

CASE STUDIES 2007

Introduction and General Characteristics

Provision of free legal help to information seekers has been a priority in the work of the Access to Information Programme for eleven years already. Every year, part of our annual report is dedicated to the analysis and assessment of cases in which citizens, journalists and nongovernmental organizations who faced obstacles in exercising their right of information have turned to us for consultation.

The first difference between the cases in 2006 and 2007 is the decrease in their number as opposed to their character. We have observed greater thoroughness and systematization in the process of searching for information. Often, several different requests are submitted to different institutions regarding a certain topic. Thus, the information seeker may compare the answers, analyze the information received and consequently acquire a more complete and detailed picture of the particular case.

An example of using this approach is the case of the informal Expert Group for Transparent and Efficient Cultural Policy, which was interested in the general state policy on the funding of community centers (*chitalishta*). They submitted several different requests to the Ministry of Finance and the Ministry of Culture. The documents received revealed the background and the justification behind the amendments to the 2007 State Budget Act related to the funding of those community centers. The requestors received information about the initiator of the proposals for the law's amendments, the stated justification for the proposal, when the *chitalishta* were informed as interested parties about the proposed changes, and whether their opinion had been sought on the issue.

Another conclusion drawn on the basis of cases referred to us in 2007 shows that a tendency observed in 2006 has continued – citizens, journalists and NGOs look for legal help in a subsequent stage in the development of their case. Fewer and fewer information seekers are unaware of which institution to submit their request to or how to formulate it. Information seekers more often refer their cases to AIP when the request has already been submitted to the competent body and there are problems with the further development of the case. This fact signifies increased awareness about the right of access to information. Information seekers already know whom to address and in what form, and the need for legal help arises only if a problem with receiving the respective information emerges or if a refusal of information needs to be challenged before the court.

Number of Cases Referred to AIP for Assistance

The total number of referred and registered cases in which the Access to Information Programme was asked for legal help and assistance in 2007 was 246. In all of these cases, the legal team of AIP provided either oral or written comments and specific recommendations for overcoming difficulties with accessing information.

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

- cases related to difficulties in exercising one's right to information set forth by the Access to Public Information Act (185 instances);
- cases of violation of the general Constitutional right of citizens to seek, receive and impart information (30 instances);
- cases related to the protection of personal data, as regulated by the Personal Data Protection Act (24 cases).

Statistical reports from the last several years show that the number of cases registered in our database has decreased. As we noted in last year's *Access to Information in Bulgaria* report, this tendency is a result of the fact that institutions have acquired knowledge on how to fulfill their obligations to provide information and create less formal obstacles for information seekers.

At the same time, the character and quality of the cases referred to AIP show a serious need for specialized help and consultations in the access to information area. As a matter of fact, the Access to Information Programme is the only organization in Bulgaria which has provided free legal help for eleven years already and thus encourages citizens in their attempts to seek and receive information.

From Which Public Institutions Do Information Seekers Mainly Request Information?

Data on the 185 cases referred to AIP related to the exercise of the right of access to information in our database in 2007 indicate that information seekers have most frequently had problems when requesting information from the following public institutions obliged under the APIA:

- A total of 98 registered cases 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.
- Local governmental authorities (mayors and local councils) – 44 registered cases;
- Public-law entities – 10 registered cases.
- Bodies of the judiciary – 8 registered cases;
- Natural persons or legal entities financed by the state budget – 7 registered cases; etc.¹

What Were the Most Frequently Cited Reasons Used by Public Authorities to Deny Access to Information in 2007?

The total number of refusals by public authorities to provide access to information registered in our database for 2007 is 99. The number of silent refusals during the period is 23, followed by unexplained refusals, whose number is 22.

With regard to explained refusals, the largest number belongs to the exemption related to third party interests. For example, in 14 cases authorities explicitly used the exemption of Art. 37, Para. 1, Item 1 of the APIA – namely, access to requested information may harm the interests of a third party and its consent for the disclosure was not obtained. In six registered cases, information was refused on the grounds of the trade secret exemption, while in three cases institutions used the personal data exemption.

The number of refusals based on the provision of Art. 13, Para. 2 of the APIA,² which regulates two specific exemptions to access to administrative public information, has decreased. During the past year, only two cases in which access was denied on that particular ground have been

¹ The difference between the data in the table of the attachment and the data referred hereby in the text comes from the difference between the total number of referred cases and the number of these qualified as related to access to information.

² The article provides that access to administrative public information may be restricted if it: 1. relates to the preparatory work of an act by 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.

registered. The administrative secret exemption has also been used rarely – in three of the registered cases.

Who Requested the Assistance of AIP in 2007?

In 2007, as in previous years, the clients of AIP were most frequently citizens, journalists and non-governmental organizations. Citizens requested our assistance in 78 cases; in 114 cases AIP coordinators (all of them journalists) addressed us; 22 cases were referred by other journalists; and in 18 cases consultation was provided to non-governmental organizations. Legal help with access to information related issues was also sought by public officials and private companies during the year.

Specific Cases Emblematic for Groups of Problems in Receiving Information

Refusals on the Grounds of Third Party Interests

In 2007, the protection of third party interests persisted as one of the most commonly used grounds for refusals. Usually, the protection of personal data and trade secrets stands behind this broadly defined exemption, and often it is used without signifying the protected interest. AIP's experience shows that the exemption is used most often in cases when access to a contract signed between a state/municipal or other public body on one side and a private company on the other is requested.

In such cases, almost as a rule, the institution which was approached with a request for a copy of the contract refuses using the exemption of Art. 37, Para. 1, Item 2 of the APIA – namely, disclosure would affect the interests of a third person who has not given his/her consent for the provision of the requested public information.

In practice, however, the exemption is often used formally and in violation of the procedure stipulated by the APIA which requires requesting the consent of the third party to the contract. It is completely possible that the third party does not know that their dissent was the very grounds for denying access to information in a considerable number of cases. Using that exemption for access to information appears to be an attempt by the obliged bodies to insure the protection of third party interests, without taking into consideration the genuine necessity for keeping the information a secret or for its disclosure.

For example, the mere statement of the fact that the requested information would harm the interests of a third party and that no consent was given for the disclosure was used as grounds by the Director of the Government Information Services to refuse access requested by journalist Pavlina Trifonova from *24 Hours* daily. She asked for information regarding repairs done on the office of the Prime Minister in 2007, and more specifically about the overall expenses for the repairs, the bids of the competing companies, as well as the price of each item purchased for the repairs. The same exemption was used by the Mayor of the town of Shumen to deny information to the citizen Rosko Simov with regard to the contractual relations between the municipality and Agrobusiness Center company.

In another case, the Minister of Economy and Energy used the exemption stipulated by Art. 37, Para. 1, Item 2 of the APIA to refuse to provide access requested by Petko Kovachev from the nongovernmental organization Institute for Green Policy. The request demanded access to the documents sent by the Ministry of Economy and Energy to inform the European Commission about the construction of the Belene Nuclear Power Plant as required under the Euratom Treaty. The answer, however, stated that the requested documents could not be provided since they contained confidential commercial information related to a third party – the National Electrical Company

JSC, whose executive director had explicitly expressed his dissent for the disclosure of the information.

Access to Judicial Information

An increase in the number of cases related to information sought from the judiciary was registered during the last year. Traditionally, information that is of particular interest to journalists is most often demanded – for example, information about the number of cases initiated and completed within a certain period of time, copies of court session protocols, copies of indictments, etc.

As examples of cases in which information was requested from the judiciary, we would like to present some interesting and non-traditional cases. A nongovernmental organization is developing a survey on the practices of national institutions with regard to the Protection Against Discrimination Act. In this regard, the NGO requested that a regional court provide copies of decisions and information about litigation on discrimination issues that had been referred to other courts (evoked or remitted) due to appeals or other relevant reasons.

In a civil case brought by a citizen, the court sessions held at the Regional Court of Shumen were audio recorded. Recordings were made on the grounds of Order No. 110 issued by the Chairman of the Regional Court of Shumen in 2004. According to the citizen, during one of the sessions within the respective proceeding, the record keeper failed to record a circumstance in the protocol. For this reason, the citizen submitted a request for access to public information demanding a copy of the audio record.

Access to Information for Consumers

During the past year, we have observed an increase in the number of registered cases referred to us by citizens and journalists who have sought information from monopolies that provide public services (water and sewage companies, heating and electricity companies), as well as from the Commission on Consumer Protection.

Frequently cases involve citizens searching for information about the quality of public services provided, price-formulation criteria for different services, information about the amount of their own bills, etc. In cases when obtaining such information from the companies is not possible, citizens turn to the Commission on Consumer Protection.

Besides the afore-mentioned cases, the activity of the Commission itself is the subject of increased public interest. Unfortunately, receiving access from that institution is not always easy and fast. For example, a journalist from the town of Pernik asked for information from the local office of the Commission on Trade and Consumer Protection. However, they refused to provide him access to any of the requested information and directed him to the central office in Sofia. The local body even refused to provide information about the procedure for returning poor quality goods and for informing the Commission about violations. Journalists from the town of Dobrich were denied statistical data about the number of investigations completed by the local office of the Commission, and information about the most common violations referred by citizens, etc.

Access to Personal Data

The AIP team provided legal consultation in 24 cases related to violations of the right of personal data in 2007. As the main characteristics of these cases we can point out the persistent practice, which has been criticized in preceding reports, of data controllers collecting more data than is

necessary to carry out their activities. In many cases, official IDs are requested and held without specific reasons.

In 2007 some cases were again referred to the AIP office with questions about the legitimacy of CCTV recordings of certain public places such as streets, official buildings and others without clear signs indicating such surveillance.

A persistent problem is the publication of various kinds of lists containing personal data. For example, in March we were informed about the practice in the Regional Court of Varna where letters reporting "no criminal record" were published on a notice board where those documents were accessible to everybody. Those letters contained personal data, such as personal identification numbers, names and addresses. In order to find their own letter, citizens had to check all the others. A similar case is that of a citizen complaining that initiators of free medical examinations for the early diagnosis of breast cancer required that all patients provide their personal data. They then publicly posted the examination schedule, which contained the names, addresses and identification numbers of women who would receive free medical services.

Existing Practices in APIA Implementation

Inconsistency in Information Provision Practices

The adoption of the APIA in 2000 was followed by a period of training sessions for the administration and other obliged bodies under the APIA. The submission of access to information requests played an important role in that process. It established opportunities for acquiring practical experience in the provision of information. If we assume that to acquire theoretical and practical capacity, someone who enters a new and unknown area needs several years, we assume this is true of the administration, which has been learning how to implement the APIA.

Unfortunately, if during the last few years we have observed comparatively stable and consistent administrative information provision practices that were based on the regulations stipulated by the law and showed some knowledge of it, 2007 witnessed inconsistent implementation practices and even regression.

For example, statistical data about information refusals indicate an increase in the number of silent refusals, which contradict the declining trend over the past few years. Furthermore, some institutions that provided certain information in the past have created a number of obstacles for receiving it now. It turned out that in some of those institutions the official responsible for the provision of information was changed and all practices developed until that moment within the respective institution were forgotten and the process had to start over from the very beginning. It must be emphasized that the obligation for provision of information does not belong to a specifically appointed official, but to the institution itself represented by its managing body, which is obliged to establish consistent transparency practices regardless of internal personnel changes.

The establishment of consistent administrative practices is useful and necessary for the administration itself, as it will have clear rules to follow in its work related to the provision of information without causing obstacles and stress for the officials themselves. Such practices will be undoubtedly useful for citizens looking for information from institutions, as they would not have to wonder every time whether they will receive information, whether the official will be good-natured towards them and how long this attitude will last.

Charging Varying Costs According to Different Criteria

Some of the cases registered during the last year show the persistence of problems related to the payment of costs for the provision of information under the APIA. For example, sometimes payment for information provision is required in advance, i.e. at the moment of the submission of the information request and before the decision of the respective body on that request.³ In another case, authorities overcharged a requestor for information which required a reference; the expenses should have been calculated after the stipulated procedure. According to the responsible officials, however, the request demanded so-called "expressly processed information" under the definition set forth by the Environmental Protection Act (EPA),⁴ and the cost, which should be negotiated, would be in any case higher than that which was due for a reference.

Cases in which institutions require payment of costs according to their own internal rules or tariffs are not unusual. These costs often exceed those defined by Order No. 10 of the Minister of Finance as of 2001.⁵ In one such case, for example, the requestors were asked to pay 65 BGN to review requested documents, namely orders by the regional governor which repealed orders by the mayor of the municipality. As a justification for the requested amount, the responsible officials claimed that some of the repealed mayor's orders contained the names of third parties. Thus the administration had to blank out the data related to third parties and to copy the orders again before granting provision in any form. Apparently, blanking out data was calculated as an expense for the provision of the requested information.

In other cases, information requested under the procedure stipulated by the APIA was regarded as something related to the administrative services provided to citizens and was consequently charged as an administrative service. The following example demonstrates the most preposterous interpretation of the charging regulations: a mayor responded to a citizen's request by stating that he would make an exception for him, but for the submission of successive requests or appeals, the citizen would have to pay a fee of 15 BGN, pursuant to the Regulation for Determining and Allocation of Local Fees and Prices of Services issued by the Municipal Council. Otherwise, those subsequent requests/appeals would be disregarded.

All cases described here demonstrate on the one hand the lack of awareness about the APIA, and on the other hand the lack of understanding about the purpose of the law. Pursuant to Art. 20 of the APIA, access to public information shall be free of charge. Only expenses incurred for granting access shall be recovered according to the tariffs set forth by Order No. 10 as of 2001 by the Minister of Finance. That is why attempts to require different and in any case higher costs for the provision of the requested information may correspond to other goals of the respective institution but not to the principle of free access to information established by the APIA.

Forms for Information Requests

In 2007 the practices of some institutions again require citizens to provide additional and unnecessary data by requiring the use of pre-approved request forms. The APIA does not introduce an obligation for institutions to create their own information requests forms. The publication of

³ The case was referred to AIP by a journalist who had been promised in a phone conversation provision of information and was also informed about the amount he had to pay in advance. Regardless of advance payment, however, the information has not been provided.

⁴ According to § 1, Item 9 of the EPA, *expressly processed information* shall be the information collected or processed, summarized and analyzed at the request of a person concerned. The information that was requested in the particular case, however, was related to the regular work of the institution and was obviously demanded as a reference. It did not require summarizing, nor did it contain any analysis.

⁵ Order No. 10 of the Minister of Finance as of January 10, 2001 determining legal tariffs for the provision of public information under the Access to Public Information Act according to the type of carrier, issued by the Minister of Finance, promulgated in State Gazette, issue 7 as of January 23, 2001.

request forms on institutional Internet sites or making them available at the submission venues is very positive since such practices facilitate the requestors in their search for information.

However, as we have emphasized in last year's report, filling in those forms requires that citizens provide information that is not required by law, such as a personal ID number, an explanation of why they need the requested information, although such requirements contradict the basic principles enshrined in the legislation regulating the protection of the right of access to information. Some pre-approved request forms require requestors to declare readiness to present additional documents to the respective administration if necessary. Thus, in practice, from something useful the forms of information requests have become more harmful since they mislead the requestors.

When we reviewed the official websites of different public institutions, we found that request forms requiring information seekers to provide additional information were available on the web sites of the Municipalities of Pernik, Vratsa, and Kubrat, as well as the Regional Governor's Administration of Razgrad, etc.

Unfortunately, one negative practice in this regard is the requirement by the respective administrations that requestors should use only their pre-approved request forms, instead of allowing these to serve only as voluntary forms to facilitate requests. For example, the chief editor of the local newspaper *Posrednin (Mediator)* reported the following case: Since September 2007, a Center for Administrative Services for Citizens started functioning at the Municipality of Pleven. It turned out that submission of requests for access to information that were printed in advance was not acceptable. Filling out pre-approved request forms by hand was obligatory. If citizens disregard this requirement, their request is not considered at all.

Apparently, we have to remind officials responsible for the implementation of the APIA within public institutions yet again that introducing requirements for citizens to fill in pre-approved request forms is a violation of the law. Requests may be submitted in any form and they shall be reviewed if they comply with the law and contain the following mandatory elements: a full name, or respectively the business name, and registered address of the applicant; an address for correspondence with the applicant; and a description of the information requested. All additional requirements beyond the ones prescribed by Art. 25, Para. 1 of the APIA, should be considered a violation of the APIA and consequently are not binding for the information seekers in any way.