Cases 2006

Introduction and General Characteristics

Providing free legal help for information seekers has been one of the priorities of the Access to Information Programme for over ten years. During the past year, journalists, non-governmental organizations, and citizens who faced problems with the implementation of their access to information rights turned to the legal team of AIP for assistance. From the cases referred to us in 2006, we have noticed that a decreasing number of people have been seeking our assistance in the very beginning of their access to information struggle, such as when they need help in formulating their requests or in identifying the public authority they should turn to, or simply because they do not know what to expect after submission. Ever more frequently, people turn to us after formulating the request correctly and after submitting it to the correct institution following the procedure of the APIA. This is a fact that can only please us, because it indicates increased awareness of the right to information access regulated by the APIA, especially among the citizens of Sofia and the largest Bulgarian cities.[1] On the other hand, we can infer that public authorities have also developed in a positive direction and – almost seven years after the adoption of the law – generally do not view information seekers as intruders who have no right to inquire about the work of public institutions.

Number of Cases Referred to AIP for Assistance:

The total number of cases in which the Access to Information Programme was asked for assistance in 2006 was 350. In all of these cases, the legal team of AIP provided either oral or written comments and specific recommendations for overcoming possible difficulties. Most of the cases were received either by phone or when information seekers visited our office personally; some of them were sent by e-mail.

With regard to their legal characteristics, the cases referred to us can be divided into the following categories:

- cases in which information seekers had difficulties exercising their right to information access following the procedures of the Access to Public Information Act (260 instances);
- cases of violation of the general Constitutional right of citizens to seek, receive, and impart information (45 instances);
- cases related to the protection of personal data, as regulated by the Personal Data Protection Act (39 cases).

Statistical reports show that the number of cases registered in our database has decreased: in 2005, we provided assistance in 408 cases, while in 2006 they numbered only 350. This tendency is characteristic for the last few years and can be largely attributed to the experience gained by public authorities in the process of implementing the Access to Public Information Act for nearly seven years now. Immediately after the adoption of the law in 2000, even the simplest information request caused complex problems and provoked many inadequate responses from public institutions, forcing information seekers to request our legal advice as the only solution to their problems with access to government-held information. In no way do the above numbers mean that problems with the implementation of freedom of information legislation have started to disappear; rather, the implementation of the law has entered a new stage, in which – seemingly – purely procedural and formal obstacles to the right to information have gradually been dealt with.

From Which Public Institutions Do Information Seekers Mainly Request Information?

1 Unfortunately we cannot say the same for smaller towns and villages, where the most active seekers of information are typically journalists and NGOs.

Data about cases referred to AIP for assistance and registered in our database in 2006 indicate that information seekers have most frequently had problems when requesting information from the following public authorities:

- A total of 129 cases registered concerned bodies of the executive power. These include not only the central bodies of the executive power, such as ministries, state agencies, state commissions, but also the regional directorates of these executive bodies (see the attached list).
- Local governmental authorities (mayors and local councils) – 81 registered cases;
- Natural persons or legal entities financed by the state budget – 15 registered cases;
- Bodies of the judiciary – 13 registered cases;
- Public-law entities – 8 registered cases.

What Were the Most Frequently Cited Reasons Used by Public Authorities to Deny Access to Information in 2006?

The total number of refusals by public authorities to provide access to information registered in our database for 2006 is 156. They can be roughly divided into: oral refusals to provide access to information following an oral request, and refusals to provide access to written requests. Most frequently public authorities provide no legal grounds when refusing to provide information orally. The total number of unfounded refusals for 2006 was 33. The second most frequent category of registered complaints is that of *silent refusals,* which numbered 24 in 2006.[2]

When considering only the written information requests filed in 2006, the largest number of refusals were grounded in the need to protect third-party interests. For example, in 19 cases, public authorities explicitly used the exemption of Art. 37 para. 1 item 2 of the APIA, which refers to information concerning a third person who has not given his/her consent for disclosure. In still 15 other cases, information was refused using the protection of personal data exemption, while in eight cases public authorities referred to the exemption for trade secrets. The exemptions in Art. 13 para. 2 of the APIA, which defines two different exemptions of access to administrative information[3] was used 13 times by public authorities to withhold access in 2006. The exemption of *administrative information* has been used relatively rarely to withhold access to information of public interest, being cited in only four registered cases in 2006.[4]

Who Requested the Assistance of AIP in 2006?

Most frequently in 2006, as in previous years, the clients of AIP were citizens, journalists, and non-governmental organizations. Citizens requested our assistance in 125 cases, while the AIP coordinators (all of them journalists) sent us 151 cases; 24 cases were referred by other journalists, and 41 by non-governmental organizations. In some rare cases in 2006, public officials and business representatives requested our assistance on access to information issues.

Information Most Frequently Sought in 2006:

2 The majority of silent refusals follow oral requests, but there are still cases in which written requests receive absolutely no response.

3 The provision of. Art. 13 para. 2 stipulates the following:
Access to administrative public information may be restricted, if it:
1. relates to the preparatory work of an act of the bodies and has no significance in itself (opinions and recommendations prepared by or for the body, reports and consultations);
2. contains opinions and statements related to on-going or prospective negotiations to be led by the body or on its behalf, as well as any data relating thereto, and was prepared by the respective bodies' administrations.

4 Complete statistics are available in the attachment.

A review of the cases referred to the legal team of AIP shows that in 2006 the interest in information was concentrated in the following spheres:

Access to Contracts Between Public Institutions and External Contractors

Contracts signed between public authorities and private companies have been a major subject of public interest in 2006. Our observations show that as in the previous year, the obstacles to information access are directly proportional to the amount of money public authorities pay out according to the signed contracts. Registers of public procurements and concession contracts do exist, but the data they contain is quite scarce. Access to public information is limited to the names of the private companies and a short summary of the contract terms.
Unfortunately, all the examples we give here are indicative of common practices nationwide. An example is the unsuccessful campaign by journalists from the town of Pernik, who have repeatedly requested at least the names of the companies with which mayor Antoaneta Georgieva signed contracts for cleaning and planting trees. In 2006 the mayor of the town of Sliven refused to provide a copy of the contract for a twenty-year concession for maintenance of the street lighting facilities. The question of publishing the full text of the above-mentioned contract was raised during a meeting of the local council; however, the mayor replied that local councilors could read the contract only after signing a declaration that they would not disclose it afterwards. Journalists from the Sliven-based newspaper *Sedmica* had requested access to the contract between the municipality and the company that maintains and cleans the snow off the municipal roads. The mayor turned down the request, arguing that the whole contract contained commercial secrets.
We are still not aware of a single case of a public institution disclosing the full text of a contract it has signed with a private company. Access to information has been refused using many different reasons, but most often institutions refer to the need to protect a third-party interest, that of the private company.

Access to Information in Cases of Illegal Construction

Illegal construction has been a hot topic during the past few years in Bulgaria; hence, people have actively sought access to official documents related to this topic. Public interest is mainly focused on inspection results, violations, and the prevention of illegal construction by the responsible agency, the State Construction Control Directorate (SCCD).

We can identify two major groups of people who seek information about illegal construction. The first group consists of citizens who need access to information in order to solve personal problems. A typical example of this group is Mr. Dichev, a citizen who owned land in the center of the Bulgarian capital of Sofia. The land was expropriated, thus Mr. Dichev was forced to engage in several long-lasting lawsuits. While the court decisions were pending, a supermarket and a gas station were built on the expropriated land. Mr. Dichev requested the assistance of AIP, hoping to gain access to all permits and other documents issued by the SCCD in connection with the above-mentioned construction. After some short legal proceedings, the court ruled in favor of the citizen's right to information access.

The second group of people who seek information about illegal construction are journalists and NGOs who conduct various investigations. One representatives of this second group is Genka Shikerova, a journalist from bTV, who used the assistance of AIP to receive access to official documents proving several cases of illegal construction in the Black Sea town of Nessebar. In a similar case the environmental organization For the Earth received official documents indicating illegal construction in the winter resort of Bansko.

Access to the Archives of the State Security Services (SSS)

As in previous years, access to information contained in the documents of the former SSS was problematic, as can be seen from many of the cases referred to AIP. Most of the obstacles faced by people who sought such information were caused by the lack of a uniform regulation about access to the archives. For example, access to the archives of the Ministry of Internal Affairs was regulated by an internal Order I-113 from 06/24/2002 establishing the procedures for access to information contained in the Ministry archives. At the same time, procedures for access to the archival documents of the Ministry of Defence and the National Intelligence Service (NIS) were regulated by the Personal Data Protection Act and the APIA.

The second major and clearly defined problem with access to documents of the former secret services is connected with certain contradictory practices concerning information disclosure. Likewise, in several cases the Ministry of Internal Affairs has failed to follow its internal rules on access to its archival documents. A drastic example was a reaction by the same Ministry to the civil initiative "Clean Voices," in which a large number of public figures requested access to their personal files in case the Ministry kept such files. Although Art. 3 of the above-mentioned internal order establishes that everyone has a right to access their own personal files kept in the ministerial archives, this information was withheld.

However, we should note a positive tendency from last year in the practice of providing access to archival information, specifically from the NIS. While in the previous years all information requests resulted in either silent or explicit refusals, 2006 signalled a slight change in a positive direction. A request from the *24 Hours* journalist Alexenia Dimitrova initially resulted in a silent refusal; however, after a subsequent request the journalist was provided with access with the requested information: the list of reviewed and declassified documents of the NIS.

Access to Information in the Sphere of Healthcare

In the first half of 2006, three different non-governmental organizations turned to us for assistance with almost identical cases in which the National Health Insurance Fund (NHIF) failed to publish on its own initiative information of great public importance. In the beginning of each year, the NHIF publishes a National Framework Agreement (NFA) signed between the NHIF, the Bulgarian Medical Association (NMA), and the Bulgarian Dentists Union (BDU). The framework agreement is supplemented with free healthcare plans related to certain diseases. According to the 2006 NFA, each healthcare plan must contain the criteria for inclusion of patients in the plan and should list all documents that patients are required to submit in order to get free medicine. After the official adoption of the 2006 NFA, the free health care plans were changed through a decision by the NHIF board. The changes however, were not made public, which was a serious violation of Art. 14 para. 2 of the APIA.[5] Because of this many patients prepared their documents in vain and had no right to be included in the free healthcare plans, which cost them money, time and a lot of stress. The situation outlined above refers to the following three healthcare plans for 2006, which were described to us by three different patients:

1. A free healthcare plan for the treatment of multiple sclerosis – a case referred to us by a member of the Multiple Sclerosis Patients Association.
2. A programme for free treatment of female fertility – a case referred to us by the Conception Association.
3. The free healthcare plan for treatment of breast cancer, carried out by the Ministry of Health – a case referred to us by a member of the Bulgarian Cancer Association.

5 The provisions of Art. 14 para 2 require public authorities to publish information on their own initiative when such information: 1. is of a nature to prevent some threat to citizens' lives, health or security, or to their property; 2. disproves a previously disseminated incorrect information that affects important social interests; 3. is, or could be, of interest to the public; 4. must be prepared and released by virtue of law.

Access to Personal Data

Thirty-six cases in which the right of personal data protection was violated were referred to the legal team of AIP in 2006.

In the majority of these cases, citizens complained that data controllers collected more of their personal data than was necessary to carry out their activities. In many cases it is not necessary for data controllers to keep and hold personal IDs. For example, the parents of several students from the town of Targovishte reported that the school where their children studied required them to submit their birth certificates. In a number of cases, even at the door of some public institutions, personal data of visitors is collected and sometimes even their IDs are held until they leave the building.

In 2006 an increased number of people referred questions to us, asking whether CCTV recordings of certain public places such as streets, official buildings, and others are legitimate without clear signs indicating such surveillance. The same question has been raised when it comes to recording in places that are far from public, such as hospitals, for example. AIP's coordinator for the region of Vratsa submitted a case in which the owner of a dental clinic had installed CCTV cameras to record the work of the dentist he had employed. However, the question was raised by the dentist's clients regarding the legitimacy of his recording their visits. An identical question was submitted by AIP's coordinator for Plovdiv regarding CCTV recordings of visitors to a private hospital in the town.

Existing Practices of APIA Implementation

An overview of these cases allows us to summarize the most frequent problems related to the implementation of the right to information:

1. It is difficult or practically impossible for seekers to receive certain information based only on an oral request – this is obvious not only from AIP's experience, but also from the cases referred to us by our nationwide network of coordinators. The opportunity of requesting information orally is envisaged by Art. 24 para. 1 of APIA, which establishes that access to information is provided after a written request or an oral inquiry. In case the information seeker does not receive information or is unhappy with the information he/she received based on his/her oral inquiry, he/she can formulate the request in written form, according to para. 3 of Art. 24. In practice, however, most oral inquiries are turned down and information seekers are forced to submit their applications in writing, even when they seek information that can be easily retrieved and provided. It is hardly necessary for information seekers to wait for two weeks for a copy of a town ordinance, the institutional budget, a decision of the local council, the protocol from a public discussion, or other easily retrievable public documents. Furthermore, all of the above documents contain information of public interest and should be made available on the institutions' websites, so that all interested parties can easily get acquainted with them without having to contact the information officials or having to request it from the institution. Documents that have been repeatedly requested from the institution (frequently requested records) also should be made available on-line, since this would save the administration the effort of having to respond to further information requests for the same information.[6]

2. In some cases information seekers are encouraged to submit their information requests using a pre-approved form by the institution. In many cases, however, filling in those forms requires the

6Requirements for publishing information of public interest online are established by the amendments to the US Freedom of Information Act (known as eFOIA, adopted in 1996), in the Public Information Act of Estonia (adopted in 2000), and in the Hungarian Act XC of 2005 on the Freedom of Information by Electronic Means from 2005.

provision of information about citizens that is not required by law, such as a personal ID number for citizens or Bulstat (identification number) for legal entities. Some application forms require information seekers to explain why they need the requested information, something which is outside the requirements of the law. Pursuant to Art. 25, para. 1 of APIA, there are only three attributes of an APIA request, which – if missing – might result in a refusal by the administration to handle it. These are**:** 1) a full name, or respectively the business name and registered address of the applicant; 2) description of the information requested; 3) the address for correspondence with the applicant. Consequently, all additional requirements on pre-approved request forms should be considered a violation of the APIA. After all, the aim of these pre-approved application forms should be to facilitate information seekers, rather than to burden them with additional information required only by the public institutions.

When we reviewed the official websites of all public institutions as part of a survey done in March 2007, we noticed that two of them – the municipality of Kubrat and the municipality of Kostinbrod – had posted online application forms that require information seekers to provide additional information.

3. Ever more frequently, institutions have started introducing a requirement that information seekers digitally sign information requests that they file electronically.

The opportunity for information seekers to file information requests electronically was established with Art. 24 para. 2 of APIA. According to this provision, information requests should be treated as written applications if filed electronically following a procedure established by the public institution. A procedure for electronic filing and responding to requests would save time and effort for both information seekers and public officials. On the one hand, such a procedure would facilitate the process for citizens, since they would not have to visit the institutions or submit their requests by certified mail, but rather would have the opportunity to file their applications electronically from their homes or workplaces. On the other hand, responding to requests electronically would lessen the burden on officials as well, since in most cases it would decrease the expenses for the preparation, sending, or providing the requested documents by other methods.

This is not what happens in practice, however. Instead of opting for a practical and more convenient solution, quite a few institutions have complicated the procedure for filing electronic requests by introducing a new requirement for information seekers that requires that requests filed by e-mail must be signed digitally. This requirement probably originated from the provision of Art. 24, para. 2 of APIA, which authorizes public institutions to set up an internal procedure for receiving and handling information requests. The internal procedure, however, should regulate some of the specifics of the information request process, such as: how public officials should register electronic requests; how and whether the information official should prepare a protocol verifying that information was provided; how the access fees should be paid by the information seekers (according to Order 10 from 2001 by the Minister of Finance, 1Mb of information send costs 0,30 BGN, or about 15 Euro cents). The requirement for the digital signing of electronic requests solves none of the above problems, or at least it does not solve them in keeping with the purpose and spirit of the Access to Public Information Act. A requirement for a digital signature helps the public officials identify the information requester, but this is hardly useful, because APIA establishes the right of everyone to request and receive information; the law requires that requesters must be treated equally and allows for no discrimination of any kind. Consequently, any information seeker may choose to request access to public information in his own name or in the name of anyone else, provided that he/she describes clearly what information he/she wishes to receive access to and provides his/her contact information.

The above procedures exist, for example, in the Ministry of Environment and Water (MOEW)

where "access to information requests signed with a digital signature are submitted in the same way as electronic documents." We have also identified a requirement for information seekers to digitally sign electronic requests in the Ministry of Finance, the Regional Governor of Gabrovo, and the Agerncy for Economic Analyses and Forecasting.

Last but not least, we should recall one quite significant principle: namely, that according to art. 20 para. 1 of APIA access to information is **free**. Information seekers should be required to cover only the costs for reproducing the information; however, these costs should not exceed those determined by an order from the Minister of Finance. However, purchasing universal digital signature software is not free and exceeds several times the cost of requesting even a large amount of information. For that reason, the requirement that information seekers sign their electronic requests digitally is in clear contradiction to the provisions of the Access to Public Information Act. Furthermore, this requirement limits the right to information access, rather than facilitating it.