

**ACCESS TO INFORMATION  
IN BULGARIA 2005  
REPORT**

**SOFIA 2006**

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*The conclusions and recommendations published in this report are of Access to Information Programme and do not engage or reflect the views of the Netherlands Ministry of Foreign Affairs.*



ACCESS TO INFORMATION  
PROGRAMME



Programme for Social Transformation in Central and East Europe  
(MATRA) of the Netherlands Ministry of Foreign Affairs

## **Access to Information in Bulgaria 2005 Report**

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## FOREWORD

*Access to Information Programme (AIP)* presents its annual report *Access to Information in Bulgaria 2005*.

Every year since the adoption of the Access to Public Information Act in 2000, we have been analysing the developments in the freedom of information arena during the previous year.

It is clear that the Bulgarian law needs to be amended to be in line with the Council of Europe standards, on one hand, and the developing case law, on the other. However, in 2005, several attempts were made to deteriorate FOI legislation through amendments to legislation connected to access to information. That is why the first part of this report is dedicated to the analysis of the draft proposals for legislative amendments which would affect the right of free access to information.

The second issue with which the report deals with is the scheme for active disclosure of information by executive branch bodies in the context of the permanent claims of strategies and programs for the development of the electronic government. These strategies and programs should consider the existing legal obligations of the institutions. At the beginning of 2006, the team of AIP conducted a special monitoring study on the Internet sites of executive branch institutions from the point of view of the Access to Public Information Act. The results from the monitoring are presented in the second part of the report.

While the procedure for processing and deciding on a written request is well provided by the law, the obligation for publication of certain kinds of information is not.

**First**, an important problem for the access to information provision practices is the legislative and political interpretations of *publicity*.

**Second**, as our monitoring and interviews with representatives from the administration have shown, the abstract formulation of the categories of information subject to publication should be complemented with the specification of the categories in order for the obligation under the law to be respected in practice.

**Third**, with regard to the schemes for active disclosure and the disclosure itself, it is important that administrative capacity is built for the performance of these activities.

The third part of the report gives an analysis of the cases that AIP received for legal comment by citizens, partner nongovernmental organizations, journalists and businesses.

The fourth part presents the court cases and a short description of the characteristics of the court's practices during the year.

Our six years of experience with the implementation of the law shows that good administrative practices do not guarantee their own sustainability. Changes in the political leadership frequently result in the alteration of good practices, and sometimes in their elimination.

This issue raises the question of beginning the work on the amendments to the Access to Public Information Act. It is necessary that we remember the principles on which the legislation was grounded. These are principles which should become part of the policies and which should not be constantly endangered. These principles are related to the foundations of a democratic society. We hope that these recommendations will be taken into consideration and will facilitate the promotion of access to information in Bulgaria.

*Gergana Jouleva, PhD,  
Executive Director  
of Access to Information Programme*

# RECOMMENDATIONS

## I. LEGISLATIVE RECOMMENDATIONS

### Necessary Amendments to the Access to Public Information Act (APIA):

- Increase in the number of the obliged bodies  
Introduction of the obligation for the provision of particular categories of information by monopoly-holding commercial companies. Such an introduction requires amendment of Art. 3, Para. 2 of the Access to Public Information Act.
- Change of the definition for *public information*.  
Definition of public information as information that is generated and held by the public institutions (listed by Art. 3 of the APIA).
- Abolition of the distinction between official and administrative public information.  
The current distinction (stipulated by Art. 10 and 11 of the APIA) corresponds to an understanding of the functions of the administration and the rights of citizens that undermines democratic principles of free flow of information.
- Introduction of European standards with regard to the exemptions to the access to information.  
Introduction of the principle that information may be refused only if its disclosure would harm or would be likely to harm other protected interests, and only if there is no overriding public interest in the disclosure.
- Publicity of the decision-making process of the administration.  
The statements and the discussions about draft regulations and other documents of public interest should be accessible at their initial stages, unless exemptions are applicable (amendment to Art. 13, para. 2).
- Establishment of an explicit obligation for the implementation of the law by the Minister of State Administration and Administration Reforms.
- Establishment of an obligation for the active disclosure of information under Art. 14 and Art. 15, Paras. 1 and 2 of the APIA, including through the Internet.
- Establishment of an obligation for the appointment of an information official.
- Establishment of clear and higher sanctions for failures to observe the law.
- Appointment of officials who would report on violations under the APIA and appointment of officials who would impose sanctions. It is necessary that the sanctions imposed for noncompliance with legal obligations and orders of the court be increased. The latter would require the amendments of the administrative-penal provisions of the APIA.
- Establishment of fast legal procedures for hearing cases stemming from complaints against APIA decisions.

## Necessary Amendments to Related Legislation:

- ❑ Provision of unrestricted public access to the concession and public procurement contracts through their mandatory publication in the respective registers pursuant to the Concessions Act and the Public Procurement Act.
- ❑ Connection of anti-corruption legislation to access to information legislation. In this regard, the following amendments are suggested:
  - amendments to the Public Servant Act with the purpose of unrestricted access to the conflict of interest declarations of public servants;
  - amendments to the Environmental Protection Act with the purpose of unrestricted access to the conflict of interest declarations of the experts who perform Environmental Impact Assessments;
  - amendments to the Public Disclosure of Property Owned by High Government Officials Act with the purpose of unrestricted access to the asset declarations of public figures.
- ❑ An end to the legislative and practical attempts to restrict the access to different types of registers and information related to the pasts, the assets, and the economic interests of public figures. These registers must be unconditionally public and the consent of the third party must not be sought.
- ❑ Regulation of the access to the documents of the former State Security Services by a law with the provision of maximum transparency with regard to the public figures.
- ❑ Unification of the procedures for access to public registers.
- ❑ Unification of access fees for the public registers by only charging for the material expenses incurred in granting access, according to the principle under Art.20 of the APIA. The tariffs shall be brought in compliance with Decree No. 10 of the Minister of Finance since some current fees are higher than the highest determined by the regulation.
- ❑ Establishment of a specific time-bound obligation for the publication of draft regulations before their public discussion; the time limits for public discussion; opinion statements from consultations and discussions; obligation for the body which drafts the regulations to respond to every opinion statement expressed and to publish that response before the introduction of the draft to the Parliament. The following is required to effect this:
  - Development of the provision stipulated by Art. 2a of the Statutes Act and the specification of the procedure in the secondary legislation adopted by the Council of Ministers.



## Necessary Amendments to the Personal Data Protection Legislation and to the Process of Its Implementation:

- ❑ We hereby uphold the recommendation given in the *Access to Information in Bulgaria 2004 Report* that personal data protection legislation should be brought into line with international standards in the area. We recommend the adoption of the principle that citizens' right to their own personal data be restricted only as an exception. This requires the following:
  - Amendment to the provision of Art. 34, Para. 3 of the Personal Data Protection Act instituting the requirement that administrators apply the three-part test contained in Art. 8, Para. 2 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) in cases of conflict between the right of access to personal data and protection of national security;
  - Institution of the requirement that administrators applying the three-part test under Art. 8, Para. 2 of the ECHR provide their motivations in writing, as well as the factual basis for their decisions.
- ❑ We uphold the recommendation given in the *Access to Information in Bulgaria 2004 Report* about the adoption of comprehensive and systematized regulations on access to information for personal data in the healthcare sector. More precisely:
  - Precision of the patients' right of access to explicit information about their health condition, the necessity of treatment, possible risks, etc.
  - Precision of the patients' right of access to their own medical records.
- ❑ In terms of the implementation of the PDPA, the adoption of an easier registration procedure for personal data administrators is necessary. This requires the following:
  - Establishment of an online register of personal data administrators and the possibility of electronic registration and search of this register.
- ❑ In terms of the implementation of the PDPA, the adoption of an Ethical Code with the participation of a large number of personal data administrators is necessary.

## II. APIA IMPLEMENTATION RECOMMENDATIONS

- ❑ Establishment and development of internal rules for access to information provision in all public institutions is necessary. This requires that the following specific measures be taken:
  - Adoption of a special policy for implementation of the Access to Public Information Act expressed through common guidelines for the executive branch and communicated by the Minister of State Administration;
  - Adoption of internal rules for implementation of the Access to Public Information Act at the institutions where these are still missing. Publication of these internal rules, including on the Internet;
  - Training of all public servants regarding the APIA, the standards in the area, the relation between the APIA, the PCIA, the PDPA;
  - Appointment of an information official or office within each institution.
  - Publication of guidelines on how to exercise the right of access to information in easily accessible places, including the Internet;
  - Publication of information under Art. 14 and Art. 15 of the APIA, including the report on the APIA implementation on the Internet sites of the institutions.
  - Establishment of a payment mechanism in order to allow the payment of access to information fees at the institutions, and not only at banks;
  - Effective management of existing information, making it easily accessible to public servants so that they could provide the available information immediately upon oral request.
- ❑ Special efforts need to be made to satisfy the requirement, stipulated by § 9 of the Final and Transitional Provisions of the Protection of Classified Information Act (PCIA), that all of the documents classified before the adoption of the law should be reviewed. Lists of all declassified documents, as well as those under Art. 26 of the PCIA, should be accessible on the web sites of the institutions.
- ❑ Adoption of a straightforward policy for the provision of unrestricted and unconditional access to the PUBLIC registers, including on the Internet.
- ❑ Establishment of continuity and sustainability in the access to information provisions at all covered institutions.

## CHANGES IN ACCESS TO INFORMATION LEGISLATION IN 2005

### *Trends in 2005*

Access to information legislation and changes in it in 2005 should be analyzed in the context of public demand for information in Bulgaria. During the last two years, journalists and the media have increasingly started to exercise their rights to information access. Citizens and non-governmental organizations have also evolved in seeking access to government-held information. In the first few years after the adoption of APIA, people mainly sought information in order to protect other rights or legal interests; while in 2004-2005 an increasing number of citizens and organizations requested information primarily to hold government institutions accountable for their actions. Journalists and non-governmental organizations have been especially active in this respect when inquiring about the decision-making process within public institutions, about the way public money is spent, and about the internal financial audits of the administration. The Access to Public Information Act has been used more often to fight or prevent corrupt practices or wrongdoings within public institutions.

The legal framework regulating the right to information access and the exemptions from this right does not suit the current needs of the Bulgarian society. The Access to Public Information Act was adopted at a time when public debate about corruption was not very intense. On the other hand, the law, which was drafted before 2002, did not incorporate some very important principles of access to information reflected in Recommendation (2002)<sup>2</sup> of the Committee of Ministers to member states on access to official documents. One of these principles which is particularly important is the requirement that public institutions balance the right to information access with its restrictions. Often the public interest of fighting corruption and preventing wrongdoings within the administration outweighs the interests of individuals or commercial organizations for whom information could be sensitive. These needs of the public with regard to information access were not taken into account by the Bulgarian MPs when they adopted the laws regulating access to information exemptions.

On the other hand, 2005 was characterized by intensive work by legislators in connection with the upcoming accession of Bulgaria to the European Union. Legislative changes did reflect on the right to information and the regulation of its exemptions, without really touching on its essence. Generally, changes to access to information legislation were not proposed with the idea of improving the regulation of this right, but instead in order to reform other sectors of government. Typical examples were the proposed amendments to the Ministry of Interior Act, the Protection of Classified Information Act, and the Protection of Personal Data Act. This is why legislators did not take into consideration the principles and the legal framework of freedom of information while regulating these sectors.

In most cases the draft texts of the amendments which rose questions and problems with regard to information access were improved, mainly due to the active role of the media and non-governmental organizations.

Yet another problem with drafting legislation in Bulgaria is that the necessity for wide access to some categories of government-held information is often overlooked. This is especially valid for anti-corruption amendments. For example, since March 2006 high-

level government officials are not allowed to take part in boards or councils of commercial organizations. Despite this fact, economic interest declarations filed by such officials pursuant to art. 29a of the Public Officials Act are still unavailable to the Bulgarian society. Full texts of public procurement contracts are not published either, despite the existence of an online register of concessions, maintained by the Cabinet.

Opportunities for public participation are still lacking, especially with regard publicity of draft legislation and regulations at the earliest stage of their development. Although there is special regulation of access to information and public participation on environmental matters, in 2004-2005 the Bulgarian authorities hindered access to environmental information about large projects affecting public health and security, like the construction of a nuclear power plant near the town of Belene.

We should acknowledge, however, that some government authorities have adopted access to information regulations which have led to improved access to information practices and have increased public trust in these institutions.

## ***Access to information legislation***

### ***The concept of public information***

Practices of access to information have highlighted some important problems caused by the imprecise text of the law. The first problem is related to the definition of *public information*. The Access to Public Information Act awkwardly defines such information as „any information relating to the social life in the Republic of Bulgaria, and giving opportunity to the citizens to form their own opinion on the activities of the authorities having obligations under this act“ (art. 2, para. 1 of APIA). A more precise characteristic of *public information* is given by art. 10 of the APIA - *contained in the acts of the state or local self-government bodies*, and by art. 11 - *which is collected, created and kept in connection with official information*. In comparison, Recommendation (2002)<sup>2</sup> defines the corresponding concept of official documents as „all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation.“

In a number of cases of the last few years, the Supreme Administrative Court adopted the view that certain kinds of government-held information were not public - the names, degrees, and qualification of high level ministry officials; hunting licenses; the order of a mayor where the requestor had not specified the order content; information about the number, purpose, and duration of official trips; cell phone numbers of members of a municipal council whose phone bills were paid by the local budget; etc. In still other situations, whether a court finds similar kinds of information to be public varies from case to case. In order to make a judgment, the courts sometimes consider the interest declared by the requestors. This contradicts directly with the most fundamental principle of access to government-held information reflected in the APIA legislative memorandum introduced in 2000 by the Cabinet - that access to information requests should be responded to without examining the public interest of requestors.

These practices, as well as the comparison of the text of APIA with Recommendation (2002)<sup>2</sup> and other access to information (or freedom of information) legislation of European and North American countries prove the need for changes in art. 2 para. 1 of the APIA. According to contemporary views access to information legislation should establish the right to access to all information created or kept by public institutions.

### **Some specific categories of public information**

Legislation in many countries - including Bulgaria - guarantees free access to specific kinds of information. Typical examples include information on environmental matters, documents of the former state security services, government contracts, and information contained in public registers.

Information on environmental matters has been defined by the Environmental Protection Act which was adopted in 2001. One of the purposes of the EPA was to provide easier access to such information. Although the exemptions from the right to access information on environmental matters should be applied after considering the public interest from disclosure (see art. 20, para. 4 of EPA), the implementation of the law is still problematic. The will of the legislators was for the EPA to contain no exemption analogous to art. 13, para. 2, item 1 of APIA, protecting the „deliberative process“ within public institutions; nonetheless, environmental information which relates to the preparatory work of decisions and regulations is often refused. Even environmental impact assessment reports have been withheld with reference to art. 13, para. 2, item 1 of APIA, despite the fact that the Minister of Environment and Water has issued a regulation which explicitly establishes that such documents are public.

Access to information contained within the documents of the former security services was regulated until 2002. Presently this matter is governed by a regulation of the Minister of Interior. Not only is the regulation less than a statutory act, but it also does not accommodate easy access to documents of the former security services. In practice, we have noticed many problems with access to such documents, because they have been classified as state secrets or public institutions claim they contain personal data. Before 2002, the law required that high level officials had to be checked for affiliation with the former security services, but this requirement was dropped when the law was repealed. We believe, however, that in democratic society public figures are subject to a higher level of scrutiny than ordinary citizens.

### **Information preventing corruption practices**

Public opinion has long recognized the need for increased publicity of information such as contracts between the government and private companies, property declarations of high government officials, and financing of political parties. Similar public discussions are found in many other countries in Central and Eastern Europe and Latin America. A major difference between these countries and Bulgaria is that our national legislation does not link anti-corruption measures to a requirement for publishing documents. For this reason, the anti-corruption measures in Bulgarian are implemented *in obscurity*, which significantly decreases their effectiveness.

For example, the Public Procurement Act and the Concession Act have established for the creation of public registers. The purpose of both registers is to ensure transparency of government contracts and to prevent corruption and obscure practices. At the same time, full texts of the contracts - the very reason for the registers' existence - are not made available. Rather than making the contracts available, public institutions require officials to extract and publish information from them, which only increases maintenance costs.

Recent years have witnessed a growing need in Bulgarian society for increased trust in public officials and for prevention of corrupt practices within government. This was the main purpose for the amendment of the Public Servants Act (PSA) which required public

servants to declare their economic interests and whether they were involved in commercial activities. The Public Administration Act was amended in March 2006 to prevent high government officials being board and council members of commercial organizations. At the same time, the PSA was not amended to make declarations of economic interest public. As a result, in 2003 access to such a declaration was refused by former Minister of State Administration Kalchev with the explanation that they are part of the public servants' dossiers. Indeed, information contained in a public official's dossier can be provided only after the consent of the official. In effect, the law itself has created obstacles for securing trust in the work of public servants. The refusals to disclose or otherwise publish declarations of economic interest border on absurdity.

The MOEW officially refused access to the declarations of economic interest filed by the experts who worked on the EIA reports of Belene nuclear power plant. The Supreme Administrative Court reversed the refusal, but held the opinion that access to the requested declarations can only be provided with the consent of the EIA experts.

Publicity of declarations under the Public Disclosure of Property Owned by High Government Officials Act was not well regulated by the end of 2005. Access to the *public* register is allowed only to the editor-in-chief of a media organization. The 2004 legislation by Parliament which restricted access and publication of personal data and information about the property of high government officials remains very problematic. These problems also manifested themselves in practice, as when the editor-in-chief of a local newspaper needed to file an appeal in order to receive access to a property declaration. In 2005 the Bulgarian Parliament took a step forward by amending the law to guarantee access to the property declarations for everyone. However, there are still some problems to be addressed, like making declarations available online and removing the restriction on publishing personal data and information about the property of high government officials who have submitted declarations between 2000 and 2004.

Access to information about public finances and the results of the work of financial control agencies has improved in 2005. The audits of both the National Audit Office and the Public Internal Financial Control Agency are made publicly available. In 2005 we noted a positive shift within the Public Internal Financial Control Agency. The agency currently provides copies of its documents to citizens, journalists and non-governmental organizations. Such a trend towards publicity is important not only for increasing public trust in government authorities, but also for informing the society about the work of the institutions, including the anti-corruption efforts put in by the financial control agencies.

Information about the finances of political parties can be obtained from the reports of the National Audit Office, which are published online. However, the 2005 report suggests a need to change the legal framework, which lacks some basic requirements for political parties, like whether they use single or double entry accounting.

Consequently, clear requirements towards financial documentation of political parties should be put in place, so that society receives more information about the sources of funding for political parties.

## Public registers

We have noticed a number of problems with regard to public registers over the last few years. First, the regulations for publicity of the registers are inconsistent - some of them refer directly to the Access to Public Information Act (like for example art. 63 of the Territory Management Act), while others do not (like art. 95, para. 2 of the same act). Public registers are kept at a number of different institutions, hence the different administrative practices. Consequently, one of the problems is the lack of coordination between different agencies, which would standardize the procedures for access to public registers.

The laws regarding some registers obscure the very information that makes the register of public interest. This is the case, for example, with the register of concession contracts, the register of procurement contracts, and the public register of experts who work on EIA reports under art. 83 para. 4 of the EPA. The latter register does not provide information from the conflict of interest declarations made by the experts. In other cases, problems are caused because the law does not comprehensively list registers which must be public. In 2004, a citizen requested access to the information contained in the register of hunting licenses but the State Forestry Board denied the request. The Supreme Administrative Court reaffirmed the refusal in 2005, although similar information is public according to the Hunting and Game Protection Act and the rules for its implementation.

Information contained within *public* registers is not always accessible to the public. There are some positive practices, when even registers which are not explicitly declared public are actually made available online, like the unified mediators register kept at the Ministry of Justice. Unfortunately, the opposite is also true. The Public Disclosure of Property Owned by High Government Officials Act allows only chief editors of media organizations to access the register. Obviously the view of the legislators of the meaning of the word *public* differs from what society in Bulgaria or around the world would expect; this unique understanding has resulted in a refusal by the National Audit Office to provide access to the register even to an editor-in-chief of a local media in 2003.

Access to some registers requires the payment of a fee, which is also a restriction of the right of everyone to information (the register of pledges, the trade register, etc.). In practice, it often turns out that the fees for accessing these registers do not comply with the *lex generalis* - art. 20 of the APIA which establishes that access to public information is free and fees should not exceed the actual costs incurred.

Some registers are not easily accessible for information seekers. Although they are available online, we found no description of their purpose or legal ground for their existence (e.g. the register of certified persons at the Cadastre agency).

Sometimes access to public registers or information contained therein is withheld because of personal data protection, like in the case with the register of property declarations under the PDPOHGOA. Also, in the opinion of the supreme judges, hunting licenses are not public because of the personal data (full names and personal ID numbers) contained within, and even partial access was impossible. Conflict declarations of EIA experts under art. 83, para. 1 of the Environmental Protection Act can also be disclosed only with the consent of the experts.

Some of the public registers are kept in an archaic way which also obstructs public access to them. For example, probably the largest document register in Bulgaria - the State Gazette - is still not available on the Internet, while all member-states of the European Union have published similar registers online.

### **Access to draft laws and regulations**

Often, draft laws are still inaccessible before the institutions of the executive branch present them to Parliament. This hinders public discussion on them, resulting in lower quality legislation. Some institutions make draft laws available online before they introduce them in Parliament, but this is most often done selectively. For example, there is a *draft legislation* section on the web site of the Ministry of Justice, but the draft Act to Amend the Criminal Code, the Trade Register Bill, and other draft legislation of the ministry are unavailable. Draft regulations are almost never published on institutional web sites, making public discussion on them almost impossible. The Cabinet, which is probably the Bulgarian institution which drafts the most important and the greatest amount of legislation, does not keep a register of them online. Obviously, the provision of art. 2a of the Statutes and Regulations Act adopted in 2003 is considered merely a piece of good advice, rather than an obligation for the institutions of the executive branch.

Apparently good administrative practices alone cannot lead to a solution of the problem, so it is necessary that the Parliament creates a clear obligation for all public institutions to publish their draft regulations.

### ***Restriction of the right to information access***

In 2005, most problems were caused when public institutions used the trade secret exemption and the personal data protection exemption to restrict the right to information access. The state secret exemption and administrative secret were rarely used as a reason to withhold information of public interest. The refusal of the Minister of Finance to disclose a copy of the contract between the ministry and the British consultancy *Crown Agency* (justified with the need to protect a state secret) and the refusal of the Minister of Regional Development and Public Works to provide access to the *Trakia Highway* contract (because of administrative secret), were more the exception than the rule.

### **Personal data protection exemption**

During the last year, public institutions frequently used the personal data protection exemption in order to withhold information about the public activities of public figures. Personal data turned out to include the names, degrees, and qualification of high level Ministry of Education officials; information about the number, purpose, and duration of official trips; cell phone numbers of members of a municipal council whose phone bills were paid by the local budget; and the name of a person, on whom an administrative sanction had been imposed. As we mentioned already, some public institutions withheld access to documents, containing the full names and personal ID numbers of hunters and EIA experts.

In this respect, the amendments of the Personal Data Protection Act (State Gazette issue 103 of 2005) were a positive step forward. In the new wording of art. 2 para. 1 of the law, the term *public identity* has been changed to *social identity* in compliance with the terminology of Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108) and Directive 95/46/EC of the European Parliament and of the Council. This change had very important implications in practice, because there were cases in the past where public authorities withheld information to protect someone's *public identity*. A typical example was the decision of the Minister of



Foreign Affairs to refuse access to the diplomatic notes between the **Peoples Republic of Bulgaria** and the Kingdom of Spain from 1970 concerning the citizenship of former Prime Minister Simeon Simeon Sax-Cobourg-Gotha. Another example was the refusal to provide access to information about the duration and purpose of official trips and the amount of per diems of a deputy mayor. In this respect, the abrogation of paragraph 2 from the previous art. 2 of PDPA was an important step, because information „related to the fulfillment of functions of state bodies“ is now no longer considered personal data.

The adopted amendment to the PDPA has created the necessary conditions for a precise balance between personal data protection and the right of access to information, providing for accountability, transparency and public trust in the work of public authorities and their administrations. Such practices had started to develop before 2005. In 2004 the Supreme Administrative Court referred to art. 35, para. 1, item 2 of the PDPA (which remained unchanged after the 2006 amendments), according to which no consent of the data subject is required to provide access to personal data contained in public registers. This is why supreme judges held that the personal data protection exemptions cannot be applied to information about the income and properties of high government officials.<sup>1</sup> In a newer decision from March 2006, the Supreme Administrative Court ruled that information „about the duration and purpose of official trips and the connected expenses made by a deputy mayor“ cannot be considered *personal data* in the meaning of art. 2 of the PDPA, because they „do not relate to an individual, but rather to the official functions of a public authority - the deputy mayor.“<sup>2</sup>

## Trade secret exemption

Public authorities most often use this exemption by referring to the lack of consent of a third party, as stipulated by art. 31 para. 2 of APIA. Access to information (or freedom of information) legislation in other countries formulates this exemption much more precisely as information constituting a trade secret or at least concerning a commercial interest. The formulation of „protection of third party interests“ in the APIA is too broad - something which we have already noted in our previous Access to Information reports. This creates an opportunity for public officials to misuse the exemption, an opportunity which they often make use of.

Most serious problems arise when public institutions apply the *protection of third party exemption* to withhold access to contracts between the government and private companies. The full text of such contracts is not available in the register of concessions or the register of public procurements, so when someone requests a copy of a contract, public authorities respond on a case by case basis, basing their decision on the broad formulation of art. 31 of the APIA. This not only allows public authorities to misuse the exemption when responding to access to information requests, but also creates an environment of corruption, where public funds could easily be transferred to private companies without any public oversight.

Because of all these problems, different cases are decided in different ways. On two occasions in 2004, the Supreme Administrative Court ruled that disclosure of a copy of a public procurement contract would not affect the rights of the third parties, i.e. the

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<sup>1</sup> Decision No. 3508 of 2004 delivered on administrative case No. 10889 of 2003 by the Supreme Administrative Court (SAC).

<sup>2</sup> Decision No. 3101/ of 2006 on administrative court case No. 8452 of 2005 delivered by the SAC.

companies. Even if information disclosure would affect the rights of the third parties, the court believed that „according to the provision of art. 31 para. 4 of the APIA, information could be disclosed despite the lack of consent of the third party.“ Furthermore, „both the refusal of the authority and the response of the third party lack any reasoning why disclosure of information would violate the applicable legal regulation, meaning that the decision to withhold information is in breach of art. 38 of the APIA.“<sup>3</sup>

The Fair Competition Act (FCA), in its definition of *trade secret*, provides the only evidence, from which to deduce when disclosure of information could affect the rights or interests of companies. According to the Supreme Administrative Court, access to a contract can be refused only if it contains a trade secret and disclosure could create an environment of unfair competition.

Consequently, the practice of the court with regard to access to information relating to commercial organizations is inconsistent. The obligation for public institutions to provide access to such information seems even weaker in light of art. 31, para. 4 of the APIA, which regulates cases when third parties refuse or fail to give their consent for information disclosure. In such cases, public authorities are free to decide whether to provide partial access to the requested information or to withhold it entirely in order to protect the interests of the third party.

These problems can be solved with amendments to art. 31 of the APIA and with changes in legislation to explicitly declare that certain kinds of information (like concession contracts or public procurement contracts) are public. We should also note that some of the problems can potentially be solved by building on the interpretations already made in some court decisions. Existing litigation practices have also stimulated the development of positive administrative practices, like those within the Public Internal Financial Control Agency.

### **State secret and administrative secret**

As a result of the increased demand for government-held information, public authorities have been working towards a more precise definition of information, which is subject to classification as state or administrative secret. Requests filed by information seekers have been especially important for the process of reviewing classified documents pursuant to § 9 of the final and transitional provisions of the PCIA. We should also acknowledge the role of the Protection of Classified Information Commission, which encourages public institutions to better implement the Protection of Classified Information Act, including by issuing mandatory implementation guidelines.

In 2004 the Council of Ministers declassified 1484 documents, which had been made secret before the adoption of the Protection of Classified Information Act. Access to Information Programme had requested one of the documents in 2002 and appealed the refusal of the Cabinet to the court. The court case that followed probably served to catalyze the declassification process. In yet another case, after we filed an appeal against the decision of the Minister of Finance to withhold a copy of the *Crown Agents* contract, in the fall of 2004 the Minister established a committee to review all documents kept at the ministry which had been classified between 1979 and April 2002.

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<sup>3</sup> Decision No. 4716 of 2004 on admin. court case No. 8751 of 2003 and Decision No. 4717 of 2004 on admin. court case No. 8752 of 2003, both delivered by the SAC.

The demand for information has also provoked a more precise implementation of the administrative secret exemption. As a result of a court appeal against a refusal of the Minister of Regional Development and Public Works, he adopted a new list of information categories subject to classification as administrative secret. The new Minister of Culture decided not to refer to the old list of administrative secrets within his ministry when reconsidering his initial refusal to provide access to information requested by the Institute for Market Economics.

Looking back at the situation in 2005, we can conclude that pressure by citizens, non-governmental organization, and journalists has slowly but surely led to better implementation of the PCIA. However, this process has to speed up. Almost no public institution of the executive branch has published their list of information categories subject to classification as administrative secret, which is a requirement of art. 26 of the PCIA. In 2005 about half of the Bulgarian ministries disclosed their administrative secrets lists as a response to requests filed by Access to information Programme. The rest of the ministries did not respond at all to our requests, although they were required to make these lists publicly available.

We should acknowledge that the PCIA clearly regulates the regime of state and administrative secrets. However, more efforts by public institutions are needed for it to better implemented - they should publish all lists of administrative secret categories, lists of declassified documents which had been classified before April 2002, and lists of documents about to be destroyed pursuant to the PCIA.

## CHANGES IN PERSONAL DATA PROTECTION LEGISLATION IN 2005

A number of important changes were made in personal data protection legislation in 2005. Essential amendments were made in the Personal Data Protection Act - the law which provides the general legal framework of personal data protection in Bulgaria. Most notably, changes were made in the definition of personal data and in the registration regime for data controllers. There have been no significant amendments made in sector-specific legislation, which regulates access to some specific kinds of personal data.

In the summer of 2005, the new Cabinet proposed amendments to the Personal Data Protection Act. The draft amendment act was a copy of the text which had been introduced to Parliament by the previous Cabinet.

The amendments provoked broad public debate. The reason for this was the proposed text of art. 5a, which read that „personal data related to criminal or administrative offenses, sentences, judgments on administrative cases, and security measures can only be processed under the control of competent authorities.“ Because data processing could also cover the publication of information, journalists were right to ask whether they would be able to freely publish information related to criminal offenses and the work of the prosecution services.

Another proposed amendment to the PDPA (art. 35) would restrict free access to public registers by requiring public authorities to ask the consent of data subjects before disclosing information about them. Although the text of this amendment had been criticized intensely by media and civil organizations when it was first proposed in the spring of 2005, the Cabinet did not change the text when resubmitting it to Parliament.

Access to Information Programme submitted a critical letter on the proposed amendments. Our opinions were taken into account - the text of art. 5a was completely abolished, and the regime of access to public registers remains unchanged.

In 2005 the Parliament adopted the following amendments to the PDPA:

### **Changes in scope of the law**

The law will apply only to personal data which is part of a register processed by a data controller. The Personal Data Protection Act explicitly allows for free collection and publishing of personal data for the purposes of journalism, literature or the arts.

### **Definition of personal data**

One of the most significant amendments to the APIA was the definition of personal data in art. 2 para. 1 - „personal data is any information, which makes it possible to identify an individual directly (e.g. through a personal ID number) or indirectly - through one or more specific features, related to his physical, physiological, psychological, genetic, economic, cultural, or social identity.“

With the adoption of the Amendments to the Personal Data Protection Act the definition of *personal data* was altered and now does not include information about individuals related to their participation in civil associations or in boards and councils of commercial

companies, as well as information related to the fulfillment of functions of state bodies. This change will guarantee better protection of the citizens' right to access information, especially with regard to access to information about public figures, the importance of which has been outlined by the Constitutional Court of Bulgaria when interpreting art. 39-41 of the Constitution.

The second significant change related to the definition of *personal data* is the explicit enumeration of principles of lawful data processing (art. 2, para. 1 of PDPA). Personal data shall be processed fairly; shall be obtained only for a specified and lawful purpose; shall be adequate, relevant and proportionate in relation to the purpose for which they are processed; shall be accurate and kept up to date; and shall be kept in a way which allows for identification of data subjects.

### **Changes in the registration regime of data controllers (art. 17 of the PDPA)**

According to the previous text of the Personal Data Protection Act, every person or organization which processed personal data was required to register with the Personal Data Protection Commission (PDPC). This comprehensive requirement has been criticized by AIP on a number of occasions. After the changes in the PDPA, data controllers should only register with the PDPC in case they:

- process sensitive personal data (personal data revealing the racial or ethnic origin, political opinions or religious beliefs of the data subject, etc.);
- have a legal obligation to process personal data;
- keep a register of more than one-hundred data subjects;
- or, have been explicitly instructed by the Commission to do so.

## INFORMATION PUBLISHED BY BULGARIAN INSTITUTIONS ON THEIR OWN INITIATIVE

*(Report from a study of Internet sites of public institutions in Bulgaria)*

The Bulgarian Access to Public Information Act obliges all institutions of the executive branch to regularly publish information on their own initiative. *Access to Information Programme* has monitored the implementation of this obligation since 2000 - the year when the law was adopted.<sup>4</sup> Between December 2000 and March 2001 we conducted interviews with 216 institutions which were covered by the Access to Public Information Act. The aim of the study was to assess how prepared the institutions were to implement their obligations and regularly publish information on their own initiative.

Since then AIP has conducted several studies on the implementation of APIA. The aims of the survey have differed through the years, which determined the different survey methodologies. The aims of the surveys were decided on the basis of other evaluations of access to information in Bulgaria, like analyses of legislative changes, assessments of the administrative capacity of public institutions to implement their obligations under APIA, and analyses of the most frequent problems seen from the cases submitted to AIP. Since the adoption of APIA, we have been using the outcomes of the specialized surveys to formulate recommendations for improving access to information legislation and practices within government institutions.

### ***Aim of the present survey***

In the past few years, a growing number of Bulgarian institutions have been developing and maintaining their websites. At the same time, we are observing ever more frequent problems with access to information that is mandatory for institutions to publish. In most cases, the Internet is the cheapest way to make such information public.

The Bulgarian APIA does not explicitly oblige public institutions to regularly publish information on their own initiative on their websites (see art. 14 and art. 15 of APIA). However, this would be a rational action of the administration, especially concerning information which is already available.

The aim of this study, which was conducted by AIP in early 2006, was to check how local government authorities and institutions of the executive branch make use of the Internet to publish important information on their own initiative and whether citizens are accommodated when seeking information on the official institutional websites.

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<sup>4</sup> See *Current Situation of the Access to Public Information in Bulgaria 2000 - Report*, AIP, Sofia, 2001 at <http://www.aip-bg.org/pdf/report01.pdf>

## **Methodology**

The study was conducted between February 20 and March 5 of 2006. Four hundred and eleven public institutions were selected for review from the official Register of Administrative Structures<sup>5</sup>, broken down by type:

Municipalities	264
Ministries	17
State agencies	10
State commissions	4
Executive agencies	38
Institutions established by an act of Parliament	50
Regional governors	28
<b>TOTAL</b>	<b>411</b>

We believe that the study is representative enough, since it covers all ministries, all regional governors, all municipalities and most of the other administrative structures in Bulgaria. A full list of the reviewed institutions can be found on AIP's website, where you can also see the complete set of outcomes.<sup>6</sup>

The first task of the seven reviewers - all of them from the AIP team - was to find out whether each institution maintained its own Internet site. Official websites were maintained by 281 of the public institutions.

In some cases, information about the reviewed institutions could be found on the websites of other institutions. For example, the Internet site of the Ministry of Agriculture and Forestry (MAF) contained information about the regional directorates of agriculture and forestry. In other cases, information about the institution could be found on the website of different associations, like the Rhodope Municipality Association, the Danube Municipalities Association, or the National Association of Bulgarian Municipalities. In still other cases, information about an authority could be found on the website of other institutions, or on a tourist site.

For the purposes of this study, the above information was not considered to be an „institutional website“ for a number of reasons. The first one is that the institutions themselves do not consider such sites official, and therefore do not assume responsibility for their content. Additionally, non-institutional websites publish information for their own purposes, and usually they do not present the work of the institution in a systematic way. For example, publishing the annual municipal budgets or a database of mayors and their contacts is valuable information for citizens and - of course - serves its purpose. Such databases, however, cannot replace the need for regular publishing of systematic information about the work of the administration, like its structure, functions, decisions, and reports.

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<sup>5</sup> <http://www1.government.bg/ras/>

<sup>6</sup> [http://www.aip-bg.org/documents/monitoring\\_web.htm](http://www.aip-bg.org/documents/monitoring_web.htm)

## Survey outcomes

Table 1. Does the institution maintain its own official website?

Institution type	No	Yes	Total
Municipalities	107	157	264
Ministries	1	16	17
State agencies	1	9	10
State commissions		4	4
Executive agencies	7	31	38
Institutions established by an act of Parliament	12	38	50
Regional governors	2	26	28
<b>Total:</b>	<b>130</b>	<b>281</b>	<b>411</b>

The survey results summarized in the table above show that a greater percentage of the central government institutions (94%) maintain their own websites, when compared to the local government institutions (59%).

An evaluation and analysis of these results can be found in the specialized study *Internet Sites of Bulgarian Municipalities* conducted by the Applied Research and Communications Fund in 2004<sup>7</sup>.

The explanation given by the authors of the study was that a number of small municipalities could not afford to create and maintain a website. At the same time, a study done in the same year by the National Centre for the Study of Public Opinion (NCSPPO) revealed that a very small percentage of the Bulgarian population - 3,6% - uses the Internet to obtain information about the work of public institutions<sup>8</sup>. Most of the smaller municipalities in Bulgaria simply cannot afford to assign personnel to maintain their own web page.

Conclusions with regard to Internet sites of the central government authorities can be found in the Information Technologies section of the annual Report on the State of Bulgarian Administration for 2004 published by the Minister of State Administration. According to the text of the report, IT units are a prerequisite for the development of information and communication technologies and are crucial for keeping information up to date<sup>9</sup>.

<sup>7</sup> Results of the study and media coverage available at <http://www.arc.online.bg/>

<sup>8</sup> Results from the nationwide study *Public opinion about the administrative reforms in Bulgaria and administrative services for citizens and business organizations*, done by the NCSPPO in March 2005.

<sup>9</sup> <http://sadocs.government.bg/sa/Documents/Документи/AnnRep04.pdf>



After identifying the official institutional website, our reviewers were asked to establish some facts, by answering 42 questions, grouped in three topics:

- How had the institution implemented its obligations as set up by the Access to Public Information Act? (18 questions);
- Was there a specialized freedom of information subsection on the institutional website? (19 questions);
- What other information was made available by the institution pursuant to other obligations? (5 questions).

### **Information subject to mandatory publication**

Let us start by reviewing the provision of art. 15 of APIA:

#### **Publication of up-to-date public information**

Art. 15. (1) In order to achieve transparency of the administration's activities, and for the purpose of maximum facilitation of access to public information, every head of an administrative structure within the system of the executive power shall publish on a regular basis up-to-date information containing:

1. description of his/her powers as well as data on the organizational structure, the functions and the responsibilities of his/her administration.
2. list of the acts issued within his/her authority;
3. description of the information resources used by the respective administration,
4. the name, the address, the telephone number, and the working hours of the unit which is authorized to receive and handle access to public information requests.

(2) Every authority under sub-art. 1 shall prepare an annual report on access to public information requests, which shall contain information on the refusals made and the reasons for them. The annual report shall be part of the annual report under art. 61, sub-art. 2 of the Administration Act.

Although all of the questions required the establishment of certain facts, most of them required a judgement by the reviewers. For example, they were required to differentiate between statutory acts and decisions before answering the question „Are statutes regulating the functions of the institution available online?“. Both statutory acts and decisions are issued within the authority of the institution heads, but the law uses „acts“ as a generic term.

A similar issue arose with questions aimed at discovering whether institutions publish information about their authorities, functions, and responsibilities. Our reviewers had to evaluate whether institutions had made the statutory acts regulating its work, its structure, and its functions available online.

Below are the results from those three questions:

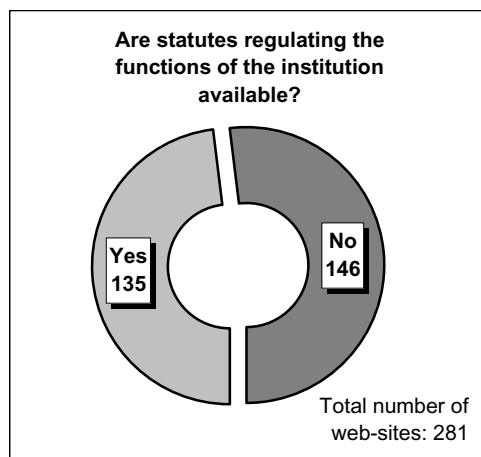


Chart 1. Are statutes regulating the functions of the institution available online?

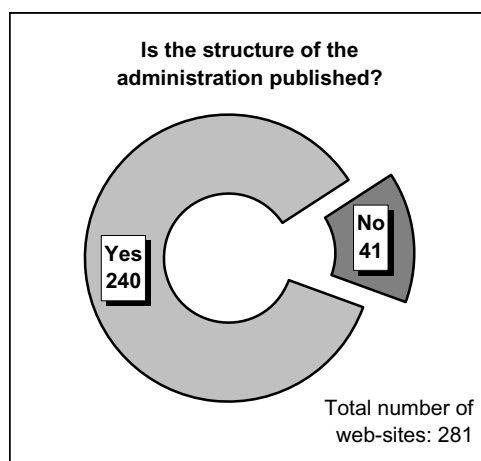


Chart 2. Is the structure of the administration published online?

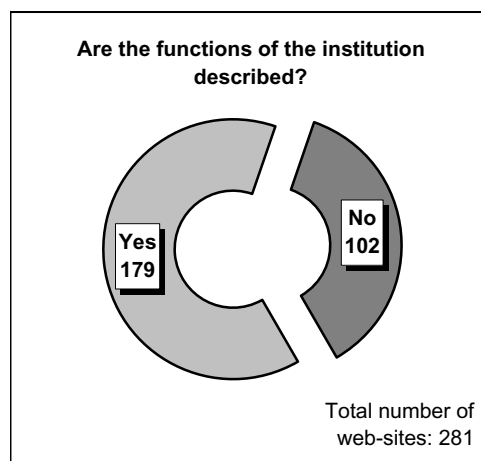


Chart 3. Are the functions of the institution described?

The obligation for publishing a list of acts and decisions delivered by institution heads within their authority would seem to be easy to implement. However, in many cases - as seen from the outcomes of the study - decisions of the authorities are not available online. While 51 % of the institutions have made available statutory acts on their official websites, only 34 % of them publish decisions of their heads.

Results are available below.

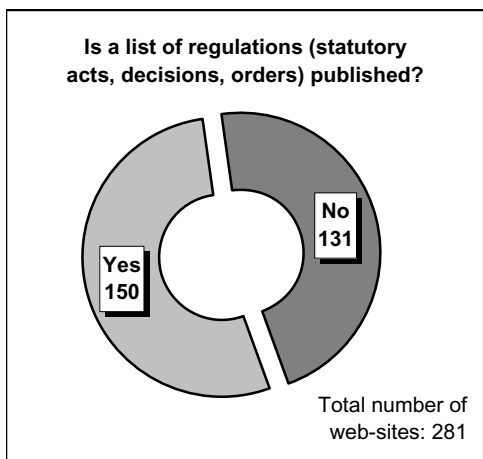


Chart 4. Is a list of regulations (statutory acts, decisions, orders) published online?

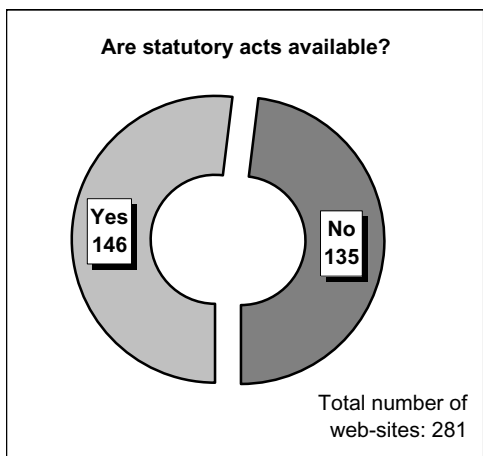


Chart 5. Are statutory acts available online?

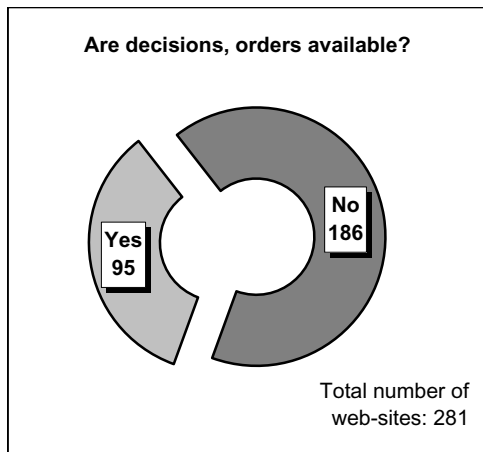


Chart 6. Are decisions, orders available?

Obviously most public institutions do not feel obliged to publish information about information resources they keep, like registers and databases. Only 36% of the reviewed institutions have made a description of their information resources available online<sup>10</sup>.

<sup>10</sup> In comparison, the study conducted by AIP in 2001 revealed that 38% of the 303 reviewed institutions believe to have implemented their obligation to publish a description of their information resources. See the report *Current Situation of the Access to Public Information in Bulgaria 2000 - Report*, AIP, Sofia 2001

The above results explain why free access to public registers is one of the serious problems noticed by Access to Information Programme in our previous studies. When most public institutions do not even announce what registers they keep and what databases they work with, it is not strange that public registers are not really that public.

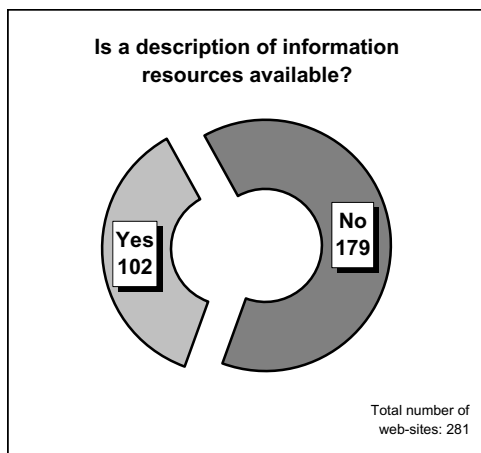


Chart 7. Is a description of information resources available online?

Pursuant to art. 15 of the APIA, public authorities are required to publish their contact information. The study used several parameters to assess how this requirement had been implemented - whether contact address, name and reception hours of the unit „which is authorized to receive and handle access to public information requests“ was available online.

The lawmakers have only created an implicit requirement for the establishment of such a unit, without regulating its functions and responsibilities. Consequently, such units or officials and their responsibilities have to be determined by a decision of the institution head.

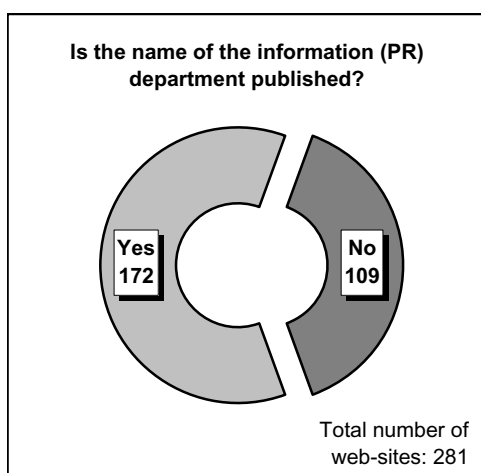


Chart 8. Is the name of the information (PR) department published?

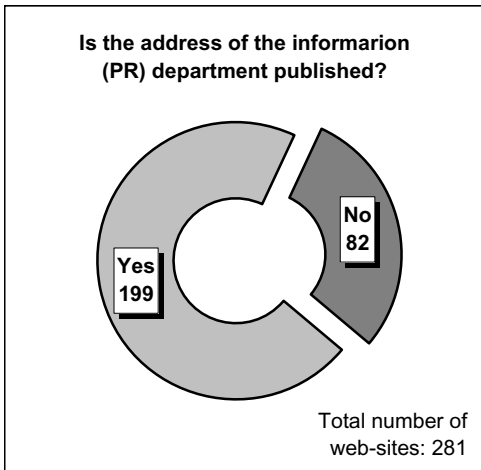


Chart 9. Is the address of the information (PR) department published?

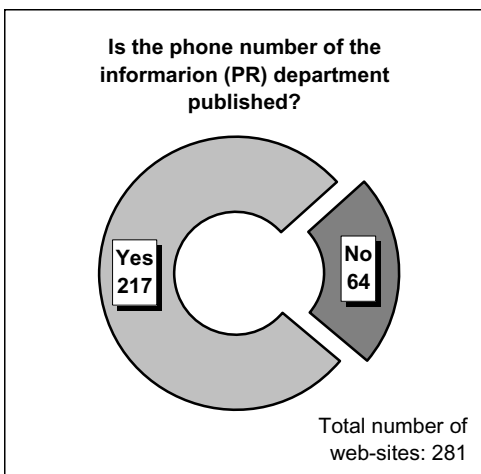


Chart 10. Is the phone number of the information (PR) department published?

The question of whether the reception hours of the access to information unit were available online resulted in some deplorable outcomes. Only 15% of the reviewed institutions had made such information available online.

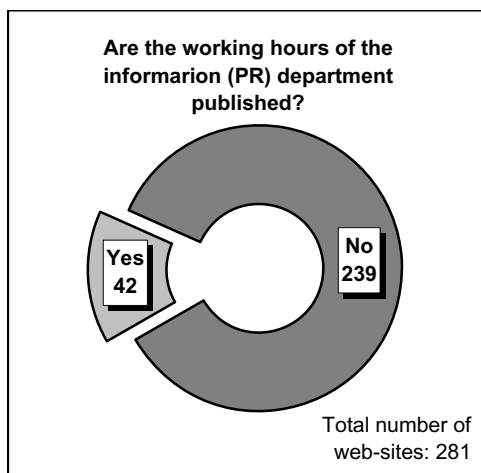


Chart 11. Are the working hours of the information (PR) department published?

### Was the available information up-to-date?

An important question related to the requirements of art. 15 of APIA was whether the available information was up-to-date. The law requires public authorities to update the information „regularly.“

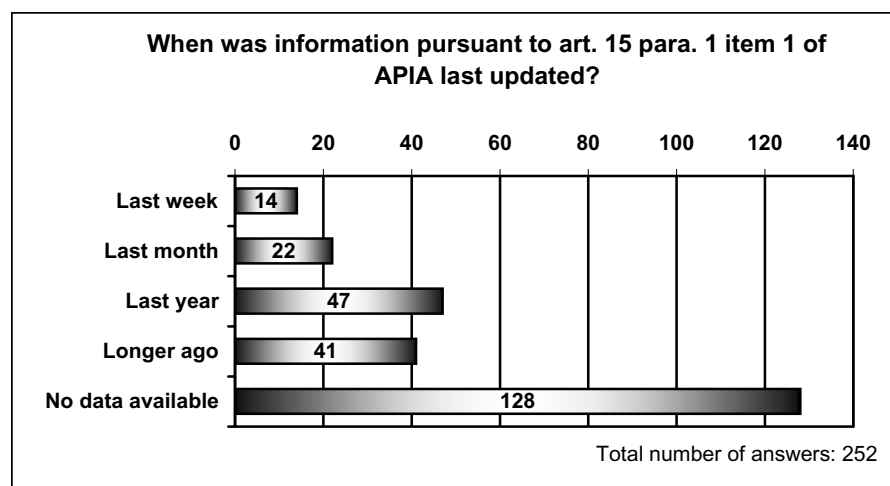
Our reviewers were asked to answer whether each category of information covered by art. 15 of APIA had been recently updated. This turned out to be a difficult task, because most often the reviewed web pages did not contain information about the last time they had been updated. This forced reviewers to guess when information had been uploaded by the dates of the available documents, leading to some uncertainty.

The law does not give a definition of „up-to-date“, nor does it specify how regularly information should be uploaded, but common sense in this case suggests a requirement for updating the information every time it is actually modified.

For example, when the structure or the functions of an institution changes, this should be clearly indicated and the statutory act regulating the changes should be made available online. Such information is clearly necessary for citizens, because it is sometimes hard for them to follow emerging or disappearing institutions and the creation, closing, or transfer of information resources containing valuable information.

The following table displays the results in answer to the question whether information about the authorities, functions, and responsibilities of public institutions (art. 15, para. 1, item 1 of APIA) is up-to-date.

Chart 12. When was information pursuant to art. 15 para. 1 item 1 of APIA last updated?

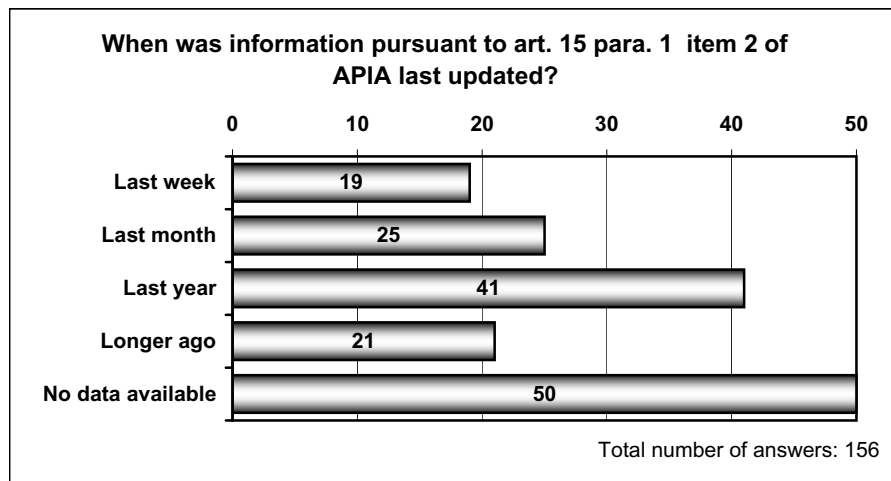


Likewise, the list of statutory acts and decisions should be updated regularly. Whenever a new act is issued by the institution head, it should be duly published, along with a short description. This is in line with the purpose of the law - to facilitate public access to information.<sup>11</sup>

<sup>11</sup> See the first sentence of art. 15, para. 1.

The following table displays the results in answer to the question whether information about the statutory acts and decisions (art. 15, para. 1, item 2 of APIA) is up-to-date.

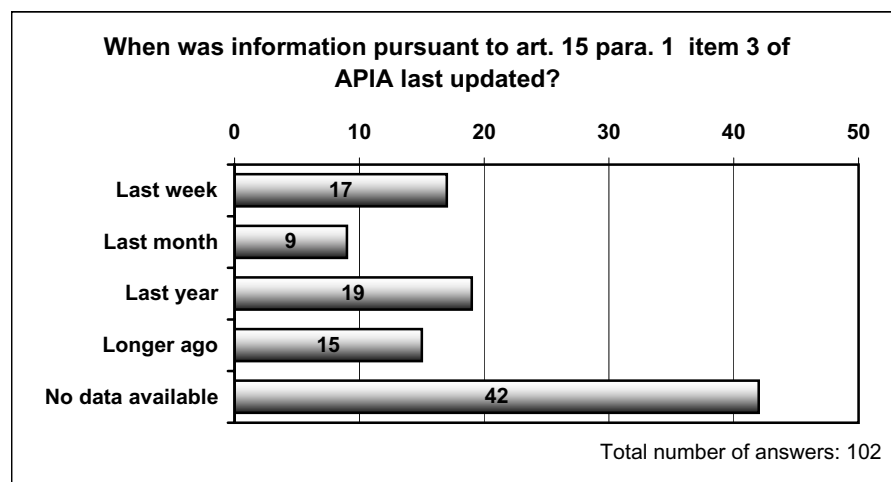
Chart 13. When was information pursuant to art. 15 para. 1 item 2 of APIA last updated?



Information about the information resources would be considered up-to-date if it showed what registers and databases were kept within the institution and what changes are made to them.

The following table displays the results in answer to the question whether information about information resources (art. 15, para. 1, item 3 of APIA) is up-to-date.

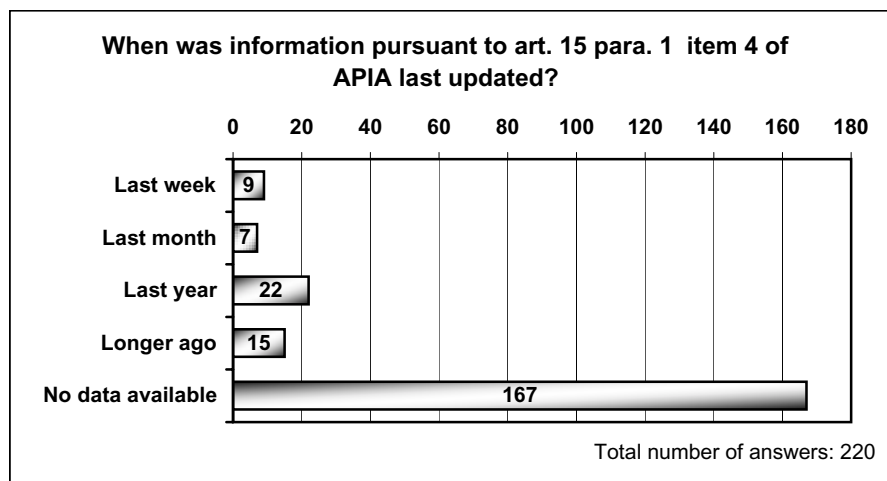
Chart 14. When was information pursuant to art. 15 para. 1 item 3 of APIA last updated?



The requirement to make the most recent contact information available, like the address, phone number, name and receiving hours of the access to information units within institutions is fairly obvious. Access to information seekers need accurate information and should be informed of the dates when it has been updated.

The following table displays the results in answer to the question whether contact information, like the address, phone number, name and receiving hours of the access to information units within the institutions (art. 15, para. 1, item 4 of APIA) is up-to-date.

Chart 15. When was information pursuant to art. 15 para. 1 item 4 of APIA last updated?



### Other requirements for making information available

Besides information covered by art. 15 of APIA which is subject to mandatory disclosure, authorities are required to make public their lists of information categories, subject to classification as administrative secret. The latter requirement is established by art. 26 para. 3 of the Protection of Classified Information Act (PCIA), which requires that the list should be „announced“. The Rules for the Implementation of the PCIA, adopted by the Cabinet in 2002 establish that the lists must be public.

We believe that the easiest way to make the lists public after their adoption by the head of the „administrative structures“ (a term used within the Administration Act and the APIA) is to upload them onto the official institutional websites. By publishing the lists, the head of the administrative structures would demonstrate an understanding of the strong link between the two laws and that the right to access to information requires that institutions implement their obligations established by the PCIA and the Rules for its implementation. Only two Bulgarian institutions have made the lists available on their websites, and their names are worthy of mentioning:

#### Ministry of Agriculture and Forestry

<http://www.mzgar.government.bg/Begin/inform.htm>

#### Public Internal Financial Control Agency

[http://www.advfk.minfin.bg/kategoria\\_sl\\_taina.php](http://www.advfk.minfin.bg/kategoria_sl_taina.php)



Results are displayed in the table below:

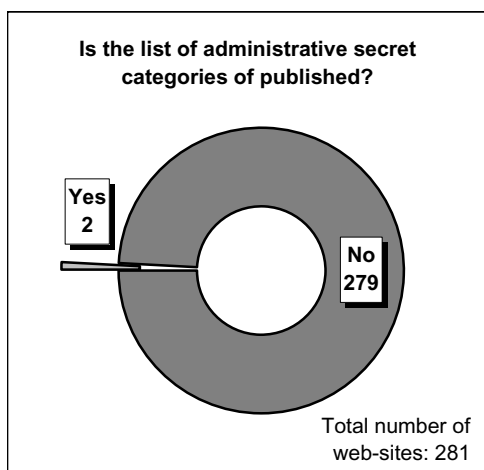


Chart 16. Is the list of administrative secret categories published?

Another important indicator of a democratic society is the opportunity for the public, and interested groups in particular, to participate in the discussion of draft laws. As in the previous case, we believe that the easiest way to provide such an opportunity is to publish the text of the draft laws online. Yet again, the results to this question are disturbing.

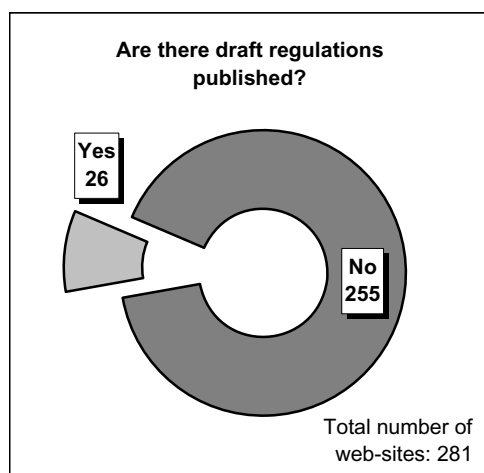


Chart 17. Are there draft regulations published online?

### Access to information subsection

Establishing an „access to information“ subsection on the official website is the easiest way for public institutions to fulfill the purpose of the Access to Public Information Act, i.e. to assist those citizens who wish to create their own opinions about the work of the authorities.

Although the law does not establish an obligation for the creation of an access to information subsection, some categories of information, subject to mandatory disclosure would fit well there. Such an arrangement would not only significantly ease the work of the administration, but would also help citizens exercise their access to information rights. It would certainly be better, if these subsections contain other information which is likely to be sought by the public. Only thirty of the reviewed public institutions had established access to information subsections of their official websites.

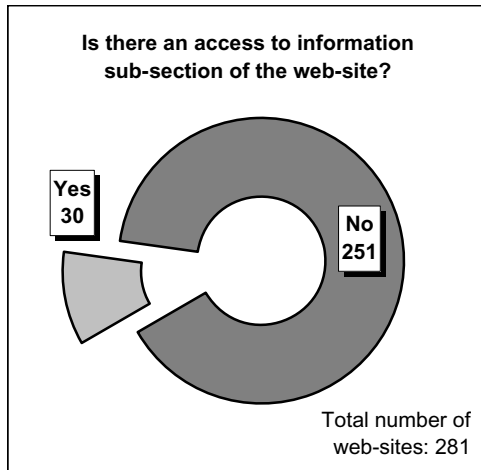


Chart 18. Is there an access to information sub-section of the web-site?

We will now discuss the outcomes of this study, related to information subject to mandatory disclosure and, which could fit within the ATI subsection.

The Access to Public Information Act requires that covered institutions should announce the place where information request can be filed (assuming that such a place has already been appointed), the acceptable forms of submitting the request, access fees and how they can be paid.<sup>12</sup>

Our study aimed at discovering whether information which could facilitate information requestors was available online. We wanted to learn whether information requests were accepted electronically; and if not, whether institutions had published information online on where to file requests, the phone numbers, address, reception hours, and the names and position of the information officials. The following tables display the outcomes from these questions:

Chart 19. Is the place for filing APIA requests indicated?

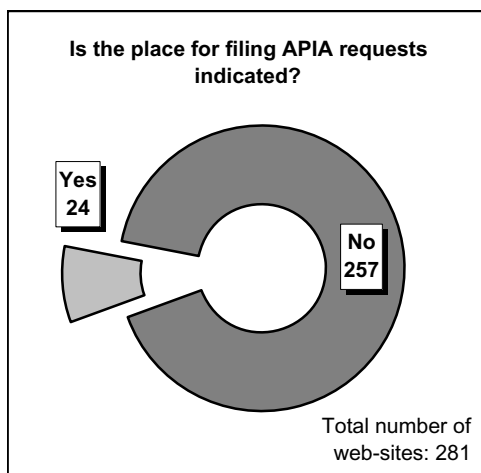
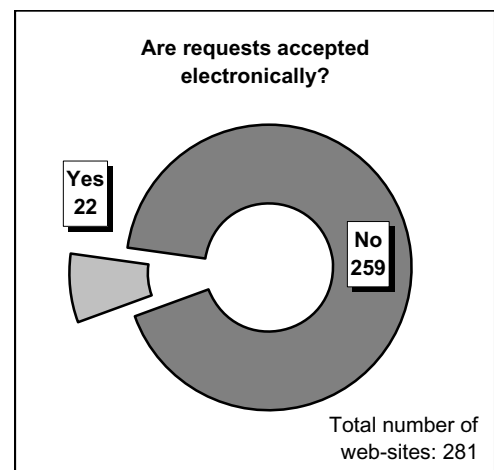


Chart 20. Are requests accepted electronically?



<sup>12</sup> See for example art. 21 and art. 25 para. 3 of APIA.

Chart 21. Is the phone number of the information official/unit published?

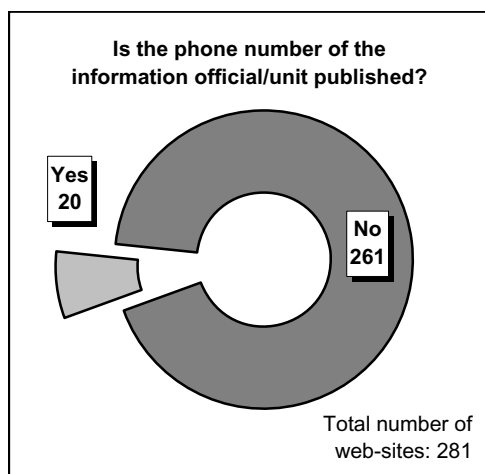


Chart 22. Is the name of the information official/unit published?

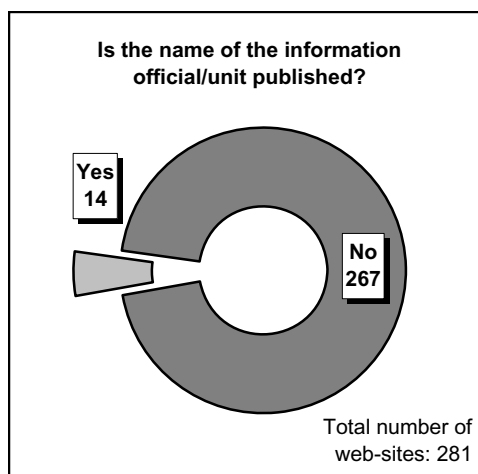


Chart 23. Is the address of the information official/unit published?

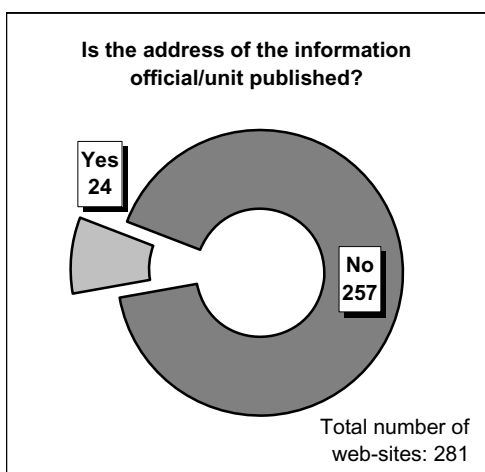
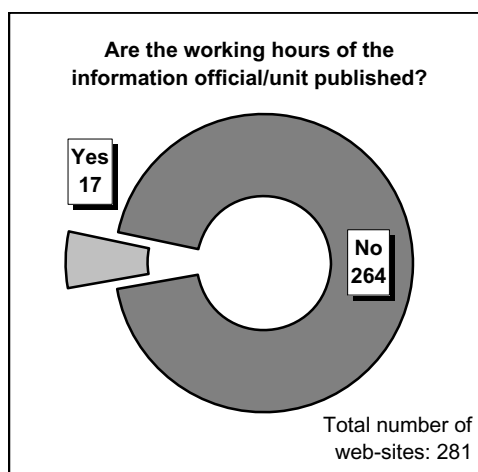


Chart 24. Are the working hours of the information official/unit published?



The Access to Public Information Act requires public authorities to prepare and submit to the Minister of State Administration annual reports on the implementation of the law. The annual ATI reports should also be made available to the public, as required by art. 16 in relation to art. 15 of the APIA. Again, the easiest way to allow the public to „consult the annual reports“ is by making them available online within the access to information subsections.

Pursuant to art. 15, para. 2 of the law, annual ATI reports should also include information about the number of information requests submitted, the number of information refusals made and the grounds for refusal. Obviously, most public institutions prepare such reports and submit them to the Minister of State Administration, who publishes an annual report for the work of the Bulgarian public administration. At least for the last two years, ATI reports are sent to the Minister electronically, making it even easier for institutions to also publish them online.

The following tables, however, show a different story:

Chart 25. Is the APIA implementation report available?

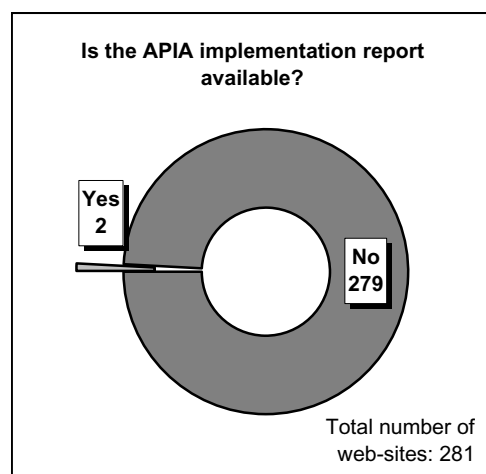


Chart 26. Does the APIA report contain data about processed requests?

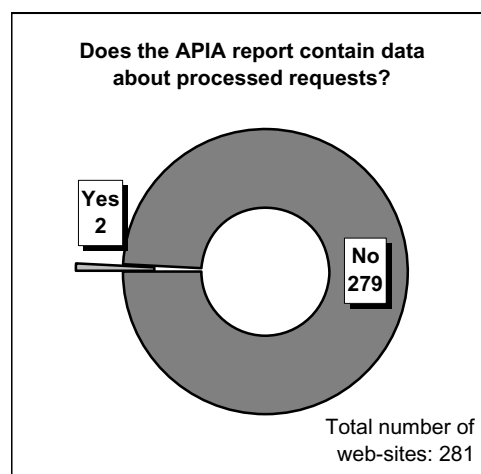


Chart 27. Does the APIA report contain data about refused requests?

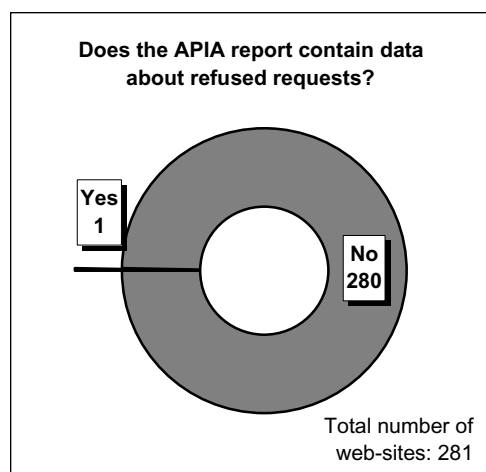
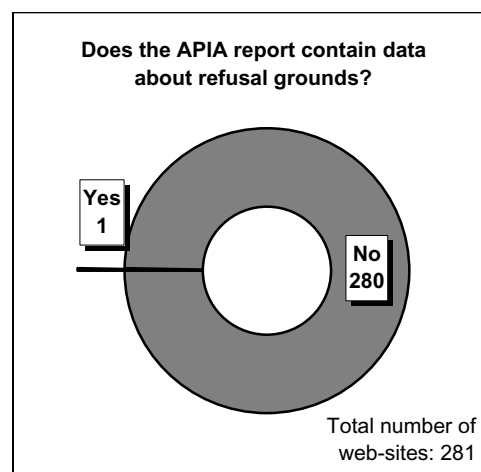


Chart 28. Does the APIA report contain data about refusal grounds?



One of the two public authorities who have made the annual ATI report available online, was the Minister of State Administration and Administrative Reform - as part of the report on the work of the Bulgarian administration, which must be published annually. The other institution which had made such information available online was the Municipality of Sofia. However, the data had not been updated since 2002.

On a number of occasions, we have been recommending that the authorities regularly publish information about information requests and their outcomes in the annual ATI reports. We would like to stress once again that the easiest and most effective way for institutions to do this is by publishing such information online.

Another important part of an access to information subsection is the availability of request forms and materials explaining the public's right to information.

Many freedom of information laws adopted after the Bulgarian APIA require public institutions to publish a handbook for information seekers.

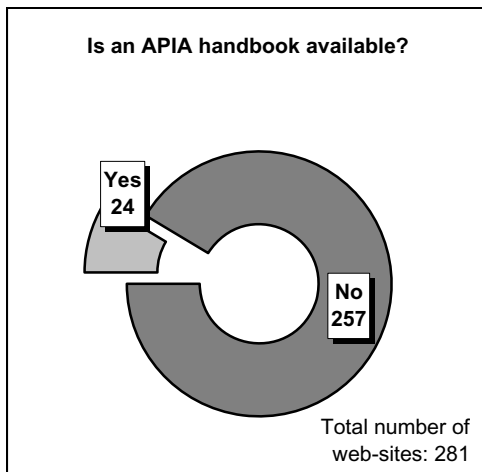


Chart 29. Is an APIA handbook available?

Such a requirement for publishing handbooks or educational texts has not been established by the Bulgarian law, but a few institutions have published such materials; therefore, we believe they should be acknowledged.

Institutions that have made access to information handbooks available online:

<p><b>Ministries</b>            Ministry of Health, Ministry of Finance, Ministry of Defense, Ministry of Justice, Ministry of Environment and Water, Ministry of Foreign Affairs</p> <p><b>State commissions</b>            State Energy Regulatory Commission</p> <p><b>Agencies</b>            Public Internal Financial Control Agency            State Agency for Child Protection</p> <p><b>Basin directorates</b>            Basin Directorate - Blagoevgrad</p> <p><b>Regional governors</b>            Plovdiv, Razgrad, Sliven, Veliko Turnovo, Vratsa, and Yambol</p> <p><b>Municipalities</b>            Burgas, Dobrich, Kostinbrod, Lukovit, Peshtera, Russe, Sliven, Straldja</p>
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Some public institutions have made request forms and other request related documents available online, although this is not a requirement of the law.

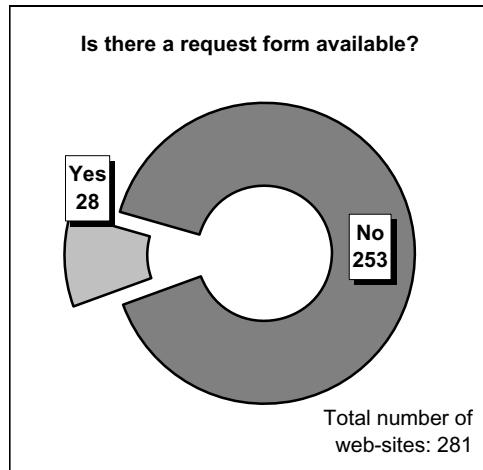


Chart 30. Is there a request form available?

We have carefully reviewed all access to information request forms officially published online. For a number of reasons, however, we cannot give an entirely positive evaluation of these forms:

**First**, some of the forms require information seekers to indicate the reasons why they are seeking information. This requirement is illegal and confusing for information seekers. Such request forms should be brought in compliance with the legal norms and should

correspond to the main principle of the Access to Public Information Act - everyone has the right to free access to government held information, without having to explain the reasons for his/her request.

**Second**, some forms require information seekers to supply excessive identification information, like the personal ID number for citizens, or a proof of the legal status for registered organizations. Such forms are not in line with the law and should also be brought in compliance with it. Instead of these forms that do not comply with the law, institutions could use the sample access to information request forms, which AIP has published in both our handbooks for citizens and for the administration.

**Third**, some institutions have made refusal forms available offline. Such „innovations“ contradict the spirit of the law, which establishes that access to all government held information is free and should be restricted only in exceptional cases. We believe that such forms should not be adopted, because they might stimulate officials to refuse information.

An important question related to access to information subsections is whether they are easily accessible.

The tables below contain the answers to this question:

Chart 31. Can APIA materials be accessed from the main menu?

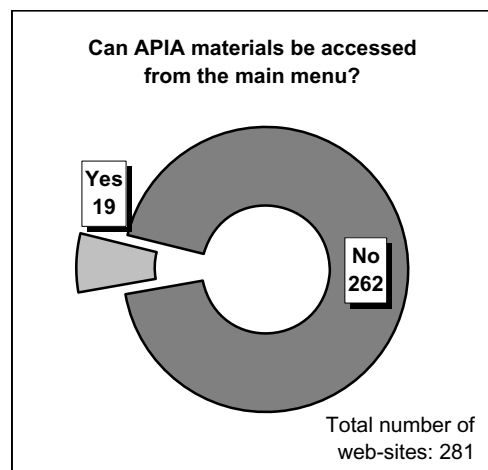
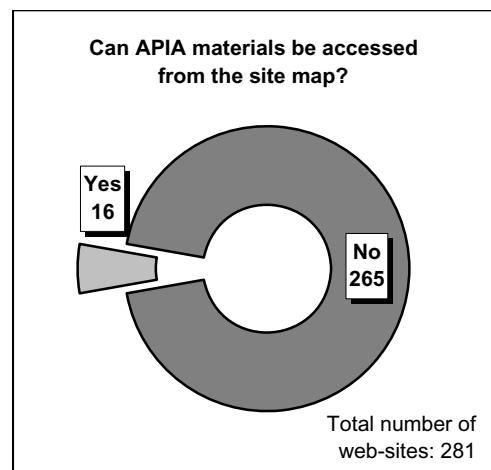


Chart 32. Can APIA materials be accessed from the site map?



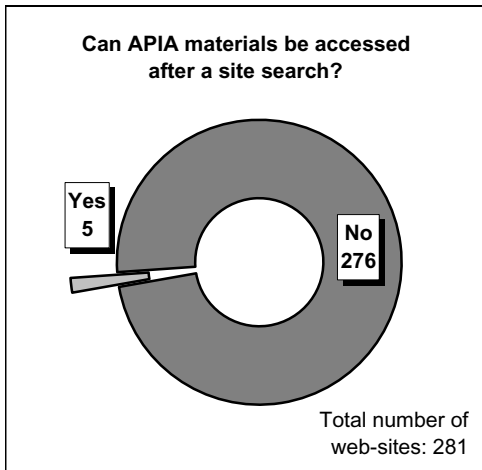
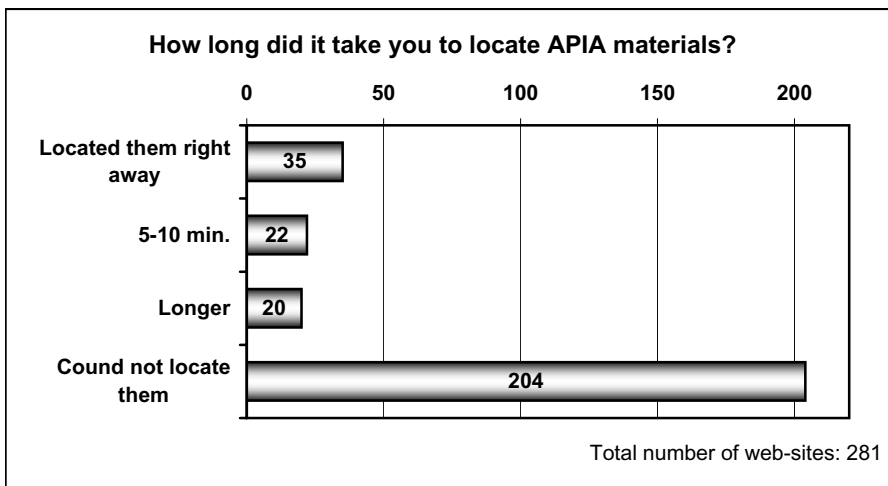


Chart 33. Can APIA materials be accessed after a site search?

Chart 34. How long did it take you to locate APIA materials?



### Other information made available by the institution

When reviewing the structure and content of institutional websites from the point of view of the Access to Public Information Act, we decided to check whether institutions have made available some other categories of information which are not subject to mandatory disclosure. However, such information - if published - would help citizens learn more about the work of public institutions, and the results of their activities and development plans.

The purpose of these questions was to evaluate and outline some of the good practices of Bulgarian institutions, from the point of view of international standards and national freedom of information litigation.

The results indicate that there is a need for public debate for future changes in the Access to Public Information Act.

In the practice of many countries which have special regulation of electronic access to information, public institutions make information which has been repeatedly requested available online. For example, US institutions are advised to publish information online after it has been requested three times by different requestors. In countries without a regulation of electronic access, authorities are also obliged to publish frequently requested

information. When trying to determine what kind of information categories to include in the present review of Bulgarian websites, we relied on last year's annual report of the Minister of State Administration. The report indicated the categories of information most frequently sought by the public in 2004.

We checked whether:

Chart 35. Are contracts of the institution available?

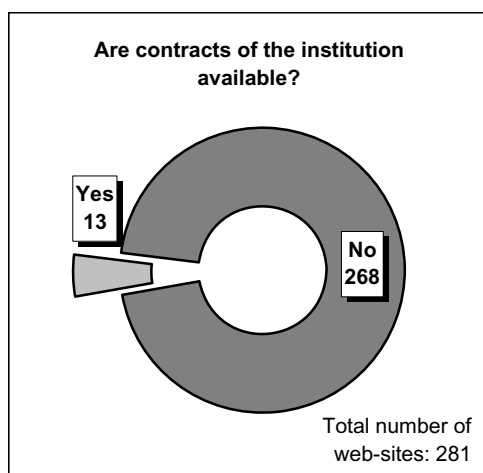


Chart 36. Are programmes and strategies available?

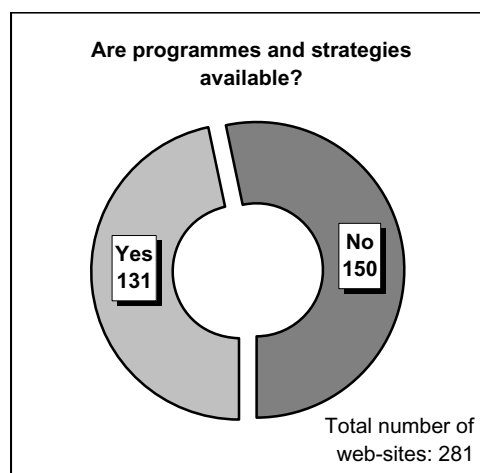


Chart 37. Is the description of services provided by the institution published?

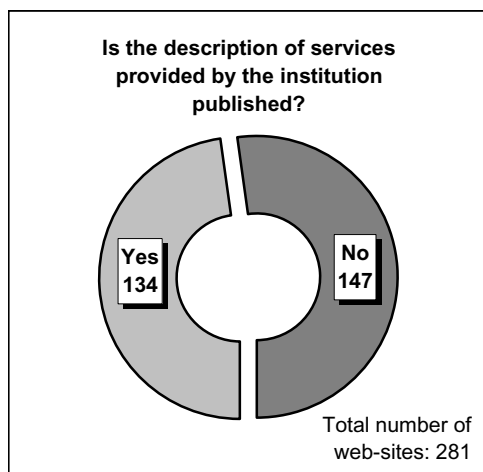
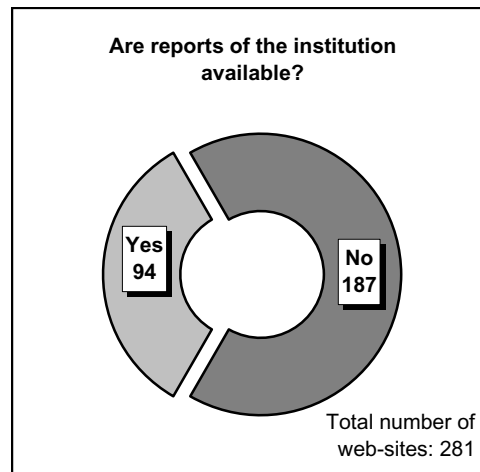


Chart 38. Are reports of the institution available?



The attitude of the administration towards the past and the willingness to turn the page on secretive practices is an indicator of a shift towards openness and overcoming the culture of secrecy. After 2002 a regulation was established for reviewing all secret documents. The public authorities had an opportunity to announce lists of declassified documents online<sup>13</sup>, as a process of declassification was obviously ongoing within the institutions.

<sup>13</sup> The requirement for review of classified document was introduced by §9 of the Transitional and final provisions of the PCIA.



The study revealed that none of the reviewed institutions had published a list of declassified documents on their websites.

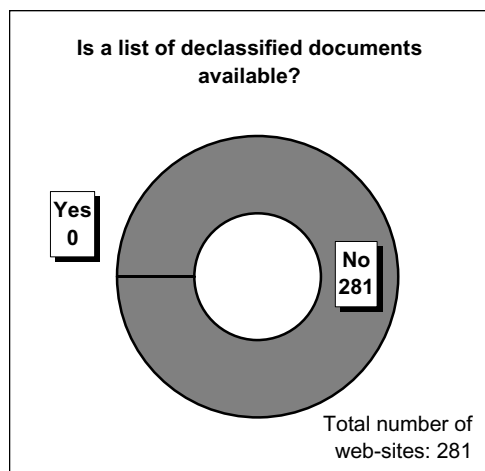


Chart 39. Is a list of declassified documents available?

In conclusion, we would like to note that we have found some positive institutional practices, like:

- making available the full text of statutory acts regulating the work of the institution and decisions delivered within their authority;
- property and tax declarations of a mayor and his wife;
- opportunities for filing and tracking information requests online; and
- many other innovative practices.

However, these are all isolated cases and will not be widely implemented without internal support and clear will for making them more universal.

### **Conclusion**

With information technologies fast developing in our everyday life, it should be increasingly possible and desirable to find information without having to visit the institutions in person. E-government has been a strategic priority of a number of Bulgarian governments, although we are still behind some of the leading European countries, in which the right of access to information is mainly exercised online on the official websites of public institutions.

At the same time, as recent surveys of the NCSPPO reveal, the number of citizens who prefer to contact the administration online is relatively small compared to those who prefer visiting the institutions personally. The percentage of the population which has access to Internet is still smaller than in some European countries.

We believe that supply and demand of information are the two sides of the same coin. We believe that it is high time institutions started publishing at least mandatory information on their websites, before going on to make other useful information available online.

As we have already mentioned, the Access to Public Information Act requires institutions to publish and regularly update some important categories of information on their own initiative. The Internet is the cheapest and most effective way for public authorities to fulfil these obligations.

At the same time, we have often noticed a lack of coordination between the information departments and the units maintaining the websites within institutions. As outcomes from our studies indicate, where institutions maintain their websites with an eye toward implementing their obligations under the Access to Public Information Act, results are good and citizens are accommodated when exercising their access to information rights.

In our opinion, the outcomes and recommendations of this study could be used by institutions to improve the content of their official websites. Bringing website content in line with the requirements of the Access to Public Information Act will fulfil the purpose of the law - to better inform Bulgarian citizens about the work of public authorities.

## CASE STUDIES 2005

### *Foreword. Common Characteristics*

Since the organization's founding, Access to Information Programme's team has been providing legal assistance in cases when access to information is refused. Every year, citizens, associations, and journalists turn to our organization for legal advice regarding different cases when information has been sought from institutions covered by the APIA. These cases have been systematized due to their entry into a specialized data base, which allows us to follow the developments in each particular case, as well as the consultations that we have provided.

In 2005, the assistance of AIP was sought in **408 cases in total**. All of these cases were registered and in all of them legal advice was provided in the form of oral or written consultation. Consultations were given on the phone, in the AIP office, via e-mail, through the forum on the AIP web site, or through its network of coordinators. Coordinators receive the monthly summary of access to information refusals with comments from AIP's legal team.

With respect to the type of advice they received from the AIP team, the cases may be defined as:

- Cases, related to difficulties in the exercise of the right of access to information, provided by the Access to Public Information Act - **286 cases**,<sup>14</sup>
- Cases, related to the violation of the constitutional right of the citizens to seek, receive and impart information - **63 cases**;
- Cases, related to the violation of the right of protection of personal data, provided by the Personal Data Protection Act - **56 cases**;
- Cases, related to the violation of the freedom of expression - **2 cases**.

The presented data for 2005 show that the number of cases related to difficulties in the exercise of the right of access to information had increased from the previous year. In 2004, there were **223** of these cases. The same tendency was observed with regard to the cases related to the right of protection of personal data. Their number for the previous year was **37**.

The 286 cases that were registered in the AIP data base related to difficulties in the exercise of the right to information indicate that the seekers of information **had the greatest difficulties in obtaining access to information from the following obliged under the APIA institutions**:

- The bodies of the executive branch-these are the central bodies: ministries, agencies, commissions, as well as regional departments of the executive branch-our clients sought AIP assistance in **142** cases when they asked for information from these bodies;

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<sup>14</sup> Out of all registered cases, related to the right of information (286), the total number of refusals was 163. Most of these refusals had been received as a result of oral requests. In the remaining instances, though no access to information refusal was registered, the seekers of information had encountered problems with the formulation of the request, with the procedures under the APIA, etc.

- The local government authorities (mayors and municipality councils)-in **68** case;
- Public legal entities-in **21** cases;
- Bodies in the judicial branch - **16** cases;
- Private companies-in **16** cases, etc. (See the Appendix).

During 2005, the number of cases of information refusals that were registered in the data base was 163. Among these, **the so called silent refusals-31 and the ungrounded refusals-24, were the most frequently used.** The other grounds on which the administration and the other obliged bodies, refused information were: the information was unavailable-in 13 cases; third party's interests and referral of the requestor-in 9 cases respectively; administrative secret and personal data-in 8 cases respectively. Less frequently, information was refused on the grounds that it was a state or commercial secret (See all the statistics in the Appendix).

It is no accident that the silent and ungrounded refusals constitute the greatest part of the refusals. Their number is mostly due to the fact that information has been requested orally. Oral requests are frequently refused on random grounds that usually do not exist under the APIA. Thus, the obliged institutions practically "deal" with the requestors, compelling them to submit written requests for access to information. The grounds for refusal explicitly stipulated by Art. 37 of the APIA were used primarily when information was requested in written form.

Our experience has shown that the basic reasons for the refusal of information at an oral request is the absence of an appointed officials responsible for the access to information, as well as explicit internal rules facilitating the institution itself in the provision of information.

The statistics from last year's cases indicate that **journalists, citizens, and non-governmental organizations were the most frequent kinds of seekers of information.** Journalists turned to AIP for legal assistance in 221 cases, citizens asked for consultations in 106 cases, while NGOs-in 78 cases. Consultations and legal help on issues related to access to information were also sought by business companies and public servants, but these requests were less common. In some of the cases, the legal help was provided in the initial phase of information seeking and the legal team of AIP advised or prepared the request for access to information. In these cases, our clients had difficulties in identifying the body that was obliged to provide the information sought, in specifying the documents which contained the desired information, or simply wanted to fill in correctly the request for access to information. Legal assistance was also provided in cases when refusals had been already given as a response to an oral or written request. The total number of complaints against refusals of access to information during 2005 was 38.

## ***Most frequently requested types of information***

The analysis of all the cases that were received and consulted by AIP show that several areas were of particular interest to the seekers of information. These were:

### **Access to state contracts**

The contracts that the state signs with private companies have always been of particular public interest. These are contracts which the state or the municipalities sign with private companies to bypass the normal tender procedures for the public procurements. It is interesting to note that the bigger the amount of money that the state has to pay under these contracts, the more obstacles to the public access to information. Three grounds are most commonly given for refusals with regard to these contracts-state secret, administrative secret, and finally - the most frequently used exemption - protection of the third party's interests, those of the private company. For example, several advertisement clips were produced during the government run voting campaign „Elections 2005,“ with the purpose of increasing voting activity. The advertisements were commissioned by the Council of Ministers and were paid from the state budget. We submitted a request for access to information to the Director of the Government Information Services, asking about the amount of money spent for the production of the advertisements, and the name of the company or companies which had produced them. We also requested why the contracts for the productions had not been signed under the procedures of the Public Procurement Act. The information was refused on the grounds that the particular contracts had been signed under the Decree for Small Public Procurements and the interests of the companies, parties of the contracts, needed to be protected.

Similar cases were observed outside Sofia as well. The mayor of the town of Razgrad refused to disclose the names of the ten companies which were allowed by contracts to exploit the municipality forests. The municipality in the town of Burgas silently refused access to the contract between the municipality and a private company for the maintenance of the road network in the town. The mayor of the municipality in the town of Kresna refused to provide information about the advertisement area renting contracts between the municipality and private companies.

On a more positive note, the declassification of the concession contract for the construction of the Highway Trakia was a good start for improvements in this area. In September 2005, the new Minister of Regional Development and Public Works declassified the contract, which was signed during the term of the previous government. Unfortunately, other ministers who had inherited big state deals signed under a shroud did not take this initiative.<sup>15</sup>

### **Access to Public Registers**

Access to information contained in the public registers, proved to be problematic in a lot of cases in 2005. For example, the deputy chair of the *National Movement Ekoglasnost* submitted a request to the Minister of Environment and Waters demanding copies of the conflict of interest declarations of the experts who had prepared the environmental impact assessment for the construction of the nuclear power plant *Belene*. The information was

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<sup>15</sup> e.g. the Minister of Finance's contract with the British Consultancy Crown Agents, and the Minister of State Administration's contract with Microsoft.

refused on the grounds of personal data protection, despite the fact that the register of the environmental experts was public.

Very often, the municipality administrations refuse access to information related to municipality estate properties, although the register of municipality estate properties is also public.

For example, the mayor of the municipality in the town of Bansko refused to provide information to journalists about the estate properties of the municipality and their market prices. The mayor stubbornly refused to provide figures about the size of the properties and the prices offered to investors for their sale. The municipality administration in the town of Pazardzik also refused to provide information about the number of the expropriated estates and their price

### **Access to Information About Public Services**

In the previous report, we noted that there was an active seeking of information about the activities of commercial companies that hold monopolies, and especially those that provide public utilities, such as water, heating, electricity, and postal services. However, it is still difficult for citizens and journalists to obtain information from such companies. We would like to emphasize again the negative impact of the absence of legal obligation for private companies offering public services to provide public information. It is difficult even for the clients of the above-mentioned companies to get access to simple information about their activities and the quality of their services.

Here are some examples from the cases received by AIP:

A citizen submitted a request under the APIA to companies which supplied electricity in the towns of Stara Zagora and Plovdiv demanding information about the pricing of the electricity. They did not receive a response and submitted a complaint against the silent refusal to the regional court. The latter, however, declared the case inadmissible since the company was not covered by the APIA.

Similarly, the Regional Consumers' Union in the town of Haskovo submitted a request to *Electricity Supply - Plovdiv*, a company with state participation. They asked about the legal grounds and the criteria behind the calculations of the price of the monthly reference each consumer of energy was supposed to pay. No response was given.

Traditionally, the companies supplying water also keep silent. A reporter from the newspaper *Slivenski novini* requested information from *Water and Sewage Ltd at the town of Sliven* about the pricing of the drinking water. Furthermore, the journalist requested information about the qualitative characteristics that the drinking water should possess in comparison to the ground water. The company replied that the information was available in a format that could not be provided.

The executive director of *Water Supply, Dunav Ltd* in the town of Razgrad refused to explain to reporters from local media what the reasons for the increase of the price of water in January 2005 were. The director's answer was that the issue was about economic planning.

## Access to Environmental Information

Environmental information was also actively sought during 2005. Specialized nongovernmental organizations working for the protection of the environment showed increasing interest in the area. The statistics of the registered cases show that environmental organizations most frequently submit requests to the Ministry of Environment and Waters. This is the institution that holds the greatest volume of environmental information. During the year, the Ministry was requested about information related to the stock-taking of the persistent organic pollutants in Bulgaria, data about the violations of the environmental impact assessment of the ski runs in the Bansko resort, copies of the issued licences for the prospect of precious metals, etc.

The cases that were registered through the coordinators' network indicated an increased interest towards the activities of the RIPCOPHs<sup>16</sup> (the former Hygienic Epidemiological Inspectorates) and the RIEWs<sup>17</sup> in regards to the measurements they did on the quality of the drinking water and the air.

## Access to Personal Data

In 2005, fifty-six citizens turned to AIP for legal assistance in cases when the right of personal data protection was violated. Most of these cases were related to the refusal of the administrators of personal data to provide citizens access to their own personal data.

Access to documents containing health information was frequently denied. The AIP team was addressed by a citizen who had been treated in two different hospitals. After the end of her treatment, she was given only the treatment history and not the results of diagnostic tests. The citizen requested copies of the results of all medical examinations she had gone through during her stay in the hospital. However, they refused the information, saying that it was not their policy to provide these documents and that they would keep the results to be presented before the National Health Insurance as proof that they had really done the examinations. After the submission of a special request for access to personal data to the managers of the two hospitals, the results were obtained from one of them. The other did not respond. The silent refusal was appealed before the Commission for the Protection of Personal Data and a decision is pending. Unfortunately, this case is not unique. Frequently, hospitals refuse to give to their patients the original examination results since they fear that they will not be reimbursed by the National Health Insurance Fund.

The Ministry of Interior also regularly refuses to provide access to citizens to their own personal data. There was a particularly interesting case, with which AIP was asked to help. Legal proceedings had been started against a minor under the Act for the Prevention of Criminal Offences or Other Misbehaviour by Minors. The father requested the Sofia Regional Prosecutor's Office to read the file of his minor son. It is obvious that such information was necessary in terms of the future upbringing of the child and the protection of his rights. The deputy Prosecutor refused to provide access to the requested information. The refusal was appealed before the Commission for the Protection of Personal Data. The Commission issued a decision obligating that the Regional Prosecutor's Office give the father access to the personal data of his son, while protecting the personal data of third parties.

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<sup>16</sup> The Regional Inspectorates on the Protection and Control Over the People's Health.

<sup>17</sup> Regional Inspectorates on Environment and Waters.

## ***Practices of Information Provision***

### **Positive Practices**

The goal of the AIP report is to present and analyze not only problematic areas in the practices of the obliged bodies to provide public information, but also to encourage public positive practices that have been brought to our knowledge. We have to note the improvement that one of the institutions has made, namely the Public Internal Financial Control Agency (PIFCA).

During the previous years, there were often problems obtaining information related to the audits made by the internal financial control bodies.

Information contained in the requested audits was refused by the PIFCA more than once on the grounds of "administrative secret." In response to these practices, several court cases were started by citizens, with AIP providing the court representation. For example, after an unsuccessful attempt to obtain access to the copies of two audit reports issued after PIFCA inspections in two higher education schools in Sliven, branches of the Technical University of Sofia, the chairman of the Civil Association Public Barometer started FOI litigation against the PIFCA.<sup>18</sup>

As a result of the advocacy of AIP and the FOI litigation, the PIFCA acquired an attitude of greater openness in its work in 2005. The cases we receive indicate that the practices have been changing and the Agency has started to provide detailed summaries of the audit reports, at the requestors' demand.

An example that illustrates this development is the case of a client who submitted an information request demanding a number of audit reports after the PIFCA financial inspections in Sofia and the regional directorates of the agency in other parts of the country. The requested audit reports concerned the inspections of the holiday centres kept by the Council of Ministers for the period 1998 - 2002. In response to the request for access to information and within the legally prescribed time frames, the citizen received the complete information she had asked for.

Furthermore, AIP was invited to participate in and consult on the process of drawing the internal rules for the provision of access to public information within the PIFCA. The implementation of these rules would facilitate both the servants of the agency, as well as the citizens who search for information about its activities

### **Negative Practices**

A permanent negative practice that AIP observed during 2005 was the lack of good organization and a system of active disclosure of information on the part of the legally obliged subjects. During the past year, the fulfilment of the obligation stipulated by Art. 14 and Art. 15 of the APIA was understood as the publication of information simply about the structure and the functions of the respective administration, and in some cases, the publication of a newsletter. Five years after the adoption of the law, there is not an established and working system for the dissemination of information in times of disasters, crises, and accidents.

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<sup>18</sup>The case is described in the recently published by AIP third volume of the book *Access to Information Litigation in Bulgaria*.

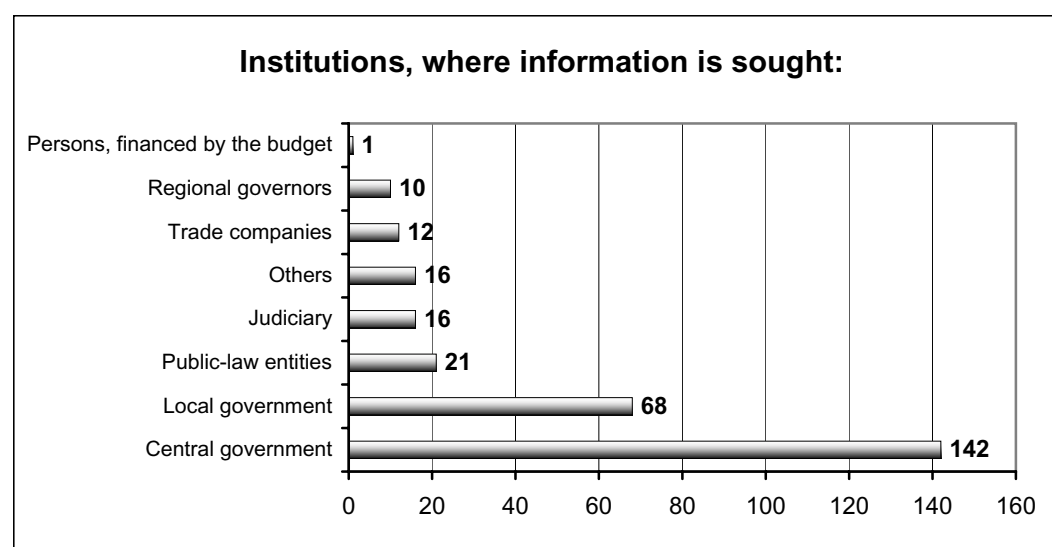
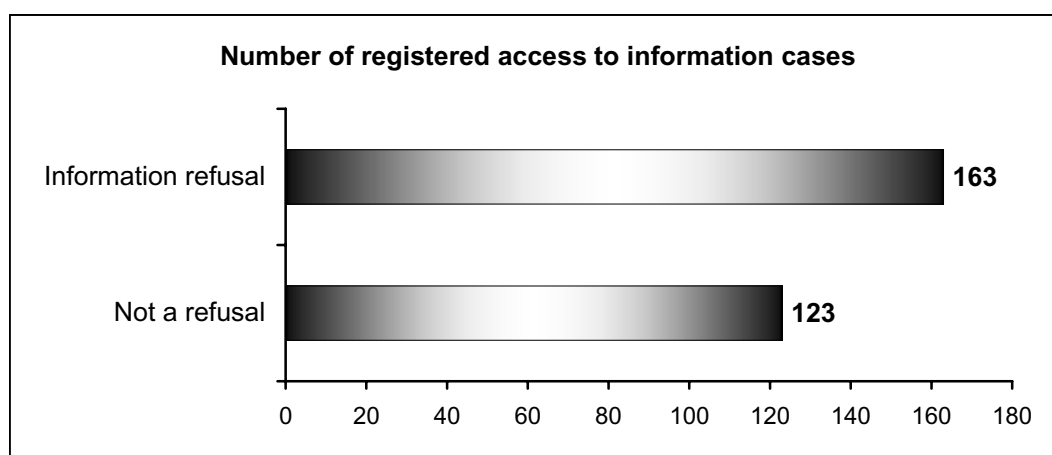
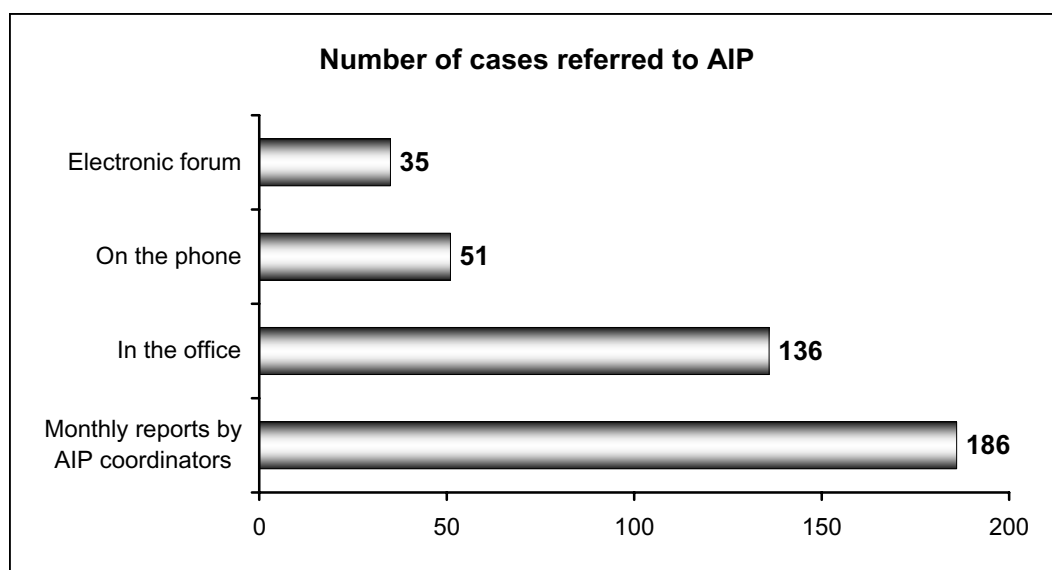


The lack of such a system for dissemination of important information was strongly felt during the flood period during the summer of 2005. On August 9, 2005, water wave overran the village of Kapitan Andreevo and the Border-control check point „Kapitan Andreevo.“ The flood may have been predicted since it was a result of the overflowing of the Maritsa river after the discharge of water from the Topolnica dam. The local population in the region of Plovdiv had not been informed about the situation neither at the time, nor after the floods. People could have taken some measures to save at least part of their property and stock.

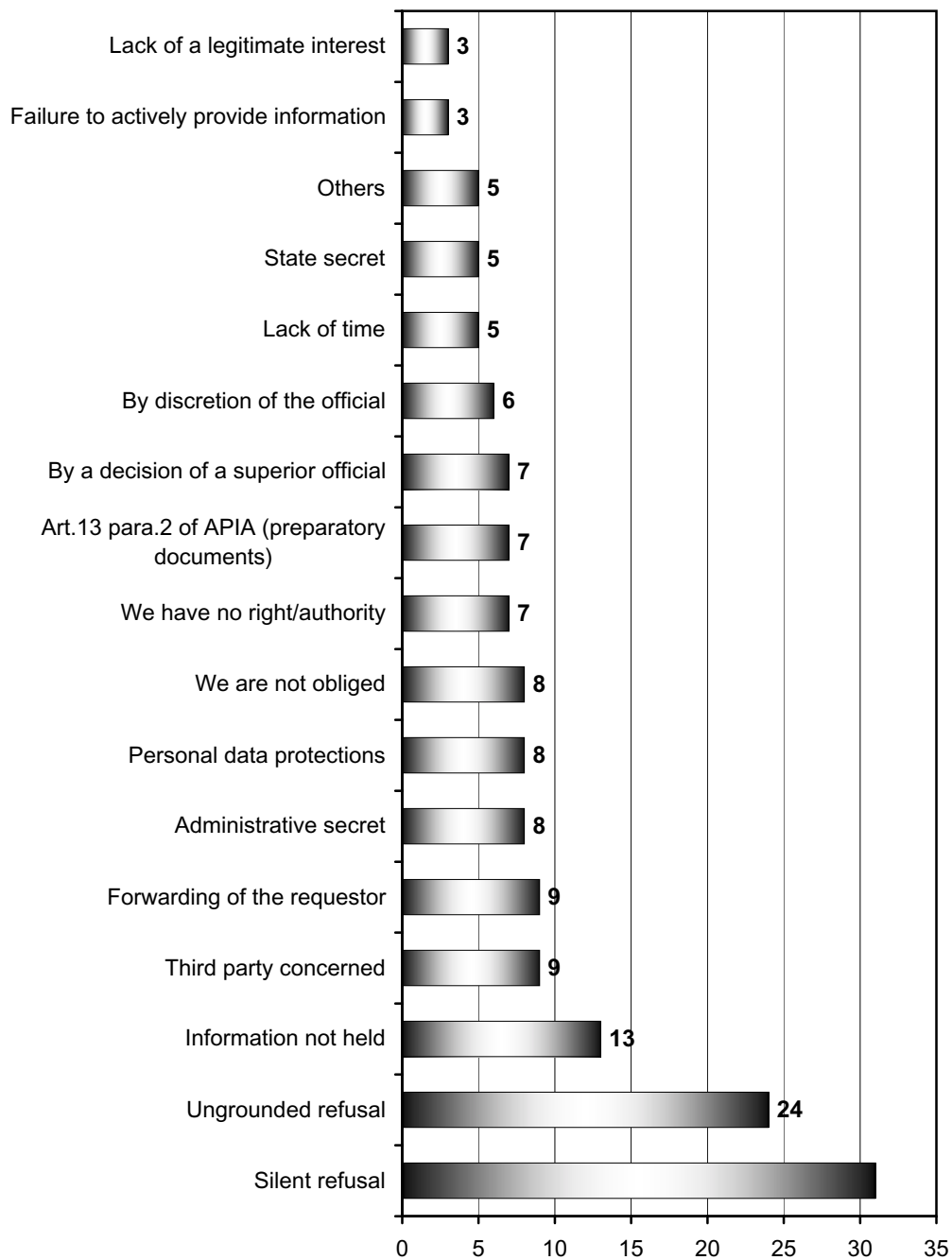
This case was not an isolated one. The emergency services, the mayors, and the environmental inspectorates were, in most of the cases, busy with the restriction of the floods and the prevention of further damages. The dissemination of information was put aside. No officials were assigned to provide updated information all the time. As a result, incorrect and misleading information was disseminated.

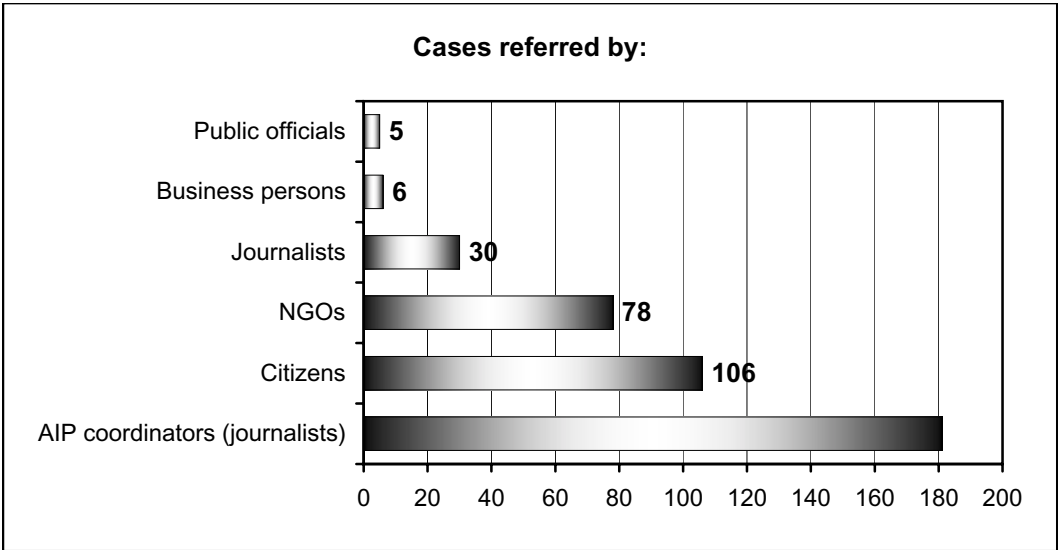
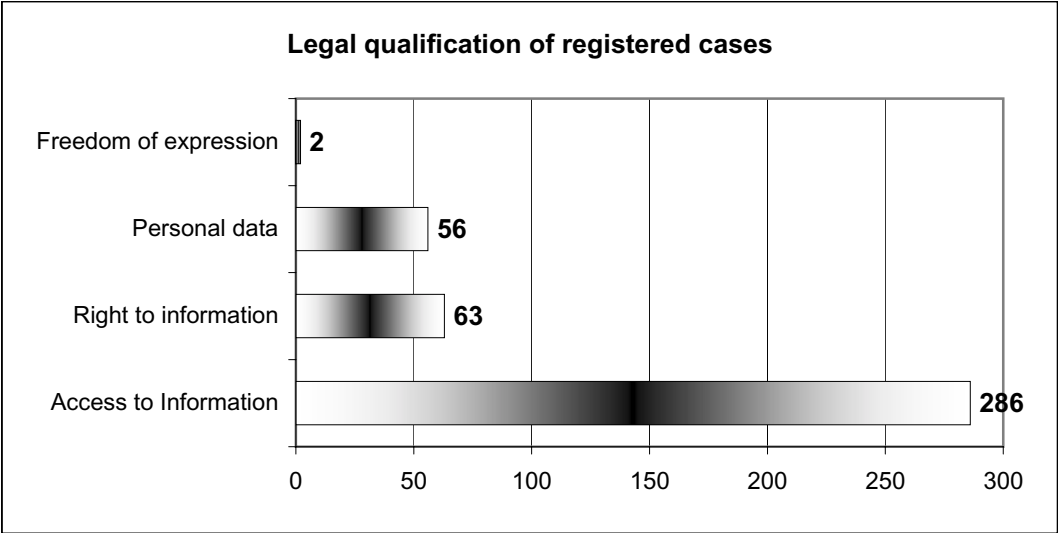
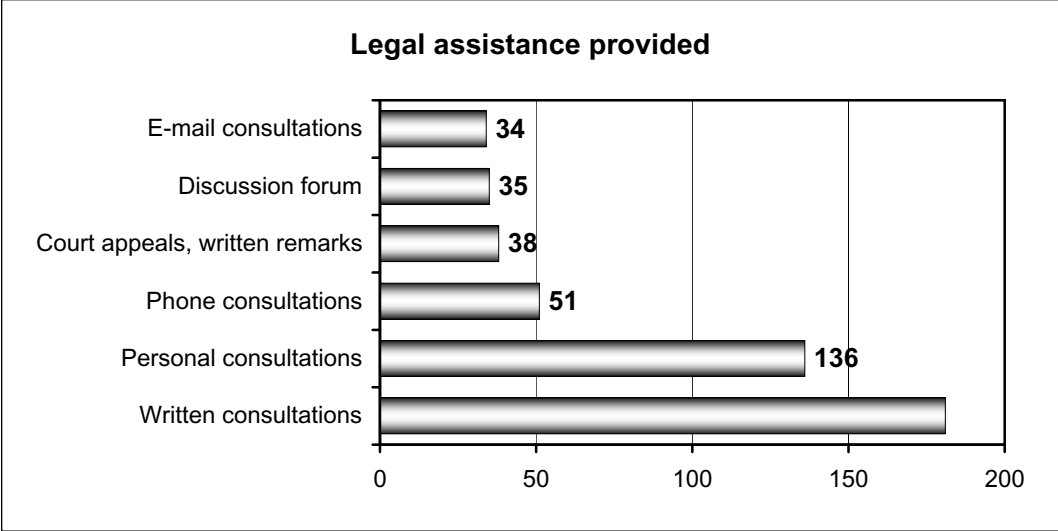
## APPENDIX

### Statistics from the electronic database Access to Information Programme, 2005



### Refusal grounds





## LITIGATION 2005

In 2005, the legal team of AIP continued to provide legal help to citizens and NGOs and to protect their interests in court cases regarding information refusals. During the reported period, the lawyers of AIP prepared and submitted 38 letters of complaint to the court against unlawful refusals of the administration to provide access to public information. AIP also provided representation in 35 access to information court cases.

The access to information litigation assisted by AIP during the past year has brought about the answers to two very important questions related to the access to information right -what is the type of the government-held information that was most frequently sought, and what was the solution that court decisions gave to the issues set by the refusals.

Despite the varying character of the information that was sought during the past year, several tendencies may be identified in this regard. The greatest interest was shown towards information of commercial character, related to state or municipality concession contracts, public procurement contracts, and privatization contracts. The court case of the journalist Silviya Yotova from Novinar newspaper illustrates the above-mentioned tendencies. Ms. Yotova started litigation against the refusal of the Minister of Regional Development and Public Works to provide a copy of the concession contract for the construction of *Trakia* highway. A similar case was that of our colleague from AIP, Kiril Terziiski, against the refusal of the Minister of Finance to provide a copy of the contract with the British Consultancy *Crown Agents*, which has been ongoing for three years. Another similar case was that of the Environmental Association *Green Balkans* from the town of Plovdiv when they submitted a request to the Minister of Agriculture and Forestry demanding access to all documents related to the legal analysis of the privatization of the state-owned company Sredna Gora. Initially, the information was denied on the grounds of protection of third party's interest and the association turned to the legal team of AIP for assistance. After filing an appeal to the court, the ministry reconsidered their decision for refusal and provided unrestricted access to the information.

The seekers of information showed considerable interest towards financial information, held by the bodies of the state internal financial control (this includes financial audits, budget reports, etc.); towards environmental information; and towards information held in the public registers.

Some of the AIP assisted litigation set forth the issue of access to information contained in the public registers. Information contained in the *Register of Property Owned by High Government Officials*, the *Register of Licensed Hunters*, and *Register of Experts Licensed to Perform Environmental Impact Assessments (EIA)* continued to be problematic. For example, a problem arose when the deputy chair of National Movement *Ekoglasnost* requested the Minister of Environment and Waters to provide copies of the conflict of interest declarations of the experts, who had performed the EIA report on the construction of the nuclear power plant Belene. The information was refused on the grounds of protection of personal data, regardless of the fact that the *Register of Experts Licensed to Perform Environmental Impact Assessments (EIA)* was public. The case of the environmental association Tetida in the town of Blagoevgrad was almost identical. Tetida submitted a request to a regional forestry service, demanding access to copies of licenses for individual hunting of game that had been issued on particular dates. A refusal followed on the grounds of protection of personal data, though the *Register of the Licensed Hunters* was public.

The permanent interest towards financial information generated by the bodies of the public internal financial control led to the frequent submission of appeals to the court against the refusals of these bodies to provide access to information. In the case of Kalina Grancharova-a journalist from the local newspaper of the small town of Tutrakan (*Tutrakanski Glas* newspaper) - the tacit refusal of the mayor of the town was challenged before the regional court. The mayor had refused to provide a copy of the financial audit report of the municipality, prepared by the Regional Directorate of the Public Internal Financial Control Agency (PIFCA). The regional court reversed the denial. This case is important for the implementation of access to information law on the local level.

Problems in this particular area were the reason why AIP continued to assist the case of Yurii Ivanov, Chairperson of the Sliven Civil Association *Public Barometer*. In 2002, he was refused access, on the grounds of administrative secret, to copies of two financial audit reports issued after PIFCA inspections in two higher-education institutions in Sliven. After the repeal of the refusal by two court instances, a new refusal was issued by the PIFCA on the grounds of the protection of third party's interests (these of the two universities). The refusal was again challenged in court. We should note, however, that the legal assistance of AIP in challenging such denials combined with the AIP advocacy led to changes in the practices. The PIFCA acquired an attitude of greater openness in its work in 2005 and started to provide detailed summaries of the audit reports, at the requestors' demand.

A whole new tendency was observed in 2005-the attempts of journalists to obtain access to information contained in the archive of the First Bureau of the former State Security Services (SSS). The archive is currently held by the National Intelligence Services (NIS). Two court proceedings were triggered in this regard-one was of the journalist Bogdana Lazarova of *Darik Radio* against the refusal of the Director of the NIS to provide information about the case of „Sergey Antonov“ and the assassination attempt against Pope John Paul II; the other-of the journalist Hristo Hristov of *Dnevnik* daily newspaper against the refusal of the Director of the NIS to provide information about the murder of the dissident writer Georgi Markov in 1978 in London.

Regarding the court decisions on access to information cases, we have to note that the courts issued 25 decisions on AIP assisted court cases. These decisions not only settled disputes on access to information, but also gave interpretation for a number of vague provisions of the Access to Public Information Act (APIA).

At the end of 2005, the team of AIP completed the third volume of the book *Access to Public Information Litigation*. Like the previous two volumes, the book contains two parts-an analytical text, which comments on the issues that had emerged in 2004 and 2005 court practices, and a compilation of documents regarding 10 court cases. Again, the book attempts to present-through the publication of a greater number of documents concerning particular court cases like protocols, written defence, etc-the statements of the court parties and the final decision judgements of the justices in their entirety. The analytical part of the book is dedicated to issues related to the seeking of information by citizens, nongovernmental organizations, and journalists; to the formulation of requests for access to information; to the existence of information and the compliance of the administration with the preferred form of access pointed by the requestor. Furthermore, the questions about the jurisdiction of the complaints against access to information refusals, the hearing of access to information cases on their merits, and the execution of the court decisions are also discussed. A considerable portion of the comments in the book constitutes an analysis of court practices regarding limitations of the right of access to information-

state, administrative and commercial secrets, as well as the exemption related to preparatory documents.

In terms of the execution of the court decisions, the 2005 tendency was an increase of cases in which the administration executed court decisions. To a large extent, the trend is a result of the increased number of cases which the court decides on their merits and obligates the body to provide access to the requested information, rather than merely returning the case to the administrative body. Thus the execution of the court decision is correlated with the orders given by the court in the decision itself. If the court decision orders the body to provide the requested information, the information is most often provided. However, if the court refers the request back to the body for reconsideration, the information is often refused again. There are still some obstacles in this regard and the complainant in several cases must follow up in order to push for the execution of the court decisions. An example is the AIP assisted court case of the journalist from the daily newspaper 24 Chassa, Pavlina Trifonova. In its two instances, the court repealed the refusal of the Government Information Services (GIS) to provide information about the per diems of the ministers. However, a reminder letter had to be sent to the GIS for them to execute the court decision. A reminder letter would not always bring the execution of the court orders, however. In another case-against the refusal of the mayor of Vidin Municipality-a request had to be sent to the Supreme Administrative Court (SAC) to fine the mayor for not executing the court decision.

## APPENDIX

### LITIGATION - CASE NOTES

#### 1. Anton Gerdjikov vs. the Ministry of Interior

First Instance-administrative court case No. 7088/2004, SAC, Fifth Division

Second Instance-administrative case No. 10940/2005, SAC, Five member panel

#### **Request:**

In 2002, during the Second Meeting of Bulgarians who live in the Ukraine, held in the town of Zaporojie, the participants mounted a statue of Khan Asparuh, the founder of the Bulgarian state in the 7th century. The local authorities, however, dismantled the statue during the night and brought it to the historical museum of the town of Zaporojie for storage.

A year and a half after the event, in June 2004, the citizen Anton Gerdjikov-a participant in the Second Meeting of Bulgarians who live in the Ukraine-submitted a written request for access to information to the Ministry of Foreign Affairs (MFA). In his request, Gerdjikov stated that the mounting of the statue was desired by all Bulgarians who knew about its dismantling and demanded that the MFA provide all available information about the mounting and the removing of the statue. In particular, the requestor demanded documents, pointed out in five detailed points of the request-all related to the position and the measures taken by the Bulgarian state bodies in terms of the event.

#### **Refusal:**

The Minister of Foreign Affairs did not respond to the request within the legally prescribed 14 days period.

#### **Complaint:**

The silent refusal of the Minister was challenged before the Supreme Administrative Court (SAC).

#### **Developments in the Court of First Instance:**

In the course of the proceedings, the representative of the MFA presented a file with correspondence-letters and documents-concerning the issue. The hearing of the case was postponed at the first session in order for the complainant to get acquainted with the presented documents. It turned out that these documents contained part of the requested information, though some questions, raised in the request, still remained unanswered.

At the second session, the MFA submitted a written defence which presented two alternative statements. According to the first one, there was no silent refusal since the information about the mounting and removal of the statue was not related to the public life of the Republic of Bulgaria and did not concern events from the public life of the Republic of Bulgaria. Consequently, the information was not public pursuant to Art. 2, Para. 1 of the APIA. According to the second statement, the requested information was official information pursuant to Art. 11 of the APIA and contained documents with no significance of their own, thus access to these was exempted under Art. 13 of the APIA.



**Court Decision:**

Decision No. 7836 as of August 29, 2005 of the SAC, Fifth Division repealed the silent refusal of the Minister and sent the request back to the body, obliging it to provide all of the information that Anton Gerdjikov had requested. In their judgment, the justices pointed out that the Minister should provide access to the documents listed in the request since the complainant would only find an answer to the question that concerned him after getting acquainted with their content-the official position of the Republic of Bulgaria with regard to a demand of the Bulgarians residing in the Ukraine to mount a statue of Khan Asparuh in the town of Zaporojie. According to the justices, the access to these documents should not be restricted on the grounds of Art. 13 of the APIA since there was no final act of the Minister, whose preparation may have required the collection of the particular documents, whose content may have given an answer to the questions of the requestor.

**Court Appeal:**

The MFA appealed the court decision with the argument that the Access to Public Information Act (APIA) did not stipulate that administrative information was information that may only be generated in the process of a final act preparation, thus the exemption under Art. 13 of the APIA may not be applied.

**Developments in the Court of Second Instance:**

The case was heard at a single court session and scheduled for judgment.

**Decision:**

The Supreme Administrative Court found the appeal inadmissible in its decision No. 2308 as of the beginning of 2006 and upheld the decision of the lower instance court. In their judgment, the justices elaborated on the argument that access to the requested documents may not be restricted under Art. 13 of the APIA since the information they contained was not directly related to the preparation of a final act and their content may not give an answer to the questions of the requestor.

**2. Bogdana Lazarova (*Darik Radio*) vs. The National Intelligence Services**

First Instance - administrative case No. 2576/2005, Sofia City Court, Administrative Division, Panel III-B

**Request:**

On May 12, 2005, Ms. Bogdana Lazarova, a journalist of *Darik Radio*, submitted a request for access to information to the Director of the National Intelligence Services (NIS). She demanded access to information that was contained in the documents from the First Bureau of the former State Security Services (SSS) related to the case of „Sergei Antonov“ and the assassination attempt against Pope John Paul II.

**Refusal:**

A written decision was issued by the NIS to refuse access to the requested information on the grounds that it had been classified as a state secret. The decision stated that the archive materials that were being kept in the NIS regarding the issue constituted a collection of documents with different marks of classification, the highest level of which was *top*

*secret*. Consequently, the whole collection was under protection for a period of 30 years. Furthermore, the decision noted that the Personal Data Protection Act (PDPA) also imposed restriction of free access to these archive materials since the documents contained personal data.

**Complaint:**

The refusal was challenged before the Sofia City Court (SCC) with the argument that the decision itself was null and void since it had been signed by a person different from the Director of the NIS and no data about this person's authorization to decide on Access to Public Information Act issues were present. The argument went on that the interpretation of Art. 30, Para. 3 of the Protection of Classified Information Act (PCIA) related to the classification of collection of documents and the period for classification was wrong. The purpose of the provision was not to classify the whole collection of documents for the longest period of time, but to prevent a person who had not been licensed with a security clearance under the procedures of the PCIA from working with the documents. Therefore, in cases like this one, the body covered by the APIA should provide partial access to the information by removing the documents which contained classified information from the whole collection.

**Developments in the Court of First Instance:**

At the first session, with a formal ruling, the Sofia City Court declared the complaint inadmissible as it was overdue and terminated the proceedings, though a receipt note for the delivery of the complaint letter in time was presented in court. In order to deliver a ruling, the court assumed that evidence was missing in this case-there was no proof that an envelope containing the letter of complaint had ever been sent to the NIS.

**Appeal Against Inadmissibility:**

The ruling of the SCC that terminated the proceedings was appealed before the Sofia City Court.

A decision of the SAC on the SCC ruling for the termination of the proceedings is pending.

### **3. Environmental Association *For the Earth* vs. the Ministry of Finance**

First Instance-administrative court case No. 1621/2004, Sofia City Court, Panel III-v

**Request:**

The Environmental Association *For the Earth* submitted a written request to the Ministry of Finance (MF), demanding access to copies of the following documents-preliminary research reports, application forms, and cost-benefit analyses of two ISPA financed projects - *Lulin* Highway and the Regional Depot for common, construction, and dangerous waste in the town of Russe.

**Refusal:**

In a response to the request, the MF issued a decision for partial access to the requested documents-the preliminary research reports of the two projects. The rest of the requested information was refused.

**Complaint:**

The part of the MF's decision that denied access to the requested information was challenged before the court with the argument that no grounds of any type had been given for the refusal.

**Developments in the Court of First Instance:**

In 2005, three court sessions have been held and three times the proceedings have been stayed for the submission of evidence and elimination of procedural impediments to the consideration of the case on its merits.

A court session was scheduled for February 2006.

**4. Environmental Association *For the Earth* vs. the Ministry of Environment and Waters**

First Instance - administrative case No. 3138/2004, Sofia City Court, Administrative Division, Panel III-B

Second Instance - administrative case No. 10628/2005, Supreme Administrative Court, Fifth Division

**Request:**

In July 2004, the Environmental Association *For the Earth*, submitted a written request for access to information to the Ministry of Environment and Waters (MOEW). The organization demanded access to three categories of information regarding a project financed through the ISPA programme of the EU, through the European Investment Bank, and through the European Bank for Reconstruction and Development. The requested categories were as follows:

- copies of all Environmental Impact Assessment decisions issued by the MOEW;
- copies of all records of public discussions, including the lists of the participants;
- copies of the opinion statements presented by the participants at the public discussions.

**Refusal:**

A written decision issued by the Head of the MOEW Administration granted partial access to the requested information. Copies of all Environmental Impact Assessment decisions issued by the MOEW were provided. Access to the copies of all records of public discussions was refused on the grounds of Art. 13, Para. 2 of the APIA (preparatory documents with no significance of their own). Copies of the opinion statements presented by the participants at the public discussions were also refused on the grounds of Art. 27, Para. 1, Item 2 of the APIA (information that affected a third party's interests; thus their consent was required for the provision of the information).

**Complaint:**

The part of the MOEW's decision which had denied access to the requested information was challenged. The arguments adduced were that the requested information had been

explicitly defined as publicly accessible under the provision of Art. 102 of the Environmental Protection Act (EPA). The argument went on to say that Art. 13, Para. 2 of the APIA was not applicable to cases in which access to environmental information, defined under Art. 19 of the EPA, was being requested. The APIA provision was not applicable since it was Art. 20 of the EPA that provided for the restrictions of the right of access to environmental information. Article 20 of the EPA did not provide for referral to Art. 13, Para. 2 of the APIA. Furthermore, the letter of complaint went on, the opinion statements of the participants in the public discussions were public and did not constitute information that may harm a third party's interests under the provisions of the APIA.

#### **Developments in the Court of First Instance:**

The case was heard in a single session and scheduled for judgment.

#### **Court Decision:**

With a decision as of July 18, 2005, the Sofia City Court repealed that part of the Head of the MOEW Administration's decision which refused information and referred the file back to the Ministry, obligating it to provide access to the requested information. In their judgment, the justices accepted the arguments of the complainant about the inapplicability of the provision of Art. 13, Para. 2 of the APIA to the particular case. With regard to the refusal to grant access to the copies of the opinion statements presented at public discussions, the justices remarked that the consent of these individuals was not required since the statements they had made, which were submitted in a written form as well, did not constitute information that might harm their rights or legitimate interests.

#### **Court Appeal:**

The MOEW appealed the court decision with the argument that not only the records from the public discussions, but also the opinion statements presented during those discussions constituted information related to the operational preparation of the EIA decisions and consequently had no significance of their own. That was why access to the information was restricted under the provision of Art. 13, Para. 2 of the APIA.

#### **Developments in the Court of Second Instance:**

The case was heard at a single court session and scheduled for judgment.

The delivery of a decision by the SAC is pending.

### **5. Zoya Dimitrova (*Monitor* Newspaper) vs. the President of the Republic of Bulgaria**

First Instance - administrative court case No 1380/2004 Sofia City Court

Second Instance - administrative court case No 4596/2005 SAC, Fifth Division

#### **Request:**

In February 2004, Zoya Dimitrova, a journalist from *Monitor* newspaper, submitted a request for public information to the President of the Republic of Bulgaria, Mr. Georgi Parvanov. She demanded access to the report prepared by the National Security Services (NSS) and the National Investigation Services (NIS). The report contained data about Bulgarian citizens and companies that had been involved in oil trade with Iraqi companies

or state bodies during the regime of Saddam Hussein. In her request, Ms. Dimitrova pointed out that she would prefer to be given partial access to the public information if the report contained parts of information classified under the appropriate legal procedure.

#### **Refusal:**

The information request was dismissed by the Head of the President's Administration. The refusal referred to the Access to Public Information Act simply by stating that the information had been classified.

#### **Complaint:**

The refusal was appealed before the Sofia City Court. The complaint stated that the wording of the refusal did not create the presumption that the requested information had been lawfully classified as a secret of any type. The mere statement that the requested information constituted classified information, with no reference to the particular provisions of the Protection of Classified Information Act (PCIA) and no specification of the state secret information category, stipulated by Appendix 1 to Art. 25 of the PCIA, or any other particular list of categories that may have defined the information as administrative secret, determined the refusal as ungrounded.

#### **Developments in the Court of First Instance:**

The case was heard in a single session and scheduled for judgment.

#### **Court Decision:**

On February 28, 2005, the Sofia City Court reversed as illegal the refusal of the Head of the President's Administration and returned the file to the institution for reconsideration. In their judgment, the justices pointed out that the letter of the Head of the President's Administration lacked any proof why the requested information was secret, nor did it refer to any legal grounds for its classification. The refusal did not even specify whether the requested information was classified as state or official secret under the Protection of Classified Information Act (PCIA). The preparation of the report by the National Investigation Services in cooperation with the National Security Services did not automatically classify the information confidential, nor did it remove the obligation of the public authority (the Head of the President's Administration) to provide criteria and reasons for classifying the requested information.

#### **Court Appeal:**

The Head of the President's Administration appealed the judgement of the Sofia City Court (SCC) before the Supreme Administrative Court. In the appeal, the high official argued that the decisions of the Head of the President's Administration were not subject to appeal and that the refusal had been grounded.

#### **Developments in the Court of Second Instance:**

The case was heard in a single session and the court adjourned.

#### **Court Decision:**

The Supreme Administrative Court repealed the decision of the Sofia City Court with a decision No. 5 as of January 2006 and turned the case back to the lower instance court for reconsideration. The supreme justices assumed that with its decision, the SCC had not thoroughly investigated the lawfulness of the refusal that was being appealed. The SCC had not applied its entitled privilege under Art 41, Para. 3 and 4 of the APIA to

oversee the classification with a security stamp. Several other important issues were settled by the decision of the supreme court:

- access to information refusals of the Head of President's Administration are liable to appeal;
- the simple statement that the requested information is *state or other legally protected secret*, does not exclude the refusal from appeal liability;
- the first instance court should request and inspect the report of the special services in order to judge on the lawfulness of the decision to classify it as a state secret;
- the fact that the information relates to the work of the security services does not automatically classify it as secret. What was requested was not *an operational report on the work of the services*, but a report presenting the results from the operational work;
- even if there is a possibility of harm from disclosure, it could be eliminated by granting partial access to the requested information.

A new hearing of the case by the Sofia City Court is pending.

## **6. Ivaylo Hlebarov vs. the Ministry of Justice**

First Instance - administrative case No. 5648/2004, Supreme Administrative Court, Fifth Division

First Instance- administrative case No. 4095/2004, Sofia City Court, Administrative Division, Panel III-J

### **Request:**

In 2004, Mr. Ivaylo Hlebarov from the Environmental Association *For the Earth* submitted a written request for access to information to the Minister of Justice, Mr. Anton Stankov. Mr. Hlebarov demanded that he be provided with a list of the international organizations and institutions which financed projects for the implementation of judicial reform in Bulgaria with the participation or the cooperation of the Ministry of Justice (MJ). It was requested that the list contain the name of the donor organization, the name of the project, the activities under the project, and the amount of money provided for the execution of the project.

### **Refusal:**

A written decision for refusal was issued on the grounds of Art. 37, Para. 1, Item 2 of the APIA - information that affected a third party's interests and their letters of consent were not obtained. The decision of the MJ also stated that the request of Mr. Hlebarov was contradicting the basic principles of the exercise of the right to public access.

### **Complaint:**

The refusal of the Minister of Justice was challenged before the SAC with the argument that it was null and void since it had been signed by a senior expert from the reception room of the Ministry, but no data about this expert's authorization to issue decisions under the APIA existed. The refusal was also unlawful because it did not specify the third

parties whose interests might be harmed; nor the interests that might be harmed; nor the legal provisions under which those interests were protected. Besides, no evidence existed that the consent of these parties had ever been asked under the provision of Art. 31 of the APIA. The complaint also pointed out the the major donor institutions like the World Bank, the EU, MATRA KAP programme of the Netherlands Embassy, etc. encouraged greater transparency in the work of Bulgarian public bodies.

#### **Developments in the Court of First Instance:**

At the first court session, the representative of the MJ presented an order by the Minister, which had authorized the person who had signed the refusal to issue decisions under the provisions of the APIA. Under those circumstances, the Supreme Administrative Court referred the case to the Sofia City Court, under whose jurisdiction the case fell.

#### **Developments in the Court of First Instance (again):**

At the session of the SCC, the lawyer of the complainant presented evidence that the requested list was published and was accessible on the web site of the Supreme Judicial Council (SJC). It was remarked that the publication of the information on the web site of the SJC indicated the consent of all donor organizations that the information be public.

The SCC scheduled the case for judgment. A court decision is pending.

### **7. Center for Environmental Information and Education vs. the Council of Ministers (CM)**

First Instance - administrative court case No. 9872/2004, SAC, Fifth Division

First Instance - administrative court case No. S - 63/2005, SAC, Fifth Division

#### **Request:**

In July 2004, Mr. Petko Kovachev, the Director of the nongovernmental organization Center for Environmental Information and Education, submitted a written request to the Prime Minister demanding a copy of a Decree of the Council of Ministers as of 1988, which determined the towns and villages in the region of the nuclear power plant *Belene*, which would have been quarantined. Other MC's Decrees and Decision from the period 1980-1990 and documents related to the construction the nuclear power plant were requested as well.

#### **Refusal:**

The requested copy of the Decree was denied on the grounds of classified information. In regards to the other requested documents, all available decrees and decisions were provided to the requestor, while for those from the 80s, he was referred to the State Archive Administration.

#### **Complaint:**

The refusal for the provision of the copy of the document was challenged in the court with the argument of noncompliance with the requirements stipulated by the Access to Public Information Act (APIA) and the Protection of Classified Information Act (PCIA) in terms of the issuing of a decision for refusal on the grounds of classified information. The refusal had not even stated whether the refused information constituted state or administrative secret.

### **Developments in the Court of First Instance:**

At its first session, the court requested the CM to provide the Decree so that the court may inspect the document and judge on the lawfulness of the decision to classify it as a state secret. The court stayed the proceedings.

In the meanwhile, the court classified the proceedings since the CM presented classified evidence.

At the second session, the court again stayed the proceedings for the provision of additional evidence. In the meanwhile, the complainant had acquainted himself with the text of the Decree held in the secret department of the Supreme Administrative Court since the Protection of Classified Information Act provided that the parties in a court proceedings, as well as their lawyers, had access to the classified cases.

At its third session, the SAC scheduled the case for judgment.

### **Court Decision:**

The SAC dismissed the complaint with its Decision No. 136 as of January 9, 2006. In their judgment, the justices stated that the claim of the complainant had been satisfied since he had obtained access to the requested public information-he had read the CM Decree that was part of the court record/ file.

The decision was not appealed and came into effect.

## **8. Kiril Karaivanov vs. the State Reserve Agency**

First Instance-administrative court case No. S - 41/2005, SAC, Fifth Division

### **Refusal:**

A court decision on the case of Mr. Kiril Karaivanov<sup>1</sup> vs. the State Reserve Agency reverses the refusal of the State Reserve Agency's Director and sent the request back to the institution for reconsideration.

In January 2005, in executing the court decision, the Director of the Agency provided access to a part of the documents requested by Mr. Karaivanov. The Director again refused access to a receiving order as of 2000 with the argument that the requested document had been stamped secret, which is in compliance with the State Reserve Decree as of 1996. The Director claimed that the level of classification had been changed after the adoption of the Protection of Classified Information Act (PCIA) into confidential. Furthermore, the director insisted that the change in or the cancellation of the security stamp was done by the person who had initially classified the document-in the case, that person was a representative of a private company.

### **Complaint:**

The refusal was challenged before the court on the grounds that the Decree, on the basis of which the document had been classified, was not promulgated in the State Gazette. Pursuant to the Constitution of the Republic of Bulgaria, all statutes (the Decree being such under the Statute Act) should be published in the SG. Consequently, the Decree,

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<sup>1</sup> The case is included in the AIP's third volume of the book *Access to Information Litigation in Bulgaria. Vol.3.*



which had not been published, gave no legal grounds for refusal. The complaint went on with the argument that no evidence had been presented that the private company that had concluded a contract with the Agency was authorized to work with classified information under the provisions of the PCIA. This authorization was a legal requirement for the reconsideration and re-classification of information under the PCIA.

#### **Developments in the Court of First Instance:**

Meanwhile, the Director of the State Reserve Agency presented the classified document as evidence, which caused the classification of the proceedings. The case was heard in a single court session and the court adjourned. In his written remark, the legal counsel of the complainant argued that even had the classification of the document been lawful, all possible terms of protection under the PCIA had expired.

#### **Court Decision:**

With a decision as of August 2005, the court dismissed the complaint on the grounds that the document had been lawfully classified, then re-classified under the procedure stipulated by the PCIA.

This decision was appealed. A court session of the higher instance court is to be scheduled in 2006.

### **9. Kiril Terziiski vs. the Minister of Finance (the *Crown Agents contract*) II**

First instance - administrative court case № 4120/2004, SAC, Fifth Division

Second instance - administrative court case № 592/2005, Five-member panel of SAC

First instance (again) - administrative court case № 4596/2005, SAC, Fifth Division

#### **Request:**

With Decision № 2113 as of March 3, 2004 on administrative court case № 38/2004 a five-member panel of the Supreme Administrative Court (SAC) left in force Decision № 11682/2003 of the three-member panel of the same court on administrative court case № 3080/2003. The decision reversed the refusal of the Ministry of Finance to provide a paper copy of the contract between the Ministry of Finance and the British consultancy *Crown Agents* to Kiril Terziiski. The judges reiterated that the lack of any reasoning for why the requested contract constituted a state secret was not sufficient for the court to review the legality of the refusal and to exercise effective judicial control over the decision of the Minister. The file was returned to the Minister of Finance for reconsideration of the information request.

#### **Refusal:**

The court decision was followed by a new written information refusal. The contract had been classified as a state secret as early as December 2001, as noted by the information security department at the Ministry. Classification had been grounded in item 24 of the repealed List of Facts, Subjects and Other Information Constituting State Secret:

- *Records concerning the organization and technical characteristics of programs for the protection of automated systems for information management in ministries and other institutions of power and governance.*

The Minister insisted that the contract contained information classified as state secret after the adoption of the Protection of Classified Information Act (PCIA) as well. Information from the contract was under the scope of the following categories from the Appendix list under art. 25 of PCIA:

- *research created on behalf of a public institution with high importance to the interests of the national economy;*
- *information regarding technical, technological and organizational decisions, whose disclosure is likely to harm important economic interests of the state.*

### **Complaint:**

The refusal was challenged before the SAC with the main argument that the instructions of the court had not been followed. The minister had not indicated what kind of information was contained in the contract, making it impossible to judge whether it really fell under the scope of the exceptions under the PCIA. The complainant requested that the court exercise its privilege under Art. 41 Para. 3 and 4 of the Access to Public Information Act (APIA) and request both the contract and the classification decision for inspection.

### **Developments in the Court of First Instance:**

In a court hearing, the representative of the complainant requested that the court demand the minutes from a Council of Ministers session on Oct. 25, 2001. At this session, the Cabinet had discussed the relation between the requested contract and national security. The court rejected the request, but ordered the Minister of Finance to present the contract for an *in camera* inspection and to provide information about the public official who had classified it and the justification behind the classification decision. If the contract had been classified by the decision of an authorized official, the minister had to show evidence of his/her authority to assign classification levels. In order to speed up the legal procedures, the court agreed to hear arguments in the case, but assured the parties that a decision would be taken only after a review of the contract under Art. 41, Para. 3 and 4 of APIA. This was an important precondition for the final outcome of the litigation process.

After hearing the arguments of the two parties, the court adjourned.

### **Ruling on the case:**

The court reviewed the contract between the Ministry of Finance and the British Consultancy and issued a Ruling on Nov. 10, 2004. The judges established that the first page of the contract was stamped *secure*; later the stamp was crossed out and a new *confidential* stamp had been placed. An authorized official had signed below the stamp and indicated the ground for classification - § 9 of the Transitional and Final Provisions of PCIA. There was also a date - Sep. 20, 2004.

### **Court decision:**

With Decision 9472 as of Oct. 16, 2004 the three-member panel of the SAC **rejected** the appeal of Kiril Terziiski against the Minister of Finance's refusal to disclose a copy of the contract between the Ministry and the British Consultancy *Crown Agents*. The justices grounded their decision mainly in the classification mark found during the *in camera* inspection. The court took the position that the refusal complied with the Bulgarian law. The court ruled that the proof given by the Minister that information contained in the contract fell under the scope of one of the state secret exemptions, listed in Appendix 1 to the PCIA, was enough to assume that the contract had been lawfully classified. The presiding

judge, however, delivered a dissenting opinion. He argued that in order to review the lawfulness of the classification decision - a requirement of Art. 41, Para. 4 of the APIA - the court had to interpret the content of the categories quoted in the Minister's refusal. The presiding judge believed that information in the contract was outside the scope of any exemption.

### **Court Appeal:**

The decision was challenged by AIP before a five-member panel of the SAC. The complainant argued that the three-member panel had not fulfilled their obligation under Art. 41 Para 4 of the APIA to scrutinize the classification decision. Instead, the judges assumed that the security mark was enough to prove that classification had been made in conformance with the law. The first-instance court panel had not even considered the question of whether information contained in the contract had any relation to the interests protected by Art 25 of PCIA and whether any harm could result from the document disclosure.

### **Developments in the Court of Second Instance:**

On 28 April 2005, a Five-member Panel of the Supreme Administrative Court reversed the decision of the Three-member Panel of the same court, which in November 2004 has dismissed the complaint of Kiril Terziiski from AIP against the refusal of the Minister of Finance Milen Velchev to provide a copy of the contract with the British Consultancy *Crown Agents*. According to the justices, the judgment of the Three-member Panel was issued in violation of the substantive law and the rules for court procedures. First, the Five-member Panel pointed out that the Three-member Panel had not decided on the lawfulness of the security mark on the contract, which meant that the assumption that the contract contained classified information was ungrounded. Second, the Three-member Panel had reviewed the contract at a chamber session under Art. 41, Para. 3 of the Access to Public Information Act (APIA) after the close of the pleadings, and by this action had violated the right of the claimant to defend since the latter could not have gotten acquainted with the points of facts that were established. The case was referred back for judgment to another Three-member Panel.

### **Development in the Court of First Instance (again):**

In a November 2005 court hearing, the new Three-member panel requested that the Minister of Finance provide the contract to be inspected by the court in a closed session. The new panel then stayed the proceedings pending the examination of the contract. The court panel inspected the contract and announced their findings in a court ruling.

The case was heard at an open session on January 30, 2006. The parties presented their positions about the findings of the court. The case was scheduled for judgment.

### **Court Decision:**

With its decision No. 1554 as of February 13, 2006, the panel of the SAC, Fifth division, repealed the refusal of the Minister of Finance as unlawful and turned the request back to the institution for reconsideration. The justices assumed that the refusal had been issued in violation of the administrative-procedural rules since the refusal did not state the grounds and the criteria on which the entirety of the requested information had been defined as state secret. Furthermore, the justices noted that after their inspection of the contract in a closed session, they found the Minister's statement that the contract contained classified information and constituted a state secret ungrounded.

The court panel also drew the conclusion that the request had not contained the description of the requested information required by law, only the simple demand for the contract. According to the court, the vagueness of the request had been reflected in the content of the decision for refusal.

We have to remark that this issue has been settled in the first case against the refusal of the Minister of Finance in 2003 - 2004, when a Five-member Panel of SAC found that *the attitude and the procedural statements made by both parties has shown that both parties are clear about and it is indisputable what type of information has been requested* (Decision No. 2113 as of March 9, 2004 on administrative case No. 3882004, SAC, Five-member Panel).

The court decision was appealed by both parties.

## **10. Krasimir Krumov (*Monitor Newspaper*) vs. the Regional Governor of the Town of Shoumen**

First Instance- administrative court case No. 2113/2005, SAC, Fifth Division

### **Request:**

In January 2005, the journalist from *Monitor Newspaper*, Krasimir Krumov, submitted a written request under the procedure stipulated by the APIA to the Regional Governor of the town of Shoumen. The journalist demanded access to information about the projects for regional development (the so-called *demonstration projects*). More precisely, the journalist requested a list of the projects that had been approved and information about the contractors and the sub-contractors and the amount of money allocated for the implementation of these projects.

### **Refusal:**

A written response was sent to the requestor, informing him that an Internet site that would contain information about all regional development projects for the region of Shoumen was under construction. Furthermore, the letter signified that after the online publication of the information, the journalist would be informed personally.

### **Complaint:**

The refusal was challenged with the argument that the publication of the requested information on the Internet did not relieve the regional governor of his obligation to provide the information when requested. Furthermore, the information was not published afterwards, making the governor's statement into a mere promise.

### **Developments in the Court of First Instance:**

The case was heard in a single session and the court adjourned.

### **Court Decision:**

An October 2005 Decision of the Supreme Administrative Court reversed the refusal and returned the request back to the regional governor for reconsideration in compliance with the instructions given by the court. In their judgment, the justices emphasized that the requested information was undoubtedly public under the stipulations of the APIA and that no grounds for the refusal were given in the letter sent by the administrative

body. Furthermore, the justices pointed out that the *response* received by the requestor constituted a will for refusal, which, however, was not expressed in the way prescribed by the law, i.e. the refusal had been announced in the form of a recommendation with the intention of better service provision in the future.

The court decision was not appealed and has come into effect.

*Subsequently, the regional governor provided access to all of the requested information to the journalist.*

## **11. Association Center for NGOs in the town of Razgrad vs. the Municipality of Razgrad**

First Instance - administrative court case No. 78/2004, Regional Court of Razgrad

Second Instance - administrative court case No. 3169/2005, Supreme Administrative Court, Fifth Division

### **Request:**

In the end of 2004, the Association *Center for NGOs in the town of Razgrad* submitted an information request to the mayor of the town demanding access to all the regulations related to public registers in the Municipality of Razgrad-their number, their names and procedures for their use.

### **Refusal:**

The mayor did not respond to the FOI request but required the NGO to produce a document of its court registration. The association did not present such verification since they considered such a requirement unjustified. The NGO challenged the tacit refusal of the mayor before the Regional Court of Razgrad.

### **Development in the Court of First Instance:**

The Regional Court dismissed the complaint and denied justice, assuming that by failing to comply with the mayor's requirements, the NGO lost both the right to information and the right to complain.

### **Appeal Against Inadmissibility:**

The NGO appealed the denial of the regional court to hear the case before the Supreme Administrative Court (SAC).

### **Court Ruling:**

With a decision as of April 13, 2005 the Supreme Administrative Court disagreed with all the reasoning of the Regional Court. The supreme justices rejected the decision of the lower instance court and referred the case file back for reconsideration to the public body. The Supreme Administrative Court affirmed that the right to information was a fundamental civil right. In particular, it stated that everyone, even non-formal organizations, was entitled to that right and that no public institution was allowed to meet a FOI request with silence. The Access to Public Information Act (APIA) lacked any requirement that an organization seeking access to public information needs to prove its legal status. Such a requirement would be senseless since under Article 41 of the Constitution of Bulgaria, „**Everyone** has the right to seek and obtain information.“

Furthermore, every organization is constituted of members by definition and each member as a natural person has the right to access public information.

## **12. Association *Center for NGOs in the town of Razgrad* vs. the Municipality of Razgrad**

First Instance - administrative case No. 11/2005, Regional Court of Razgrad

Second Instance - administrative case No. 7222/2005, Supreme Administrative Court, Fifth Division

### **Request:**

In the end of 2004, the chair of the Association *Center for NGOs in the town of Razgrad* submitted an information request to the mayor of the town demanding access to information about the amount of money paid by the Municipality in the town of Razgrad for an advertisement in the December 9, 2004 edition of *Duma* newspaper.

### **Refusal:**

A written decision for refusal was issued on the grounds of protection of a third party's interests and the lack of its consent for the provision of information. A letter of dissent from the Chief Editor of *Duma* newspaper was attached to the refusal. It claimed that the information was the editor's and company's secret.

### **Complaint:**

The refusal was challenged before the Regional Court of Razgrad.

### **Developments in the Court of First Instance:**

The case was heard in a single session and was scheduled for judgment.

### **Court Decision:**

The Regional Court of Razgrad dismissed the complaint with Decision No. 56 as of April 27, 2005. The justices took the position that the requested information did not constitute public information under the provisions of the APIA, but concerned business relations between the Municipality of Razgrad and the newspaper. In their judgement, the justices stated that the administrative body had correctly assessed that the information affected a third party's interests and had requested their consent for the provision of the information. As a result of the dissent of the third party, the body had correctly refused access to the requested information.

### **Court Appeal:**

The decision was appealed before the SAC with the argument that the Regional Court of Razgrad had wrongly judged that the requested information was not public. The definition of public information was given by Art. 10 and 11 of the APIA and the SAC itself had ruled in a number of decisions that information contained in contracts between the state or the municipality and a private company was public. The complaint argued that the requested information did not constitute a commercial secret pursuant to the provisions of the Fair Competition Act. Thus the dissent expressed by the third party was irrelevant. It also stated that the spending of public money by public bodies should be transparent in

a democratic society, and it was of no importance whether it was spent for reconstruction, construction, official trips, or advertisement in the press.

#### **Developments in the Court of Second Instance:**

At the court session, the lawyer of the complainant presented the advertisement price offer of *Duma* newspaper as a proof that the requested information about a particular payment was not a secret of any kind when the pricing was public-it was found on the web site of the newspaper. Consequently, the information should be provided.

The case was scheduled for judgment. A court decision is pending.

### **13. Silvyia Yotova (*Novinar* Newspaper) vs. the Ministry of Regional development and Public Works (MRDPW)**

First Instance- administrative court case No. 6363/2005, SAC, Fifth Division

#### **Request:**

In May 2005, the journalist Silvyia Yotova from *Novinar* Newspaper submitted a written request for access to information to the Minister of Regional Development and Public Works. She demanded a copy of the concession contract signed between the Ministry of Regional Development and Public Works (MRDPW) and *Highway Trakia* JSC, as well as copies of the legal analyses of the concession, which are prepared under the provisions of the Concession Act.

#### **Refusal:**

The Minister refused access to the requested contract since it contained data that due to its content constituted classified information-an administrative secret pursuant to the Protection of Classified Information Act (PCIA). Access to this type of information would negatively affect the interests of the state and would harm other legitimate interests.

#### **Complaint:**

The refusal was challenged before the court with the argument that the grounds claimed under the PCIA were not enough to justify the refusal. The law under which the requested information had been classified as administrative secret should have been signified as well. More importantly, pursuant to the Concessions Act, the Minister was obliged to submit the requested information to the Council of Ministers' Public Register of Concessions. This Register was supposed to be accessible via Internet.

#### **Developments in the Court of First Instance:**

Meanwhile, the concession contract was provided to Access to Information Programme (AIP) by the new Minister of Regional Development and Public Works. The journalist's right of access to information, however, has yet to be respected since the analyses done under the Concessions Act remained out of the public eye.

In February 2006, the case was heard at a single session and scheduled for judgment.

A court decision is pending.

#### **14. Hristo Hristov (*Dnevnik* Newspaper) vs. the Supreme Judicial Council**

First Instance (the only one) - administrative court case No. 11355/2004, SAC, Five Member Panel

##### **Request:**

In November 2004, the journalist from *Dnevnik* Newspaper, Hristo Hristov submitted a written request, under the procedures stipulated by the APIA, with the Supreme Judicial Council (SJC). The journalist demanded access to copies of the operational reports of the Prosecutor's Office for three successive years-2001, 2002, and 2003. The reports had been submitted to the SJC by the Supreme Cassation Prosecutor's Office and the Prosecutor's Office.

##### **Refusal:**

A letter from the Head of the Administration of the SJC informed Mr. Hristov that his request for access to information had been declined. Pursuant to Transcript No. 37 of the SJC session held on November 24, 2004, which was attached to the letter, access to the requested information was refused on the grounds of Art. 11 and Art. 13, Para. 2 of the APIA.

##### **Complaint:**

The refusal was challenged before the Supreme Administrative Court (SAC) with the argument that the norm of Art. 11 of the APIA gave a definition of the term *administrative public information*. Information defined in this way did not give grounds for the restriction of the right of access. The unlawfulness of the refusal was grounded in the lack of specificity as to which of the two hypotheticals given by Para. 2 of Art. 13 was intended since that paragraph contained two items, which stipulated completely different situations that may justify a refusal of access. It could not have been Art. 13, Para. 2, item 2 of the APIA since it applies to administrative information which involved statements and positions in terms of current or future decision-making by the administrative body. Arguments were presented that the purview of Art. 13, Para. 2, item 1 of the APIA was inapplicable since the operational reports on the work of the Prosecutor's Office had significance of their own. This meant that the documents contained facts other than the statements, recommendations, and consultations related to the preparation of an administrative act. Furthermore, as provided by Art. 13, Para. 3 of the APIA, the exemptions stipulated by the previous paragraph of the same provision (Art. 13, Para. 2), were effective for a period of two years after the generation of the information. Consequently, the asserted grounds made in the refusal were not applicable to the 2001 and 2002 operational reports of the Prosecutor's Office.

##### **Developments in the Court of First Instance:**

In a court session, the representative of the SJC supported the claim that the refusal was lawful, defending this claim with the fact that the operational reports were administrative information, since they were not produced by the SJC. The reports contained the names of certain justices, who had been quoted, which justified the SJC's assumption that the text contained personal statements and recommendations.

##### **Court Decision:**

A Decision of the Supreme Administrative Court, as of May 2005, rejected the complaint of the journalist on the grounds that the SJC did not generate the requested information and had no obligation under the law to keep it. In their judgment, SAC justices pointed



out that the Chief Prosecutor's Office was the body obliged by the law to provide access to the requested information, since this institution was responsible for the preparation of the operational reports on the work of the Office, including the requested reports for 2001, 2002, and 2003. Hence, the latter were kept by the Prosecutor's Office. Regardless of the dismissal of the complaint, the court decision had a positive effect. The justices assumed that the operational reports on the work of the Prosecutor's Office, which were requested, undoubtedly constituted public information under the APIA.

## **15. Hristo Hristov (*Dnevnik* Newspaper) vs. the National Intelligence Services**

First Instance - administrative court case No. 687/2005, Sofia City Court, Panel III-g

First Instance - administrative court case No. S 31/2005, Sofia City Court, Panel III-g

### **Request:**

In the end of 2004, the journalist of *Dnevnik* newspaper, Hristo Hristov, submitted a request to the Director of the National Intelligence Services (NIS). Mr. Hristov demanded access to documents from the Archive of the First Bureau (the Intelligence Office) of the former State Security Services from the period 1971-1979. He requested the information for the documentary book he was writing about the murder of the dissident writer Georgi Markov in London 1978.

### **Refusal:**

In the legally prescribed period of 14 days, no response to the request was received.

### **Complaint:**

The tacit refusal was challenged before the Sofia City Court (SCC). Besides the arguments about the unlawfulness of the refusal, the complaint states that the journalist has already obtained access and studied the Archives of the Ministry of Interior, of the Ministry of Foreign Affairs, of the State Archive, and the Supreme Cassation Court. Furthermore, Mr. Hristov has published on the topic many times before, which justifies his request for access.

### **Developments in the Court of First Instance:**

At the first session of the court, the journalist presented a mass of evidence in support of his statement that he had already studied documents on the same topic in other archives. The court stayed the proceedings with the argument that the other party in the process should get acquainted with the evidence and should present their own as well.

At the second session, the representative of the defendant claimed that he did not know whether the requested information existed in the archive of the National Intelligence Services (NIS), since they could not find it in the files of documents they held. The lawyer of the complainant insisted that the the Supreme Administrative Court practices had shown that the mere statement with no evidence that a certain document may not be found was not enough to ground a refusal for access to information. In such cases, the respective administrative body should provide evidence that the document had been destroyed after the decision of an expert commission; had been archived and data had been given allowing for its tracing; or had been lost and a protocol, signifying its loss had been issued.

The case was scheduled for judgment. A new court decision is pending.

## **16. Yurii Ivanov vs. the Public Internal Financial Control Agency**

First Instance- administrative court case No. 1902/2003, Sofia City Court, Administrative Division, Panel 3-a

Second Instance - administrative court case No. 4944/2005, Supreme Administrative Court, Fifth Division

### **Request:**

Mr. Yurii Ivanov, a Chairperson of the Sliven Civil Association *Public Barometer*, filed a written request with the Director of the Public Internal Financial Control Agency (PIFCA). As early as 2001, Mr. Ivanov demanded copies of two financial audit reports issued after PIFCA inspections in the Sliven College of the Sofia Technical University and in the Engineering Education Faculty of the Sofia Technical University. The Director of the Regional Directorate of PIFCA in the town of Sliven transferred the request to the Director of PIFCA in Sofia. The latter refused access to the demanded information on the grounds of administrative secret. The refusal was challenged before the Sofia City Court, which dismissed the complaint. However, the Supreme Administrative Court (SAC) reversed the decision of the lower instance court, as well as the refusal of the PIFCA Director and returned the information request to PIFCA's Director for reconsideration.

### **Refusal:**

The Director of PIFCA released a new written decision refusing access to the information on the grounds of protection of a third party's interests, those of the two educational institutions, and the lack of their consent for the disclosure of the information.

### **Complaint:**

The refusal was challenged with the argument that the requested information did not affect the interests of third parties and that even if they would have been affected, no consent would have been required pursuant to Art. 31, Para. 5 of the APIA since the Sofia Technical University was a legal person which was financed by the state budget and consequently the university was a body covered by the APIA.

### **Developments in the Court of First Instance Court:**

At the first session, the court panel stayed the proceedings and gave instructions to the representative of the defendant to provide evidence for the authorization of the person who had signed the refusal, since the latter was signed with a comma, not a real signature.

At a second court session, the representative of the defendant did not present evidence for the authorization of the person that had signed the refusal. The court adjourned.

### **Court Decision:**

A decision of the Sofia City Court as of August 11, 2004 declared null and void the refusal of PIFCA and returned the request to the agency for a valid decision. In its judgment, the court emphasized that the assessment of the lawfulness of the refusal included the assessment of the competence of its author. The lack of evidence for the authorization, per Art. 28, Para. 2 of APIA, of the person who had signed the refusal influenced the court panel to believe that the refusal had been issued by an incompetent body, which made the act null and void.

**Court Appeal:**

The PIFCA appealed the court decision with the argument that the complaint against the refusal of access to information had been submitted after the legally prescribed deadline.

**Developments in the Court of Second Instance:**

The case was heard in a single session and the court adjourned.

**Court Decision:**

SAC dismissed the court appeal with Decision No. 11888 as of December 28, 2005 and upheld the decision of the previous instance court.

A new decision is pending on the reconsideration of the information request by PIFCA.

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Report

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