everyone to access information. This handbook presents both the basic concepts of the Bulgarian APIA, and the corresponding

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14 See the legislative memorandum (in Bulgarian) [http://www.aip-bg.org/documents/motivgov\\_bg.htm](http://www.aip-bg.org/documents/motivgov_bg.htm) and art. 2 para. 1 of the APIA.

15 See the principles, formulated within art. 6 of the APIA.

16 Decision No. 4 delivered by the Constitutional Court on 04-Jun-1996 and published in State Gazette issue 55 of 1996 is of exceptional importance for the interpretation of art. 39-41 of the Bulgarian Constitution.

procedures.

**The state may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting other legitimate interests.** The handbook presents the standards in this area, as well as the Bulgarian legal regulation (norms of the Bulgarian legislation).

Another important element of freedom of information is the obligation for public authorities **to publish certain categories of information on their own initiative**. Such obligations for public authorities are also formulated by the Bulgarian law, and are reviewed in the Handbook.

Finally, a fundamental element of access to information legislation is the **right to appeal decisions to withhold access to information and access to an expeditious and inexpensive review procedure**, as formulated by Recommendation (2002)2. Indeed, the Bulgarian law gives a right to requestors to appeal the decisions of the obliged authorities before the administrative courts. This procedure is neither expeditious, nor inexpensive, but it is the only way for citizens to defend their right of information access to the bitter end. The handbook provides examples from the practice of the Bulgarian administrative courts, mainly from the practice of the Supreme Administrative Court.

## Who has the right to information access?

The Access to Public Information Act (APIA) gives the right to EVERY:

- Bulgarian citizen,
- foreign citizen or a person without citizenship,
- legal entity – Bulgarian or foreign

to request and receive access to information, WITHOUT HAVING TO PROVE A SPECIFIC INTEREST.

In practice the law sets no limitations with regard to the requestors. This is in line with international standards, which establish the principle that information kept by the state belongs to the whole society.

### **Frequently asked questions:**

#### **Do requestors have to explain why they need the information?**

No. No one should be required to motivate his/her information request. Just on the contrary, public institutions should – in case they refuse access to information – indicate the reasons and the legal grounds/exemptions for their decision.

#### **Are there privileged groups with regard to information access?**

No. One of the fundamental principles of APIA is EQUAL access to information for everyone. No distinctions should be made between different groups of requestors, like journalists, scientists, lawyers, retailers, individuals, etc.

#### **Attention!**

With the aim to provide equal access to information for everyone, the law has provided an opportunity for people with disabilities (e.g. with impaired hearing, or seeing) to request information in a form that corresponds to their ability to communicate (art. 26, para. 4 of the APIA).

## Who is obliged to provide access to information?

The obliged institutions are listed under art. 3 of the Bulgarian law. The provisions of the act regulate before all obligations for **public agencies**.

The Access to Public Information Act also establishes obligations for three further categories of institutions. Access to information should be provided by all **public law entities**, although they are not public agencies. These include all institutions, performing public administrative functions under national law, including specific duties, activities or services, without being public agencies. The law also obliges **legal and physical entities**, to provide access to information about those activities, financed by the budget. Finally, the law obliges the **mass media** to disclose some information, related to the transparency of their activities.

### **1. Public agencies (governmental institutions) (art. 3, para. 1 of APIA):**

The Access to Public Information Act obliges all state agencies to provide access to public information.



These include **bodies of the executive** – ministers, regional governors, state agencies, executive agencies, national services (like the national security service), etc; **the legislative body** – the Bulgarian Parliament; **bodies of the judiciary** – the prosecution offices, the inquiry (intelligence) services, the courts. Public agencies, which do not belong to any of the three branches of power – like the President, the Constitutional Court, etc. - are also obliged to disclose public information<sup>17</sup>.

### **Frequently asked questions:**

#### **Are the regional directorates of the central authorities obliged to provide access to information?**

Regional directorates of the public agencies are not explicitly listed in art. 3 para. 1 of the APIA. However, they are obliged to periodically publish information by art. 15 of the law. This makes it impossible to give an unequivocal answer to the above question. Such an answer can be given in every specific case, considering the laws and secondary legislation, which regulates the structure and the functions of the respective public agency.

Obviously, in this respect, the Bulgarian law is not in line with international standards. For example, the definition of “public authority” given by Recommendation (2002)2 includes government and administration at national, regional or local level . In other words, these are all state agencies and their administrations on the national, regional and local level.

#### **Examples:**

It is possible that an obligation for disclosure of public information by the regional directorate branches of a certain public agency are established by a specialized legislation. This is the case with art. 21 of the Environmental Protection Act. It includes not only central authorities, but also the regional directorates of the executive agencies, which collect and hold information about the environment, among those, obliged to disclose it. This means that the Environmental Protection Act obliges not only the directors of the Regional Inspectorates of Environment and Waters, but also the Bassin Directorates and the National Park Directorates to provide information.

In other cases, an obligation for territorial branches to provide access to information is established with the internal rules regulating information disclosure within the administration. For example, according to the *Internal rules for the procedure of access to information disclosure within the tax administration*<sup>18</sup> decisions to disclose or withhold access to information are taken by the General Tax Director when the request is filed to the General Tax Directorate. In case a request concerns information held by the regional or local tax directorates, a decision is taken by the respective (**regional or local**) directors.

It is possible that the internal rules of information access completely exclude regional directorates subordinate to public agencies from those institutions, obliged to provide access to information. For example, art. 2, para.3 of the draft *Guidelines for providing access to public information within the Public Internal Financial Control Agency (PIFCA)*<sup>19</sup> provides no authority for the directors of the **PIFCA regional directorates** to review and take decisions on information requests.

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17 See Appendix No.1: list of obliged institutions

18 All internal guidelines and rules, referred to in this handbook have been received in response to access to information requests filed by AIP in April, 2005. They are available on the web page of AIP in the *Internal rules* subsection ([http://www.aip-bg.org/internal\\_bg.htm](http://www.aip-bg.org/internal_bg.htm)).

19 The Guidelines have been elaborated by Agency experts with the methodological assistance of AIP. The Guidelines approved by the Agency director in 2005.

## **2. Local government authorities (art. 3, para. 1 of APIA):**

This includes the mayors and city/municipal councils. Besides mayors of the municipalities, the law obliges also the city mayors, and – in cities divided into districts – the district mayors.

## **3. Public law entities (Art. 3, para. 2, item 1 of APIA):**

Apart from the state agencies, these are all institutions, which have been given administrative authorities or perform public functions by a law in certain areas.

Public law-entities are for example: the National Health Insurance Fund (NHIF)<sup>20</sup>, the National Social Insurance Fund, the Central Electorate Committee, the Electronic Media Counsel, etc.

Public law entities are also the state companies, established under art. 62, para. 2 of the Commerce Act (CA), and municipal companies, established under art. 51 - 53 of the Municipal Property Act (MPA).

## **4. Legal entities and individuals (art. 3, para. 2, item 2 of APIA):**

Legal entities and individuals are obliged to provide access to some information, which is considered public. They are obliged to provide access to information only about those activities financed by the **state or municipal budget**.

### **Frequently asked questions:**

#### **Which entities/individuals are financed by the state budget?**

The State Budget Act of the Republic of Bulgaria is adopted annually and includes a list of entities/individuals, financed by the budget. Also, these are all entities, which have signed public procurement contracts (won public tenders).

#### **Are state/municipal “firms” obliged to provide access to public information?**

State and municipal “firms” are trade companies, in which the state or the municipality part has a share in the capital. The fact that the state or a municipality has a share in the company capital does not automatically turn it into an obliged body. In order for such a company to be an obliged body, it should receive funding from the state budget. Information about state/municipal firms should be sought from the respective central or local authority, which has shares in the company capital. In all cases, when the state/municipal company receives funding from the budget, it is considered an obliged body and must disclose information about the activities, financed by the budget.

#### **Are state and municipal “enterprises” obliged to provide access to information?**

State and municipal enterprises are obliged to provide access to public information as public law entities (the sense of art. 3, para. 2, item 1 of the APIA), rather than as entities, financed by the budget.

**State enterprises** – According to art. 62, para. 3 of the Commerce Act – state enterprises, which are not commercial companies, may be established by a law. Following this provision, a number of state enterprises have been established to perform public functions or administrative authorities in some important areas of the social life.

#### **For example:**

The Civil Aviation Act (CAA) Пo has established the state enterprise Air-Traffic Services Authority,

<sup>20</sup> In a number of decisions, the Fifth division of the Bulgarian Supreme Administrative Court has established that the NHIF is a public law entity in the sense of art. 3, para. 2, item 1 of the APIA (administrative cases No. 9504 of 2002, No. 10261 of 2002, No. 8292 of 2003, No. 2664 of 2003, and No. 1793 of 2004).

which performs public functions in providing navigation services in the civil air-space of the Republic of Bulgaria (art. 53 of the CAA). Other state enterprises include the *Game stations*, which have been assigned functions connected to the breeding, populating, protecting, and hunting of game, according to the *Game Hunting and Protection Act* (art. 9 of the GHPA). The *Bulgarian Sports Lottery* is a state enterprise, created with the *Gambling Act* (GA) with the aim to raise funds for the development of sports and physical education within the Republic of Bulgaria (§ 11 of the Transitional and final provisions of the GA).

**Municipal enterprises** – pursuant to art. 52 and 53 of the Municipal Property Act (MPA) a *municipal enterprise is a specialized municipal unit, created with the aim to govern municipal property in a way such as to meet the needs of the inhabitants and to ensure the implementation of municipal activities in the following areas:*

- regional development and building, sustaining, and governing municipal property;
- governing and sustaining municipal markets;
- social services;
- ritual services (ceremonies);
- recreation services for students.

Municipal enterprises operate on the basis of regulations adopted by the respective municipal council.

#### **5. Mass media (art. 3, para. 2, item 3 of the APIA):**

The mass media are obliged to provide access to certain categories of information, which is related to **guaranteeing** transparency, correctness and objectivity of their activities (art. 18 of the APIA).

We should not here that international freedom of information standards do not assume that obligations for the mass media should be included in access to information laws, whose main goal is to ensure government transparency and accountability.

#### **Attention!**

It is possible that a certain institution may fall within some or even all hypothesis of art. 3, para. 2 of the APIA. For example, the Bulgarian National Television Network (BNT) is a *national public television operator pursuant to art. 7 of the Radio and Television Broadcasting Act (RTBA)*, which turns it into a public law entity in the sense of art. 3, para. 2, item 1 of the APIA). At the same time, the BNT is obliged to provide access to information in the sense of item 2 of the same paragraph insofar its activities are financed by the state budget<sup>21</sup>. The BNT should also provide information pursuant to art. 18 of the APIA as a mass media (art. 3, para. 2, item 3 of APIA).

What information should be provided pursuant to the APIA?

### ***Scope and content of public information***

The Access to Public Information Act defines the concept of **public information** by two basic properties. Pursuant to art. 2 of the law, **public information** is ANY information, irrespective of the kind of its physical bearer:

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<sup>21</sup> BNT receives an annual subsidy from the state budget pursuant to art. 70, para. 4 of the RTBA.

- a) which is related to the social life in the Republic of Bulgaria and
- b) would give an opportunity to the citizens to form their own opinion on the activities of the institutions having obligations under the APIA.

In practice, the concept of public information includes all recorded information, created or held by the central authorities, local government authorities and other obliged institutions.

## ***Types of public information***

### **1. Official public information (art. 10 of the APIA)**

*Official information shall be information contained in the acts of the state or local self-government bodies in the course of exercise of their powers.* This concept includes all acts of the public authorities – statutory acts, regulations and decisions.

A principle of Bulgarian legislation is that access to the statutory acts of the public agencies is provided by publishing them in the State Gazette (see art. 12 para.1 of the APIA and art. 37 of the Statutes Act). It is possible that access to other official information, which is not contained in the statutory acts, be provided by publishing it in the State Gazette – when this is regulated by a special law or by a decision of the authority, which has created the information. For example, the Privatization and Post-privatization Control Act, the Concession Act, and the Public Procurement Act introduce obligations for the promulgation of regulations and decisions.

When a public authority receives a request for official information, which has already been published, the law obliges the authority to direct the requester to the issue, the date and the name of the publication, where the requested information had been promulgated (art. 12, para. 4 of the APIA). Access to all other official information is free and the access procedure is regulated by the APIA.

### **2. Administrative public information (art. 11 of the APIA)**

*Administrative information shall be information, which is collected, created and kept in connection with official information, as well as in the course of the activities of the authorities and their administrative structures.* In practice, this concept includes all information besides official information, i.e. different from the acts (statutes, regulations, decisions) issued by public authorities.

Access to administrative information is regulated by the APIA.

### **Frequently asked questions:**

#### **What is the difference between administrative information and administrative secret?**

Administrative information is a type of public information, access to which is free and is regulated by the APIA (art. 11 and 13 of the APIA). Administrative secret is a category of classified information pursuant to art. 26 of the Protection of Classified Information Act. Matters related to the creation, processing and storing of administrative information and the procedures for accessing it are regulated by the PCIA.

## ***Special procedures for access to public information***

There are cases, when the access procedures (like the request form, the deadlines, the decisions, the appeal, etc.) are not applicable to some categories of information, which otherwise is of public nature. Due to some of its characteristics, access to such information is provided following the procedures of special laws. Example of this are:

**a) information, obtainable in the course of provision of administrative services to citizens and legal entities (art. 8, item 1 of the APIA).** The Administrative Services for Legal Entities and Individuals Act (ASLEIA) regulates in general the provision of administrative services by public agencies. The law establishes the standards in organizing and providing administrative services, as well as the appeal procedures. In contrast to information received under the Access to Public Information Act, legal entities and individuals need the information provided pursuant to the ASLEIA to certify, acknowledge, and exercise other rights or to pay liabilities (see art. 3 in connection with art. 11 of the ASLEIA). For this reason, administrative services are of an individual character and require personal information about the applicants. Administrative services are regulated by special legislation and most often include the provision of various licences, certificates, etc.

**b) information kept with the National Archives of the Republic of Bulgaria (art. 8, item 2 of the APIA).** Access to documents kept with the National Archives is regulated by the National Archives Act (NAA), which establishes the rules for collecting, registering, processing and usage of archival documents. A main characteristic of all documents kept with the National Archives, is that they have a special value pursuant to art. 2, para. 1 of the NAA, which requires special rules especially for their storage and usage.

**c) access to personal data (art. 2, para. 3 of the APIA)** – the Personal Data Protection Act (PDPA) regulates both access to personal data about the data subjects, and access to personal data of third parties. The scope and content of the *personal data* concept are given by art. 2 of the PDPA and in § 1, item 2 of the Additional provision of APIA.

### **Attention!**

A distinction should be made between a requests for access to public information containing some personal data, and a personal data request (filed either by the data subject or a third party). In the former case information should be disclosed pursuant to art. 31 of the APIA in conformity with art. 31 of the law, while in the latter case, data controllers should follow the procedure established by the PDPA.

## Exemptions from the right of information access

The reason for having exemptions from the right to information access is the need to protect the rights of others and important public interests.

The limitations from the right to seek, receive and impart information are established by:

- art.19 of the International Covenant on Civil and Political Rights (ICCPR)<sup>22</sup>;
- art.10 and art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (in short European Convention on Human Rights – ECHR)<sup>23</sup>;
- art. 41 of the Constitution of Bulgaria. Decision No. 4 delivered by the Constitutional Court on 04-Jun-1996 and published in State Gazette issue 55 of 1996 is of exceptional importance for the interpretation of art. 39-41 of the Bulgarian Constitution;
- art. 7 and art. 37 of the APIA;
- special legislation regulating the exemptions: the Protection of Classified Information Act (PCIA), the Protection of Personal Data Act, the Fair Competition Act (FCA).

Recommendation (2002) of the committee of Ministers of the Council of Europe to the member-states on access to official documents is important for the interpretation of the exemptions, laid down in the ECHR, the ICCPR, and art. 41 of the Bulgarian Constitution.<sup>24</sup> A five-member panel of the Supreme Administrative Court of Bulgaria has referred to (quoted) the Recommendation in Decision No. 4694 of 2002 delivered on administrative case No. 1543 of 2002.

### *European standards about access to information exemptions*

According to the European standard, established by Recommendation (2002) 2 and art. 10 and art. 8 of the ECHR, public authorities might limit the disclosure or publication of official documents, only when they are set **down precisely in law** and are **necessary** in a democratic society as an exception from the right to information, with the aim of protecting specific **interests**. Recommendation (2002) lists ten categories of interests, which might be give reasons for limiting access to public documents.

In other words, in order to apply an exemption from the right to information access, it should be:

- ❖ set down precisely in law;
- ❖ be proportionate to the aim of protecting one or more legitimate interests;
- ❖ be necessary in a democratic society.

Pursuant to Recommendation (2002)2 and the practice of the European Court of Human Rights under art. 10 of the ECHR, the condition that the exemption is “necessary in a democratic society” means that access to a document can be withheld only when information contained within it

- ❖ **would** or is **likely to** harm the protected interests,
- ❖ except in cases when there is an **overwhelming public interest** from disclosure.

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22 Part of the Bulgarian legislation pursuant to art. 5, para. 4 of the Constitution.

23 Part of the Bulgarian legislation pursuant to art. 5, para. 4 of the Constitution. Art. 10 of the Convention is applicable only to the right to receive and impart information, while art. 8 establishes the right to respect the private and family life.

24 Available in Bulgarian at: [http://www.aip-bg.org/documents/rec2\\_bg.htm](http://www.aip-bg.org/documents/rec2_bg.htm)

## ***Bulgarian legislation with regard to the exemptions from the right to information access***

What are the protected interests in each member-state of the Council of Europe and what are the procedures for applying the European standards? These are questions regulated by the domestic legislation of each country.

Bulgarian legislation, in light of the quoted Constitutional Court decision and the court practice on access to information, covers all the the elements of the European standard.

### **Precisely set down in a law**

In the first place, according to the Bulgarian legislation, exemptions from the right to information can be established only by the act of the legislature. According to art. 7 para. 1 of the APIA, restrictions to the right of access to public information are permissible, only when the information is classified as state or other kind of protected secret in cases provided for by an act of Parliament.

Article 19 of the ICCPR and art. 41 para.1 of the Bulgarian Constitution list thoroughly the interests, whose protection may justify imposing limitations on information disclosure. According to the Constitutional Court, the limitations have been established on a constitutional level and it is not acceptable to introduce other limitations by a law.

The exemptions, which protect the interests listed in the Constitution have been regulated in detail by special laws:

- ❖ **State secret** is defined by art. 25 of the Protection of Classified Information Act, and the categories of information, which can be classified as state secret are included in Attachment list No. 1 to art. 25;
- Art. 13 para. 2 item 1 of the APIA gives a definition of the exemption related to the **deliberative process** within the administrations;
- Paragraph 1, item 7 of the FCA defines **trade and commercial secrets**;
- Paragraph 1, item 2 of the APIA and art. 2 para. 1 of the PDPA give a definition of **personal data**;
- Article 26 of the PCIA gives a definition of administrative secret, while a number of special laws define certain categories of information, which can be classified as **administrative secret**.

Strict requirements have been set in practice towards the statutory acts, regulating the exemptions. For example, the provision that “**information, which came to someone’s knowledge in the course of his/her official duties is administrative secret**” does not meet the requirement of “precisely set down in law” (although there is still a number of regulations defining “administrative information” I the above way). The specific categories of information, which can be exempt from disclosure, must be explicitly defined by an act of Parliament, and the “administrative secret” exemption is to exception. The Fifth division of the Supreme Administrative Court has expressed the same opinion in a decision on a case where *Public Barometer - Sliven* appealed a refusal of the Director of the Public Internal Financial Control Agency<sup>25</sup>.

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25 See Decision No. 10539 of 2002 delivered on administrative court case No. 5246 of 2002.

## Protected interests

Pursuant to art. 41 para. 2 of the Bulgarian Constitution, reproduced by art. 5 of the APIA, the interests, whose protection may justify a limitation of the right to information, are:

- national security,
- public order,
- the rights and reputation of others;
- public health and morality<sup>26</sup>.

The decision of the Constitutional Court makes a distinction between the constitutionally protected *rights* (rights of third parties) and constitutionally protected *interests* (national security, public order)<sup>27</sup>.

The Bulgarian legislation introduces a number of limitations to the right of information access related to the protection of **the right of others**. These are, for example:

- trade secret /the fair competition interest /;
- personal data /protection of privacy/;
- protection of intellectual property.

## Proportionality to the aim of protecting a legitimate interest

The rule of **proportionality** requires from public authorities to limit the disclosure or publishing of information only as far as it is necessary to protect a legitimate interest.

According to the European standards and the European legislation, proportionality is achieved through the application of a number of steps:

- narrow interpretation of the exemption;
- possibility of partial access;
- defining the form of access;

### *Narrow interpretation of the exemption*

According to the Constitutional Court, the limitations of the right to seek and receive information are **exceptions** from a principle (the right), so that the limitations are subject to a narrow interpretation.<sup>28</sup> An example of such an interpretation is given in the practice of the Supreme Administrative Court - in a decision on an appeal against the refusal of the Bulgarian Minister of Finance to disclose a copy of the contract between the state and the British consultancy *Crown Agents: the right of the court to oversight the classification with the security mark (Article 41, Paragraph 4 of APIA) implicitly suggest the obligation of the administrative body to provide information about the time of the classification and the grounds for it. Besides that, the court has given clear instructions to the public authority, obliging it to specify whether the contract with the British consultancy contains facts or other information, belonging to the categories of the Attachment list to art. 25 of the PCIA and - because of that - subject to classification as a state secret<sup>29</sup>.*

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26 They can be excluded from the protected interests, because public health and morality could eventually only limit the right to disseminate - rather than seek - information. This is the reason why they are included neither in Recommendation (2002)2, nor in the Bulgarian legislation.

27 See the Decision quoted above.

28 **Ibid.**

29 See Decision No. 2113 of 2004 delivered by a five-member panel of the SAC on administrative court case No. 38 of 2004.



### *Possibility of partial access*

The possibility of providing **partial access to information** is provided with art. 7, para. 2 of the APIA. A typical case, when partial access should be given is when the requested document contains personal data. In such cases, the words or passages containing personal data should be removed/repealed and the rest of the document should be disclosed (if this is the preferred form of access, indicated by the requester). The Supreme Administrative Court has delivered a decision in this sense on the case *Totev v. the General Tax Directorate*. Mr. Totev had appealed a refusal of the General Tax Director to disclose access to a letter on taxation matters, which had been issued by the authority and had been sent to taxpayer. The court has instructed the agency to provide access, while blackening the name and address of the taxpayer.<sup>30</sup>

### *Determining the form of access*

Pursuant to the APIA, when it is likely that information disclosure is likely to harm the intellectual rights (copyrights) of others, public authorities should not withhold information, but should rather determine a suitable form of access (see art. 27, para. 2 in relation to art. 1, item 3 of the APIA). Following the above provision, the Ministry of Health provided only an opportunity of an inspection of a pharmacy building project. In this way, the Ministry avoided the possibility of violation of the right of others (copyrights, right of intellectual property).

## **Necessary in a democratic society**

### **Would disclosure ham or is it likely to harm a protected interest?**

This requirement is established in the Bulgarian legislation with regard to most of the exemptions:

state secret – within art. 25 of the PCIA;

administrative secret – within art. 26 of PCIA;

trade secret– art. 30 of the FCA;

In certain cases the administrations have full discretion to decide whether the disclosure of information would harm or would be likely to harm a protected interest. Such is the case with the exemption related to the **deliberative process** within the administrations (art. 13, para. 2, item 1 of the APIA) and the exemption related to ongoing or forthcoming **negotiations** (art. 13, para. 2, item 2 of the APIA).

In a number of cases, the assessment whether the disclosure of certain information would harm or would be likely to harm a protected interest should be made in advance (before it is requested). This is the case with information, subject to **classification** as state secret or administrative secret, as well trade secret – pursuant to paragraph 1, item 7 of the FCA, information could only fall within this exemption, when companies have taken the appropriate measures to protect it beforehand.

One of the things to consider when assessing the eventual harm from disclosure if information is that exemptions are **limited in time** – the law introduces maximum terms for the validity of the exemptions. The classification terms of only some of the exemptions can be prolonged by exception (see art. 34, para. 2 of the PCIA).

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<sup>30</sup> See Decision No. 6017 of 2002, delivered by a five-member panel of the SAC on administrative court case No. 10496 of 2002. Published in *Access to Information Litigation in Bulgaria. Selected Cases, published by Access to Information Programme, Sofia, 2002, p. 242.*

## **Except when there is an overriding interest from disclosure**

Even when information has been duly classified following the above procedures of the Bulgarian legislation and in conformity with all the elements of the European standards, it could still be disclosed in exceptional cases.

In some cases the **overwhelming public interest** has been introduced with a law. For example, the Public Disclosure of Property Owned by High Level Government Officials has established a public register of the income and property of such officials. Indeed, publicity of information contained in the register exposes parts of the private life of high level officials; the lawmakers have given more weight to the interest of exercising public control over the high level officials, when they exercise public functions. A decision of the Supreme Administrative Court has affirmed this position in his decision following an appeal against a refusal of the PIFCA president to provide information contained in the register: This is a peculiar anti-corruption measure, which may not be derogated by quoting the Protection of Personal Data Act (PPDA)<sup>31</sup>

- ❖ In other cases the lawmakers have established an obligation for public institutions take a decision **to decide** from disclosure when there is an overriding public interest. Such is the case with art. 20, para. 4 of the Environmental Protection Act (EPA), pursuant to which information on matters related to the environment should be provided after considering the public interest from disclosure. Following a request of the environmental organization *Ecoglasnost* in 2003, the Bulgarian Academy of Sciences disclosed information about the potential harms in destroying obsolete military equipment (engines of SS-23 missiles) in Bulgaria. Information that Bulgaria lacked adequate technology for destroying the missile engines and the possible harms for the public health, have lead to a decision to destroy the army equipment in a country having the appropriate equipment. This would have probably been impossible, if information had not been disclosed pursuant to the above provisions of the EPA.

## **State Secret**

The state secret exemption is regulated by the Protection of Classified Information Act (PCIA). The Act not only provides for the information classification procedure, but also gives the definition of a state secret (Art. 25)<sup>32</sup>. Article 25 of the PCIA contains a list of the interests that are protected as state secret and specifies that the exemption is meant to protect only interests that may be harmed or are threatened to be harmed.

The state secret exemption aims to protect:

- the national security;
- the foreign policy;
- the national defence;
- the constitutionally established (democratic) order.

A careful reading of the PCIA shows that foreign policy, defence, and constitutionally established order are separate interests, whose protection guarantees the protection of national security. The sensitive points in the areas of foreign policy, defence, and constitutionally established order are signified in the

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<sup>31</sup> See decision No. 3508 of 2004 on administrative court case No. 10889 of 2003.

<sup>32</sup> See Attachment No.3

List of Information Categories, which constitutes Appendix 1 to Art. 25 of the PCIA.

In terms of state secret, the Bulgarian legislation provides appropriate measures for the **proportional** protection of legitimate interests. The **Narrow Interpretation of the Exemption** is provided by the detailed List of Information Categories appended to Art. 25 of the PCIA. The Supreme Administrative Court has set a high standard for the public institutions by obligating them to give detailed grounds for the classification decisions—see *Narrow Interpretation of the Exemption* above.

Public institutions are obliged to provide **partial access**, even when the document have been security marked—this is explicitly stated by Art. 37, Para. 2 (чл. 37, ал. 2, вр. с ал. 1, т. 1) of the Access to Public Information Act (APIA). In order to be prepared for such partial access provision, the institutions should determine beforehand, during the phase of classification, which is the legitimate interest, in which category the information falls, and what is the type and level of harm that is meant to be prevented. For example, it might be assumed that the report of the Bulgarian security services regarding the illegal involvement of Bulgarian companies in the *Oil for Food* program with Iraq is subject to partial access. A comparative analysis of the Internet site of the CIA would show that their reports are being published online, with blacking out of information sources.

In order for the exemption to be **necessary** in a democratic society, the PCIA sets the requirement of **harm test** implementation, or assessment of the threat of harm from the information disclosure/provision. The assessment should be made before the classification with a security mark and should be considered in the determination of the level of classification. The assessment could be made again later, reviewing the classified document along the procedure stipulated by the PCIA. For instance, if a certain load of material is no longer stored in the State Reserve, no harm for the national security would follow from the disclosure/ provision of its records of storage. Hence, no grounds exist for the classification of these documents as state secret.

### **Administrative Secret**

The administrative secret exemption is stipulated by the PCIA. The Act provides for the classification procedure and gives the definition of administrative secret (Art. 26)<sup>33</sup>. Article 26, Para. 1 of the PCIA stipulates that the exemption is justified only for the protection of certain interests from unfavourable effect.

The interests that are to be protected by this exemption are not given by the PCIA. The purview of Art. 26 clarifies that these interests are excluded from those protected as state secret. Thus, in regards to the interests listed in Art. 41 of the Bulgarian Constitution, the administrative secret exemption might aim to protect:

- the rights of the others;
- the public order.

The sensitive points in the area of these interests are given in separate laws, which stipulate categories of information subject to classification as administrative secret. For example, such a legal provision is § 1, Pt. 1 of the Tax Procedure Code, which describes five categories of information about tax subjects.

On the basis of the administrative secret categories, stipulated by different laws, the directors of the organizational units should adopt a list of information categories that are relevant to the area of activity

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<sup>33</sup> See Attachment No.4

of the respective unit (which in certain cases coincides with a public institution). This list should be public.

The last phase, prescribed by the PCIA, in order for an administrative secret exemption to be made, is the marking of the particular document with a stamp “for administrative usage.”

That is to say: the following steps should be taken for the appropriate implementation of the exemption: assessment of the unfavorable effect on a protected interest by the disclosure/ provision of the information:

- information category, set down by law shall be defined;
- a specific information category from the list of the organizational unit shall be defined;
- a classification stamp shall be put.

If the institution assumes that the administrative secret exemption is not necessary in a democratic society, even though all other preconditions are present, it may disclose/ provide the information. For instance, in 2003, the Director of the Bulgarian Academy of Science, provided the results of a report that might have affected the life and health of the population to the organization *Ekoglasnost*, at the town of Montana. The report had been produced in terms of the destruction of the SS-23 rocket engines and the consequential impact on people's health. Although the General Staff of the Bulgarian Army denied the information as administrative secret, the representative of the academic institution had correctly decided that the public interest to know overrode the necessity of the exemption.

### **Preparatory Documents and Negotiations**

The exemption has analogies in almost all legislation. The protected interest is related to the independent and correct decision making. For that purpose, a temporary conditions for uninfluenced review of all proposals and alternatives, even of the most radical at first sight, should be provided. Another aspect of the exemption is the guarantee of the independent selection of the best applicant amongst many (in tender procedures, for example).

The exemption is stipulated by Art. 13, Para. 2 of the APIA. In the scope of the preparatory information fall opinions, recommendations, statements, and consultations. The law provides for a **narrow implementation of the exemption**. The exemption may not be applied to all statements, opinions, and recommendations, but to those, which are directed to the final decision making.

The court has also put the exemption under **narrow interpretation**. Hearing the case against the refusal of the Council of Ministers to provide access to the minutes of the first session of the cabinet, a Five-member panel of the Supreme Administrative Court (SAC) agreed on the following interpretation: “having considered the evidence that the Council of Ministers did not take any decisions during the particular session, i.e. no final decision was taken by the collective body, the applicable legal provision signified as grounds for refusal, could not be the provision of Art. 13, Para. 2, pt. 1 of the APIA.”<sup>34</sup> Consequently, the exemption may be applied only in cases when the statements, etc. Are related to the final decision making.

Among other things, the SAC has considered the question which information has a **significance of its own** and which does not. The court has differentiated between the statements, opinions, recommendations, and consultations and the information „related only to statistic and technical data.”<sup>35</sup>

34 Decision No. 4694/ 2002, Adm. Case No. 1543/ 2002 – SAC, Five-member panel

35 Decision No. 1843/ 2004, Adm. Case No. 6255/ 2003 – SAC, Fifth Division, came into effect.

The information from the last category should be excluded from the scope of Art. 13, Para. 2, pt. 1 of the APIA.

The third important thing in the narrow interpretation of the exemption is defining the public institutions, which may apply Art. 13, Para. 2, pt. 1 of the APIA. According to the practice of the SAC, these are only state bodies and bodies of local self-government but not institutions under Art. 3, Para. 2 of the APIA (public law institutions)--see *Obliged Bodies* above.

From the point of view of the assessment of **possible harm** from the disclosure/ provision of information under the hypothesis of Art. 13, Para. 2, pt. 1 of the APIA, it is important that it is made at the discretion of the public institution. In that context, the determination of the classification period is also within the discretion of the institution. The period may not be longer than 2 years. In this regard, the Bulgarian law differs from other laws, which stipulate the disclosure of the information right after the final decision is taken.

### **Protection of Third Party Interests**

The exemption related to the protection of third party interests is stipulated by Art. 31 of the APIA. The provision, however, does not give answer to the question which are these interests.

It is clear, however, that the interpretation of *interest* in the meaning of subjective preference is not in compliance with the law and with the Bulgarian Constitution. Article 31, Para. 1 of the APIA stipulates “and his/her consent is **needed**,” i.e. the necessity is based on explicit, preliminary set rules. That is why the Constitution brings the protection of these interests to „the rights and the reputation of the others.“

The third party interests exemption protects the following values:

- trade secret (the interest of fair competition);
- personal data (and life);
- intellectual property rights.

The definition of the term *trade secret* is given by § 1, pt. 7 of the Fair Competition Act (FCA).<sup>36</sup> the definition of the term *personal data* is stipulated by § 1, pt. 2 of the APIA and Art. 2, Para. 1 of the Personal Data Protection Act (PDPA).

The **proportionality** of the protection of third party interests is guaranteed by the legislation. The purpose of the personal data protection is to guarantee the „inviolability of the individual and the personal life“ - Art. 1, Para. 2 of the PDPA. The purpose of the trade secret is to protect the interests of the competitors in their relations between themselves, as well as between the competitors and the consumers – Art. 30, Para. 1 of the FCA. The explicit stipulation of the purpose for the protection of the personal data and the trade secret guarantees the **narrow interpretation** of these legitimate interests.

The intellectual property rights may be protected only by the definition of the form of access, but not by means of any exemptions – Art. 27, Para. 1, pt. 3 of the APIA. This is a concrete example of the implementation of the rule of **proportionality**.

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<sup>36</sup> See Attachment No.5

The requirement of asking for the consent of the third party when his/her rights or legitimate interests are affected (Art. 31, Para.1 of the APIA) has been also introduced with the purpose of implementing the **narrow interpretation of the exemption**. Since the exemption has been introduced with the purpose of protecting the interests of a third party, its is unacceptable that the public institutions protect these interests regardless of the will of the protected party.

The provision of Art. 31, Para. 5 of the APIA is particularly important for the **narrow implementation** of the exemption. Pursuant to the provision, the third party needs not to be asked about their consent, even if their rights and interests are affected, in the cases when the party appears the only body obliged to provide public information under Art. 3 of the APIA. Thus the legislator has stipulated a particular case in the law when the **public interest in the disclosure overrides the protected interest**. For example, the regional governor should not ask the consent of the mayor of the municipality when the correspondence on a particular topic between the two institutions has been requested.

### **Characteristics of the Trade Secret Protection**

The term *trade secret* has been interpreted narrowly by the court practice as well. Only conditions, whose disclosure may affect rights or legitimate interests of a company, could be defined as trade secret. In terms of the question whether a contract between the municipality and a municipal company regarding the treatment of stray dogs, a Three-member panel of SAC assumed the following: “If it is a question of whether the request affected the rights of legal interests of the third party, this panel finds that it does not affect such legal rights and interests of the commercial enterprise that is the third party.”<sup>37</sup>

Article 31, Para. 4 of the APIA explicitly sets the obligation for the public institutions to provide, even if third party interests are affected, the requested information in a volume and format, which would prevent the disclosure of information related to the third party. The court has explicitly emphasized this obligation in the case of trade secret,<sup>38</sup> i.e., the municipality is an obliged body and should provide **partial access** to the contract.

In order for the classification of a particular information as a trade secret to be **necessary** in a democratic society, the FCA sets the requirement of **harm**, or threat of harm, **test** in the disclosure / provision of information. There is no threat of harm if the information is included in the public register, which is public under the law. There may not be infliction of harm if the information disclosure contributes to the fair competition. For example, the information, held by the Regional Inspectorates of Environment and Waters, about the location of the blueberry-purchase-stations may not be a trade secret in terms of any interested trader. The knowledge of this information by other traders would only contribute to the fair competition, development of trade, and decrease of price for the consumers.

### **Characteristics of the Personal Data Protection**

One of the main characteristics of the personal data is that there are different regimes of protection in regards to power-exercising persons and ordinary people. The first category of individuals are less protected due to greater public interest in terms of the responsibility they bear. That is why their integrity is subject to permanent check by ordinary citizens, as it is stipulated by Recommendation 2002 (2).

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<sup>37</sup> Decision No. 4717/ 2003, Adm. Case No. 8752/ 2002.

<sup>38</sup> Ibid.

The presence of an overriding public interest is provided by law in some cases; in others the assessment is entitled to the public institutions (see *Unless an overriding public interest is present* above).

However, in all cases when the sources are public registers or documents, containing public information, personal data may not be protected and should be provided—Art. 35, Para. 2, pt. 2 of the APIA.

In all other cases, access should not be denied to the documents, which a requestor has demanded, but the **consent of the affected third party** should be asked. Not doing that is a substantial violation of the law, according to the practice of the Supreme Administrative Court.

The failure to obtain the consent of the third party does not give grounds for refusal of granting access to the information contained in the document. Pursuant to Art. 31, Para. 4 of the APIA, **partial access** may be granted in such cases. A particular example of a partial access provision is a letter of a state body with an erased address, or the penal orders and decrees, after the erasure of the names of the witnesses.<sup>39</sup>

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<sup>39</sup> Decision No. 6017/ 2002, Adm. Case No. 10946/ 2001 – SAC, First Division; Decision No. 9822/ 2001, Adm. Case No. 5736/ 2002 – SAC, Fifth Division.

## How is access to information granted?

Access to Public Information Act stipulates the obligation to grant access to information:

- at the initiative of the obliged bodies—an active provision of information
- and
- on the demand of the requestor by submitting an oral or written request.

### ***1. Providing Access to Information at the Initiative of the Obligated Bodies***

Granting access to information at the submission of request is a substantial part, though not the whole of it, of the activities of the administration, working under the principle of maximum openness.

Very often, the state institutions and the bodies of local self-government dispose of information, which should quickly reach the public due to the essence of its character. At the same time, the dissemination would facilitate the institution in fulfilling its entitled functions. For example, the coordinating body for the implementation of different social programs should announce information about deadlines and participation requirements; food control institutions should inform about the quality and the safety of the foods on sale, as well as, about any risks for the human health related to their consumption; etc.

Besides, the citizens, who want to submit requests for access to information, do not always know the type of information held by each particular institution and cannot formulate their request precisely. Thus, it is very important that all obliged institutions regularly publish information about their activities.

That is why pursuant to the Access to Public Information Act, the administration is obliged to **announce** or **publish** at its own initiative certain categories of information.

#### **1. Obligation for Disclosing Public Information—Art. 14, Para. 2**

Pursuant to the APIA, the administration is obliged to announce information to the citizens that would:

##### **- prevent some threat to the citizens' life, health or security, or to their property**

For example, the State Agency for Civil Protection should, in a timely manner, announce information about accidents, crashes, and disasters, as well as, the type of the measures taken for their overcoming. The bodies of the state sanitary control, in particular, the Regional Inspectorates for the Protection and Control of Public Health (RIPCPH), oversee the quality of drinking water and on the basis of incoming data should announce information about occurred pollution.

##### **- disprove previously disseminated incorrect information that affects important social interests**

The implementation of this provision is particularly important in regards to information related to the environment and people's health. For example, if incorrect information about radiation pollution reaches the public, this would bring to justified fear and tension among the population. Apparently, it is necessary that the bodies, which dispose of the correct information, would timely disseminate it



(usually through announcements in the media) to disprove the previously disseminated data.

**- is or could be of interest to the public**

Such information is, for example, the announcements about the beginning of tender procedures or competition for the recruitment of employers. Information of public interest could be as well information that has already been requested and provided under the procedures of the APIA. Thus, the publication of the information on the Internet site of the institution would, in many cases, decrease the number of requests demanding the same information, as well as the officials' work necessary for its provision.

**must be prepared and released by virtue of law**

For example, the Clean Air Act provides for the obligation for the competent bodies to disclose information collected by the National System for Monitoring the Quality of the Air by means of official bulletins they have to publish.

**Frequently Asked Questions:**

**How is information disclosed under Art. 14, para. 2 of the APIA?**

The law stipulates no specific procedure for the disclosure of such type of information. The assessment for the information disclosure should be undertaken by the body, which disposes of it in regards to the specific functions it performs. It is possible that the information is disclosed through the publication in Internet sites, information bulletins, press releases. Sometimes, in case this does not obstruct the work of the institutions, the combination of several means of disclosure is probable. The approach of the National Audit Office (NAO) for announcing the results from completed audits, which is undoubtedly information of public interest, is an example of such a combined method. Pursuant to Art. 2 of the Rules for Information Disclosure about the Activities of the NAO, the announcements about the audit results are made: through the Internet site, through the official bulletin, and through press releases and press conferences.

**2. Obligation for the Publication of Up-to-date Information—Art. 15 of the APIA**

The APIA sets down an obligation for every chief officer of an administrative structure within the system of the executive power to publish on a regular basis up-to-date information containing:

**- a description of his/her powers as well as data on the organizational structure, the functions and the responsibilities of the administration led by him/her**

In practice, this information is contained in the **statute** that stipulates the activities of the particular state body. A detailed description is most often given by the Organizational Regulations of the executive branch bodies. That is why, the regular publication of the above stated data should not impede any chief officer of an administrative structure—it is enough that excerpts from the statutes that describe the powers of every institution be published.

**- a list of the acts issued within the scope of the powers of the institution**

The scope of the list of acts encompasses all decrees, regulations, internal rules, instructions, and lists, as well as, orders / decisions issued by the bodies.

**- a description of the data volumes and resources, used by the respective administration**

A description of the kind is a description of the type and format of the information held by the institution. The publication of such data would help the requestors to formulate their information requests more precisely and easily, as well as to consider the abilities of the institution to provide information in a certain type of format. For example, the provision of information on a material carrier (like CD, diskette, etc.) is not yet possible everywhere. In this regard, knowing the possible forms for access provision beforehand may be helpful for both sides.

**- the name, the address, the telephone number and the working hours of the respective administration's office which is authorized to receive applications for access to public information**

The chief officer of each administrative structure should determine an office or a department within the respective institution to receive the requests for access to information. The announcement of the place where the requests will be received would save time and would facilitate the requestors in their approach to the institutions, especially when they do it for the first time. That is why the information about the name, the telephone number, and the working hours of the department where requests are submitted should be placed in plain sight in the premises of the institution, as well as, be published on the web site of the institution.

**Besides the obligation for regular publication of up-to-date information under Art. 15, Para. 1 of the APIA, every chief officer of administration structure is obliged to prepare an annual report about the submitted access to information requests.** The report should include data about the issued refusals and the grounds given for these refusals. The report is part of the annual reports about the state of the administration, which are presented to the Minister of State Administration pursuant to Art. 61, Para. 2 of the Administration Act.

**The Minister of State Administration, however, has the obligation to annually publish** summary of the reports of the bodies and their administrations, containing the information under Art. 15., as well as other information relating to the implementation of the APIA.<sup>40</sup> Besides, the Minister of State Administration is responsible for distributing the summary reports in such a manner that the information is available in every administration for review by the citizens.<sup>41</sup>

### **Frequently Asked Questions:**

#### **What is the best place where information under Art. 15 of the APIA may be published?**

Most often, information under Art. 15 is published on the official web sites that most institutions already have maintained. In practice, this approach is not always efficient enough due to the limited number of Internet consumers. That is why it is recommendable that other possibilities of availability of the stipulated by Art. 15 information be guaranteed—for example, displaying the information in plain sight within the premises of the institution, in the information centers, if such exist, etc.

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40 Since the adoption of the APIA, summary reports for the implementation of the law have been published in the annual reports on the state of the administration, prepared by the Ministry of State Administration. The reports can be found at: <http://sadocs.government.bg/sa/>

41 The results from the APIA implementation monitoring, which AIP makes annually, show that in practice, the information is not available for review by the citizens. These results are accessible at: [http://www.aip-bg.org/rep\\_bg.htm](http://www.aip-bg.org/rep_bg.htm).

## Is it necessary to keep a register of the submitted requests?

Yes. Pursuant to the provision of Art. 25, Para. 3 of the APIA, all access to information requests should be registered under a procedure set by the respective body.

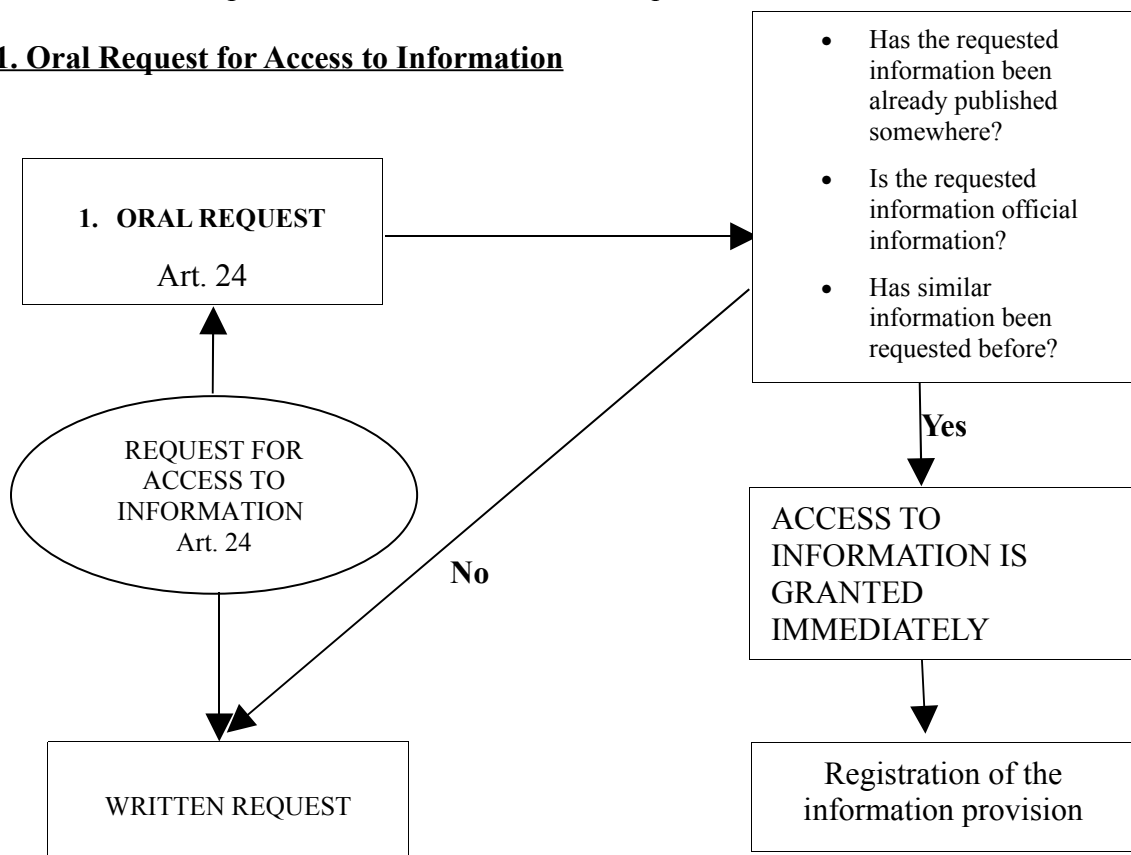
The obligation for keeping a register of the requests is related to the preparation of annual reports about submitted requests. Besides data about the number of the submitted requests, the reports should include data about the issued refusals to grant access and the reasons (grounds) given in the refusal decisions. That is why the maintenance of a register that would contain data about the management/processing of the request within the respective administration (history of the request) would substantially facilitate the preparation of summary reports at the end of each year.

## II. Provision of Information on the Demand of the Requestor<sup>42</sup>

The law provides for the possibility that citizens demand information both orally and in a written form. In both cases, the requestors should address an appointed for that purpose official. For the facilitation of the process of information provision, it is advisable that the institution sets:

- **a person**, who will be responsible for the handling of access to information requests, including the oral ones;
- **a place** where access to information requests to be submitted. Appropriate places might be the registrars' office, the reception room, the Press center, the PR department, or a purposefully appointed office for the reception of access to information requests.

### 1. Oral Request for Access to Information



<sup>42</sup> See Attachment No. 6.

Very often, citizens turn to the administration with oral requests for information. These requests may vary from very simple questions to demands for copies of documents, written reviews, etc. Provision of information at oral requests facilitates both the citizens and the administration.

In order for the provision of information at an oral request to be possible in practice, the official responsible for the reception of information requests should be:

- aware of the obligations of the administration under the APIA;
- aware of the volume and type of the information, generated and held within the respective administration, in order to decide whether the requested information may be provided immediately;
- making a list of the issued acts and the documents published by the institution available to the citizens at the reception room or at the office (department) where requests for access to information are received would facilitate the work of the officials.

**Example:**

A computer may be installed in the information center of the institution to provide access to information under Art. 15 of the APIA, the acts of the institution, as well as other type of public information. Thus citizens could search and review by themselves the documents they are interested in.

If a citizens turns to you with an oral request of information:

- Check whether the requested document has been already published somewhere—Internet site, official bulletin, etc. If the information has already been published, then you can easily provide a copy of it to the requestor.
- Check whether the demanded information has been provided at a previous request for access to information. Frequently, different people are interested in the same document and in case that access has already been granted, it is not necessary a decision to be taken on the request once again.
- In case that the requestor demands information whose provision requires time for preparation or you have difficulties deciding whether to grant access to the requested documents, then speak to the requestor, try to find out what is the information that he/ she is interested in, and, if it necessary, assist him/ her in the formulation of a written request for access to information.

**Frequently Asked Questions:**

**Who shall respond to oral requests?**

The appointment of an official who shall be responsible for the handling of oral requests often depends on the activities of the respective institution. Information centres have been purposefully established in administrations, which work with citizens everyday. In institutions, which seldom work directly with citizens, an officer from the press center and reception days for citizens have been appointed.

**Example:**

In the *Public Internal Financial Control Agency*, the Director of „Press-center and PR“ Department is responsible for the response of oral requests.

In the *Municipality of Sliven*, the official, who works with citizens at the information center, responds to the oral requests there.

In the *Ministry of Transport*, the oral requests for access to information should be made in the Registrars' Office.

### **Should the oral requests be registered and in what way?**

Avoiding any type of formalism is recommendable. The practice, however, is different in different institutions.

#### Example:

*In the Public Procurement Agency (PPA)*<sup>43</sup> - every official from the PPA may respond to an oral request within the limits of his/her competency; and there is no obligation for the registration of the requests.

*In the Ministry of Transport*, the official, who has accepted the oral request, should fill in a form, similar to the form of a written request. The form should be signed by both the official and the requestor and submitted to the Registrars' Office.

## **2. Provision of Information at Written Request**

### **a) Reception and Registration**



Most often written requests for access to information may be submitted to the administration in two ways—personally by the citizens or by snail mail. In both cases, the requests should be registered. APIA provides for the possibility that requests are submitted electronically, under conditions determined by the respective institution.

#### Example

*In the Ministry of Health (MH)*,<sup>44</sup> the officials from the Administrative Services Department (ASD) register the submitted written requests in an Electronic system of document management under a registration index and then direct the requests to the Director of the „Protocol and PR“ Department. The requests that have been registered shall be sent to the „Protocol and PR“ Department within an hour of their registration in ASD.

*In the Agency for Social Services (ASS)*,<sup>45</sup> written requests for access to public information are received and registered under the common procedure in the registrars' Office of ASS and are redirected to the PR Department at the day of their receipt. If the request has been submitted to a regional directorate of the ASS, the request is referred by official mail to the PR Department on the day of its receipt. The requests are registered under the order of their receipt in a special register that is held in the PR Department.

*In the Agency for Post-privatization Control*, written requests are initially registered by the general

43 Pursuant to the Rules for the Provision of Access to Public Information within the PPA – Point IV, Para. 1

44 Pursuant to the Internal Rules for the Provision of Access to Public Information within the MH– Art. 2.

45 Pursuant to the Rules for the Provision of Access to Information within the ASS– Chapter I,Pt. 2.

Registrars' Office, together with all other submitted documents. Later, the requests are separated and registered in a special register for access to information requests.

## b) Consideration of Written Requests<sup>46</sup> – Steps

### Who is responsible for the consideration of the requests and keeping the record?

After the registration of the requests, they should be considered by the person, appointed to be responsible for the provision of access to public information within the respective institution. Different institutions have different approach towards who shall take the responsibility for this consideration.

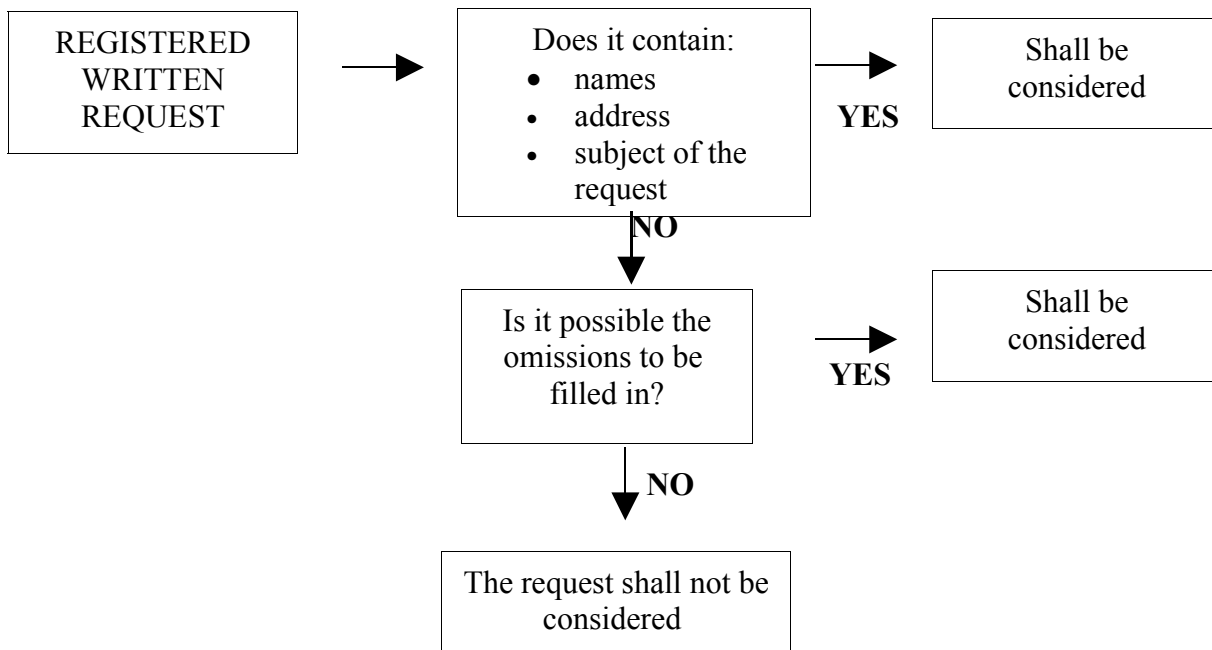
#### Example

In the *Public Internal Financial Control Agency*, the Director of the „Press-center and PR“ Department is responsible for the consideration and response to the requests within the legally prescribed time frames.

In the *Ministry of Economics and the Ministry of Transport*, the Chief Secretaries are appointed as officials responsible for the organization, coordination, and the oversight over the decisions for access to information provision or refusal.

After the registration of the written requests, they should be reviewed and a decision for access provision or refusal should be issued within a period of 14 days. Beneath, we will try to describe the steps that a decision making process in regards to a request should follow.

### Step One. Does the request contain the name and address of the requestor and the subject of the request? (Art. 25, Paras. 1 and 2 of the APIA)



<sup>46</sup> See Attachment No. 7

Every written request should contain:

- **The names of the physical persons** and the *business name and the seat of the legal persons*;
- The **type of information** that the person requests. The type of information may be defined in a descriptive way. (For example, „I would like to be granted access to all available information on the following topic:...“) The requestor may specify the documents that he/she demands (giving their Reg. number, date of issuing and type). The documents may be described by something that the requestor knows about them—for example, the addressee of a particular order. In all cases, access to information should be granted. No details about the document which is being requested are required. It is enough that the information is specified in a way that identifies it unambiguously;
- **Mailing address.**

### **Attention!**

Remember that the required requisites for each written request serve only for the quick and precise response to the demand for access to information. If the requestor has omitted a small detail, like his/her father name, or instead of a mailing address has given a telephone number, this should not be used as grounds for leaving the request with no consideration. You should do your best to get in contact with the requestor to particularize and complete the request. If hardly anything may be done after all your attempts, then the written request is left without consideration.

### **Frequently Asked Questions:**

#### **Should citizens specify their Personal Identification Number, or BULSTAT for legal persons<sup>47</sup>?**

No. The law does not explicitly provide for such a requirement. Законът категорично не въвежда подобно изискване. On the contrary, a requirement for the requestors to provide such data does not comply with the purpose of the law.

#### **Should the mailing address that the citizens give be the same as the permanent address from the ID cards?**

No. The requestor should specify a mailing address at his/ her choice.

#### **Should the request contain the personal signature of the requestor?**

No. It is enough that the requestor signifies his/ her names, or the business name and the seat for legal persons.

#### **Step Two. Is the requested information available at the respective administration? (Art. 32, Para. 1 of the APIA; Art. 33 of the APIA)**

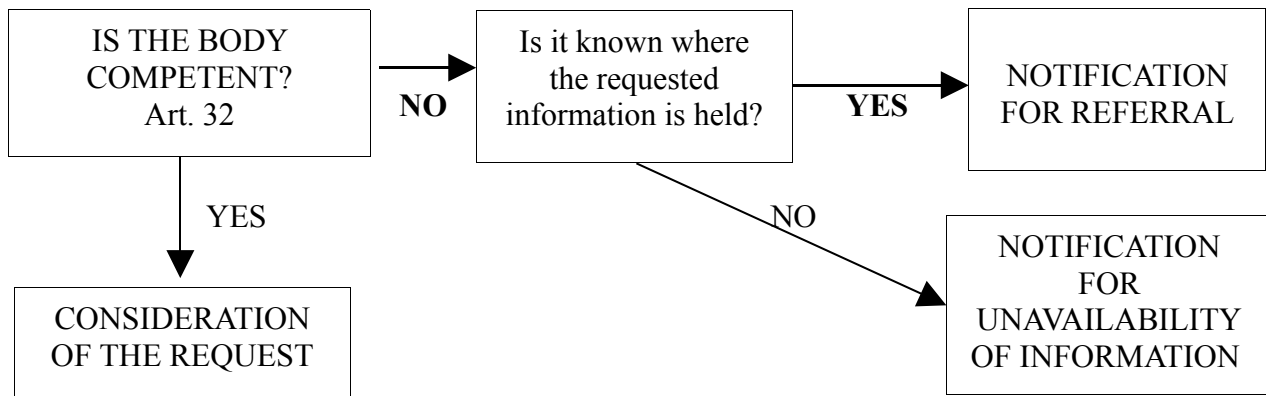
It is not always obvious to the citizens which institution is the holder of a certain type of information. That is why they may request a document that is not held by your institution. In such cases, if the institution that holds the requested documents is known, the request for information should be referred

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47 BULSTAT is a unique registration number, given to every legal person by the National Statistical Institute.

to the respective competent body. A notifying letter should be sent to the requestor within a period of 14 days. The notification should contain the name and the address of the body or the legal entity, to which the information request has been referred.

If you have no clue where the requested information is held, you should notify the requestor.



**Frequently Asked Questions:**

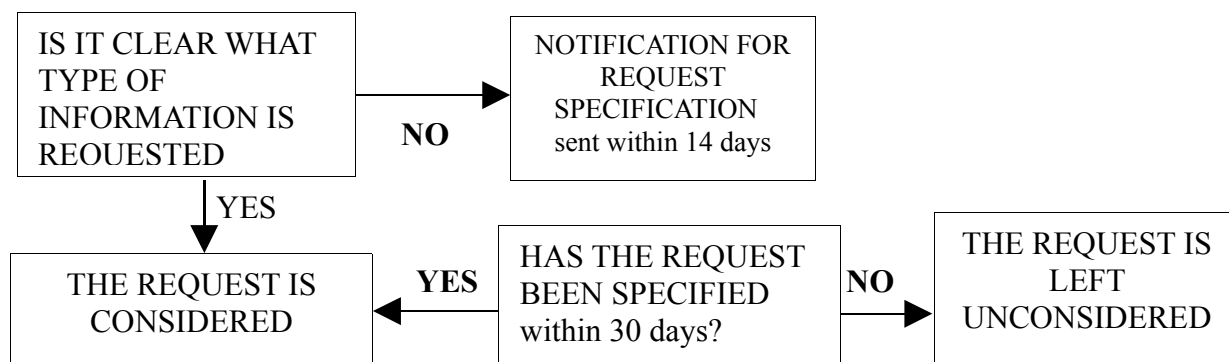
**Shall information that is not generated but is held within the respective administration be provided?**

Yes. APIA (Art. 3, Para. 1) provides for the obligation that access is granted to information that is either generated or held within the institutions.

**Example:**

If a citizen requests from the municipality copies of the permits issued by the Regional Inspectorate for Protection and Control over Public Health for the production and sale of food in market places, then the municipality should provide access to the requested information. Though the administration of the municipality is not the generator of these documents, it keeps copies of these documents for all market places within its territory.

**Step Three. Is it clear what type of information is requested? (Art.29 of the APIA)**





Citizens not always manage to describe precisely the type of information they need. There are cases when the requestor has not formulated comprehensively his/ her request and the officials can hardly determine the document they are supposed to provide. For example, s request of the type: „I would like to have information about the procurements on public tenders, organized by X“ is too broadly formulated.

In such cases, the law provides that the so called notification for the specification of the request is sent to the requestor. This notification should be also sent within a period of 14 days after the registration of the request.

**The specification** of the request by the requestor shall be sent to the institution within 30 days after the receipt of the notification. If the requestor fails to send the specification within the prescribed period of time, the request shall be left unconsidered.

After the citizen clarifies the his/ her request, the information shall be provided within 14 days after the specification.

**Frequently Asked Questions:**

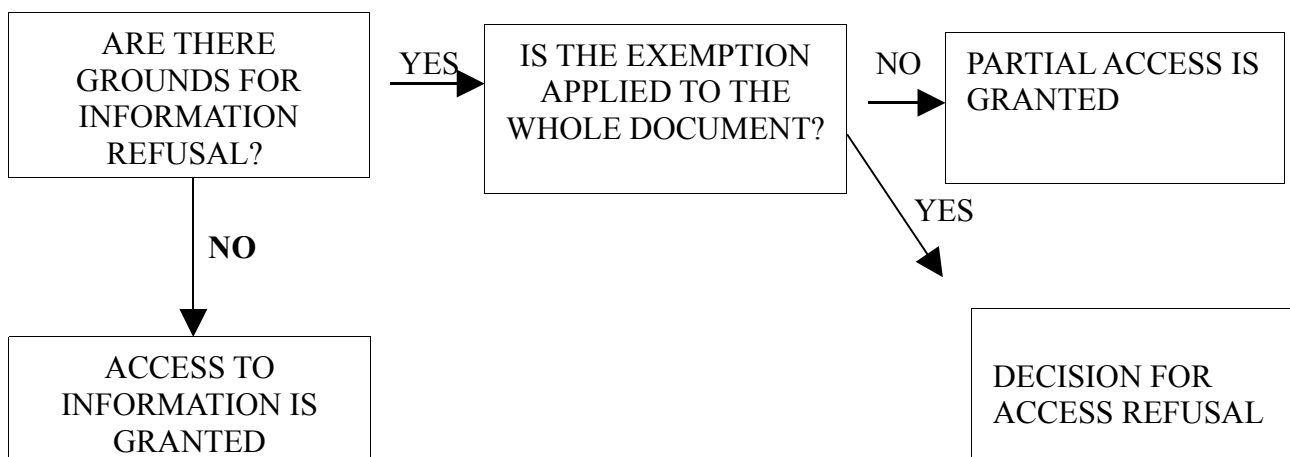
**May the specification be done by phone?**

Yes. We recommend that all types of formalities be avoided in the processing of the request with the purpose of timely provision of the requested information.

**Evaluation of the volume of the requested information—notification for extension**

When the volume of the requested information is big or when more time is required for the searching for the particular documents, the APIA allows for the extension of the legally prescribed period for access provision, though not more that 10 days.

**Step Four. Are there grounds for information refusal? Is the exemption applied to the whole document or only to some parts of it? (Art.37 of the APIA)**



## **Who shall do the assessment?**

The assessment whether the requested information is subject to a legal exemption shall be done either by the person, whom the APIA explicitly obliges to do so (e.g. Ministers, mayors, chief officers of agencies, etc.), or by an official purposefully appointed by the respective obligee.

The most important things that should be taken into consideration in that case are:

1. A decision refusing access to public information may be issued only if legal grounds for that exist.
2. Whenever it is possible, partial access to information should be granted.<sup>48</sup>

### Example:

*In the Ministry of Transport (MT)<sup>49</sup> and the Ministry of Economics (ME),<sup>50</sup> all Deputy Ministers may take decisions for access to information provision, while decisions refusing access to information or granting partial access to information may be taken by the Chief Secretaries of the two ministries.*

## **Assessment whether the requested information affects third-party interests**

It is possible that the requested documents contain information that if disclosed may affect the interests of a third party. Personal data or information pertaining to the trade secret may constitute this type of information (See the exemption section of this handbook). In such cases, the consent of the third party should be sought before the decision for access provision is taken. The law prescribes that the consent is given explicitly in a written form.

## **Frequently Asked Questions**

### **When the consent of the third party is not required?**

The consent of the third party is not required in the cases when the third party is also an obliged body under the APIA. In such cases, the requested information shall be provided with no delay.

### **Within what time period shall the consent of the third party be sought?**

The letter, which asks the consent of the third party, shall be sent within a 7 days period as of the registration of the request for access to information.

### **What is the time period within which the consent of the third party shall be expected?**

The response of the third party shall be given within a period of 14 days as of the sending of the request for consent

### **What shall be done if no response is sent by the third party?**

If no response is sent by the third party, **partial access should be granted** to these parts of the requested information, access to which shall not be restricted. The parts which contain information that may affect the interests of the third party shall be erased beforehand (Art. 31, Para. 4 of the APIA). Only parts containing personal data or data pertaining to the trade secret exemption may be erased.

### **What shall be done if the third party refuses its consent<sup>51</sup>?**

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<sup>48</sup> See Attachment No. 9

<sup>49</sup> Order No. ПД-08-2845/31.12.2004 of the Minister of Transport

<sup>50</sup> Order No. ПДТ – 16 – 236/08.11.2002 of the Minister of Economics

<sup>51</sup> See Attachments No. 9 and No. 2

In such a case, the respective body **may also provide partial access** to the requested information, in volume and manner that does not disclose the information pertaining to the third party (Art 31, Para. 4 of the APIA).

### **Step Five. Granting access to public information or refusing to grant access (Arts. 34 and 38 of the APIA)**

#### **c.) Decision to grant access to public information<sup>52</sup>**

In cases when no restrictions to the provision of the requested information exist, a decision granting access to information shall be prepared.

The **decision** granting access to public information must state:

**- the degree of the ensured access to the requested public information;**

The law provides for granting partial access to information. This means that if the requestor demands a document, which contains both data explicitly protected by law as secret and data that are not secret, access to the document to be granted given that secret parts have been erased beforehand.

**- the time within which access to the requested public information is available;**

The requested information must be available to the requestor within a minimum of 30 days period. The decision granting access to information should state the opening and closing dates when the information would be available.

**- the location where the requested information will be disclosed;**

Premises must be provided where the requestor would have access to the requested documents in the format he/ she has stated as preferable. This requirement pertains precisely to cases when the requestor has stated that he/ she would like to read and review the documents.

**- the form in which access to the requested public information will be granted;**

**- the costs for granting access to the requested public information.**

Granting access to public information services are free of charge. Payment is only required to cover the expenses for copying, printing, or the material bearer. The expenses incurred for granting access to public information shall be recovered in accordance with tariffs determined by the Minister of Finance.

#### **Attention!**

It is recommendable that the decision granting access to information state the name and phone number of the official, who is responsible for the actual provision of the information. Thus the requestor may get in contact with the official and make an appointment for the day and time that is convenient for both sides, the way of payment (bank transfer or cashier), etc. Furthermore, such an approach allows the official to plan better his/ her work schedule and at the same time guarantees that the citizen would not have to wait to be taken care.

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<sup>52</sup> See Attachment No. 8

Example:

Here is a part of a decision granting access to public information, sent by the Ministry of Health to Access to Information Programme:

*„...You may contact us by phone at number:..... every working day between 9 a.m. And 5:30 p.m. In order to make an appointment for the provision of information at your convenience.“*

**d.) Actual granting access to information**

The decision granting access to information shall be signed and sent by mail to the requestor, while the requested documents shall be copied and prepared for provision.

**Attention**

If the requested information is in small volume, it is recommendable that you send it by mail. Thus, you would save time and efforts. Some Bulgarian institutions use this approach. These are, for example, the Ministry of Culture, the Cadastre Agency, the Customs Agency, the State Reserve Agency, etc.<sup>53</sup>

We recommend that you follow such positive practices by including the possibility of sending copies of requested documents by mail in the Internal Rules for Granting Access to Information within your institution.

If the requestor receives the requested documents in person, he/ she shall pay the specified copying costs and, when it is necessary, shall sign a record<sup>54</sup> upon the provision of the information.

We recommend again that all formalities are avoided in the payment process, as well as in the procedure for signing the record.

Frequently, some institutions allow for payments through bank transfers only, which sometimes means that the cost of the bank transfer is higher than the cost of the information itself. Consequently, the institution should provide more convenient ways for payment in the Accounting Office or at the Cashiers' within the institution.

The record shall be signed upon the provision of the information by both the requestor and the civil servant and should contain a list of the disclosed documents.

**Example:**

*In the Ministry of Transport,<sup>55</sup> every department keeps a record of the submitted request. The record contains: a request, the correspondence, a decision under Art. 28, Para. 2 of the APIA, payment documents under Pt. 10 of Order of the Minister of Transport, record or a letter signifying the provision of information, registration card filled in under the provision of Pt. 19 of the Order of the Minister of Transport. Within a period of one month after the closing of a particular access procedure, the directors of the respective department refer the records of the requests to the Registrars' Office to be included in the register as stipulated by Pt. 5 of the Orde of the Minister of Transport. The records on the access to information provision procedures are kept in the Registrars' Office.*

*In the Public Procurement Agency (PPA),<sup>56</sup> access to the requested information is provided by the official, who has signed the decision granting access. A records is drawn and signed by both the official and the requestor. Copies of the record and the payment document is sent to the Financial Department of the PPA*

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53 After submitting a request, AIP has received information in such a way.

54 See Attachment No 10

55 Order No. ПД-08-2845/31.12.2004of the Minister of Transport

56 Pursuant to the Internal Rules for Access to Information Provision within the PPA.

*In the Social Services Agency (SSA),<sup>57</sup> access to information is provided after a payment of the expenses, if any, at the Cashiers' Office at the SSA or through a bank transfer. A record is drawn upon provision of access to public information, which is signed by the applicant and an official from the PR Department, who has provided the information. If the information cannot be given personally, it is sent by registered mail with a log number from the Registrars' Office. The expenses are covered by cash on delivery.*

#### **e.) Decision to refuse access to information<sup>58</sup>**

In case that access to the requested information, or part of it, shall be restricted, a decision for refusing access to information must be issued.

The decision should contain:

factual grounds/ reasons;

- legal grounds;
- conclusion;
- the procedure and time frames for its appeal.

***Factual grounds/ reasons** – contains the following facts: who, when has requested what type of information; what actions has the institution undertaken in regards to the requests and what conclusions have been drawn in regards to the factual grounds.*

***Legal grounds** – the legal provision that gives grounds for refusal.*

***Conclusion** – the conclusion is drawn upon the existing factual grounds interpreted under the provision of the respective legislative act.*

The failure to issue a decision within the legally prescribed time period is an administrative violation and the responsible official would be punished with a fine between 20 to 50 BGL pursuant to Art. 42, Para. 1 of the APIA.

### **3. Appeals of decisions of refusal to grant access to information**

Each decision under the APIA, which violates the rights of the requestor, may be challenged before the court (Art. 40 of the APIA). Both decisions for granting access to public information and for refusal to grant access to public information may be challenged. The decisions may be **appealed** before the Supreme Administrative Court (SAC) or before the respective regional court, depending on the body which has issued the decision. The procedure of appeal is stipulated by the provisions of the Administrative Procedure Act (APA) or the Supreme Administrative Court Act (SACA). For issues unsettled by the SACA, the APA should be applied (Art. 11 of the SACA).

The complaints are sent to the courts **through** the institution, which has issued the respective decision.

#### ***Attention!!***

Under the procedure of the SACA, as well as under the procedure of APA, the administrative body is obliged to send the complete record of the requesting procedure and the complaint, within **3 days** of the submission of the complaint to the institution.

<sup>57</sup> Pursuant to the Internal Rules for Access to Information Provision within the SSA.

<sup>58</sup> See Attachment No. 11.

The failure to meet the obligation of timely referring (within 3 days) the complaint and the record to the court is an administrative violation and the responsible official is punished with a fine of 40 BGL (Art. 54, Pt. 2 of APA).

**Attention!**

If a refusal to grant access to information under Art. 37, Para 1, Pt. 1 of the APIA (the requested information is classified as state or administrative secret, as well as in cases described in Art. 13, Para. 2) is appealed, the court may request that the body presents the documents as necessary evidence. In practice, this means that the court may oblige the body to provide the information to which access was refused in order to inspect it in chamber and judge over the classification mark (Art. 41, Paras. 3 and 4 of the APIA). The time period within which the body shall provide the information to the court shall be determined for each particular case.

**Frequently Asked Questions:**

**Are mute refusals subject to appeal?**

Yes. Despite the lack of an explicit provision under the APIA, mute refusals are subject to appeal<sup>59</sup> under the common provision of Art. 14 of the APA.

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<sup>59</sup> According to the established practice of the SAC, mute refusals are subject to appeal since the APA is applicable under analogy. The supreme justices assume that the absence of a particular legal provision under the APIA shall not deprive the citizens of their right of access to justice. Furthermore, such a hypothesis will undermine the whole meaning of the APIA.

