

**HOW TO GET ACCESS
TO ENVIRONMENTAL INFORMATION?
HANDBOOK**

SOFIA 2003

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Access to Information Programme

HOW TO GET ACCESS TO ENVIRONMENTAL INFORMATION?

Handbook

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INTRODUCTION

The right to environmental information is in the very heart of the constitutional right of the public to access government held information. Historically, it descends from the crucial events affecting the environment in the mid 80s and the lack of information supplied to the public about them.

The Environmental Protection Act (EPA), which was adopted in 1991, regulated the right to access environmental information. The EPA introduced a corresponding obligation for state bodies and - in some cases - for commercial companies to publish environmental information - both on their own initiative in specifically defined cases, and upon request. However, before the Adoption of the Access to Public Information Act (APIA) in 2000 no court has ruled on the lawfulness of refusals to disclose environmental information. After the adoption of the APIA citizens and NGOs have started to file court appeals against such refusals of the state bodies. The right to access environmental information has been further elaborated with the adoption of the new Environmental Protection Act in 2002.

On October 14, 2003 an Act for Ratification of the Convention on access to information, public participation in decision-making and access to justice in environmental matters done at Aarhus, Denmark, on 25 June 1998 was promulgated in State Gazette issue 91/2003. The Aarhus convention will become part of the Bulgarian legislation and will act as priority in relation to contradicting domestic laws after it is enforced and its text is promulgated. Because of this fact, and due to the great significance of the Aarhus Convention as a widely accepted international standard, the exemptions from the right to environmental information should be interpreted in the light of its provisions.

Since 2000 the legal team of Access to Information Programme has provided assistance to NGOs, journalists and citizens in over sixty lawsuits in cases when access to information has been denied. Twenty of those suits have ended in 2002 and 2003. In eight cases the requests were either for environmental information or for information related to the right to clean and healthy environment. NGOs, and citizens continue to appeal against refusals to disclose such information.

The demand for environmental information is currently growing with the increased awareness of the public of their rights of access to information.

The structure of this handbook was drawn after a review of the specific cases referred to Access to Information Programme between 1997 and 2003 and the lawsuits conducted since 2000. The text of the handbook reflects on questions raised on discussions of the EPA and the Aarhus convention with representatives from the Regional Inspectorates of Environment and Water (RIEW), Basin Directorates, NGOs and other institutions working for the preservation of the environment, held in 2003 in Kyustendil, Blagoevgrad, and Plovdiv in the frame of a project supported by the Regional Environmental Center - Bulgaria¹. While working on important cases concerning the right to access environmental information we have been relying on the experience of the Center for Environmental Law, Green Balkans Association, For the Earth Environmental Association, InfoEcoClub for healthy environment - Vratsa, and National Movement Ecoglastnost - Montana. The discussions held in Primorsko, Bulgaria (June 2003) and Sinaia, Romania (October 2003) with members of the Environmental Advocacy Network for South Eastern Europe (EANSEE) have helped us a lot with the selection of typical cases for the region.

We would like to thank our colleagues Gergana Jouleva, Fany Davidova, and Nikolay Marekov for their remarks and the valuable assistance in the preparation of this handbook.

Sofia

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The authors

¹ *In the spring of 2003 AIP took part in trainings on the Aarhus convention, organized by the Regional Environmental Center - Bulgaria. Talks with MOEW officials have been held in the course of a Global Monitoring project, conducted by AIP in the summer of 2003.*

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WHO HAS THE RIGHT TO ACCESS ENVIRONMENTAL INFORMATION?

The Environmental Protection Act (EPA) gives the right to EVERY:

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

to request and receive access to the available environmental information, without having to prove his/her legal interest.

WHO IS OBLIGED TO PROVIDE ACCESS TO ENVIRONMENTAL INFORMATION?

Access to environmental information should be provided by:

- Central and regional executive bodies of power, which collect and hold environmental information. These include the Ministry of Environment and Water (MOEW), the Regional Inspectorates of Environment and Water (RIEW); The Executive Environment Agency (EEA); The Basin directorates, mayors and regional governors.
- Other bodies and organizations, which dispose of funds from the consolidated state budget and collect and hold information about the environment, such as the National Agricultural Science Center, and the Nuclear Regulatory Agency.

(See Appendix I - List of important addresses)

NB!



The judicial and legislative bodies are not obliged under the Environmental Protection Act. Information can be requested from them following the procedures under the Access to Public Information Act (APIA).

WHAT INFORMATION CAN BE REQUESTED UNDER EPA?

Environmental information is any information in written, visual, audio, electronic or other material form about:

- the state of elements of the environment (air, atmosphere, water, soils, landscape, mineral and biodiversity);
- the factors, reflecting on the state of the elements of the environment, such as substances, waste disposal, noise, vibrations, radiation, etc.;
- activities and measures that have an impact on the elements of the environment (administrative measures, international contracts, policies, legislature, plans and programs) and economical analyses in connection with them;
- the state of human health and safety;
- cultural sites, built structures and facilities;
- emissions, discharges and other harmful impacts on the environment.

The Environmental Protection Act defines three kinds environmental information:

- Available raw information** - these are results from measurement, service tests, observations, and similar information, collected by the institutions and organizations under a legal requirement.
- Available processed information** - this is primary information, already processed, analyzed and summarized within the obligations of the competent institution, without a request from an interested person;
- Subsequently processed information** - information collected or processed, summarized and analyzed only in response to a request of an interested person².

² See p. 13, **How to get access to information?**, B.

Information is always recorded on some **carrier**. Most often, information held by the obliged bodies is contained in the **documents** they create, like reports and evaluations on the state of the environment, measurement and examination protocols, results from service tests, observations, orders of ministers and agency heads, etc.

NB!



The Environmental Protection Act gives everyone the right to access available environmental information - already collected or processed by the administration in the course of its work.

The law also ensures right to access to environmental information, collected and processed in order to meet a request by an interested person (subsequently processed information).

WHAT KIND OF INFORMATION COULD BE RESTRICTED FROM ACCESS?

1. What are the exemptions from the right to access environmental information?

In some cases, the obliged bodies may refuse to provide access under the Environmental Protection Act. The exemptions, which are explicitly defined by the law, are:

- the requested information is classified as state secret (*See Appendix N^o II*);
- the requested information is classified as official secret (*See Appendix N^o III*);
- the requested information constitutes production or commercial secret, prescribed by law;
- the disclosure of the requested information could violate intellectual property rights;
- the requested information contains personal data about a person, who has not given his consent for disclosure;

- ❑ the disclosure of the requested information would harm the interests of a third party, which has voluntarily provided it;
- ❑ the disclosure of the requested information would have an adverse effect on the elements of the environment (e.g. the breeding sites for endangered species).

In all these cases the obliged body has discretion to decide whether the requested information should be disclosed or not. This means that the right to access environmental information should be restricted only after careful consideration, rather than after formally establishing that the requested information falls within one of the above categories. This assessment by the officials working for the obliged institutions presumes the performance of the „balance of interests“ test, which is introduced for the first time by the Bulgarian legislators with the Environmental Protection Act in 2002.

NB!



„Balance of interests“ means that when taking decisions to withhold information the officials should take into consideration the public interest from disclosure of the requested information. In cases when the public interest prevails, the requested information should be disclosed even if it formally falls under one of the restriction categories.

2. Partial access to information

There are some cases when only parts of the information that you request fall within the restrictions of the right to information access.

In such cases the EPA provides for the so-called „partial access“, meaning that those parts of the information, which can be segregated from the restricted sections should be disclosed.

WHAT KIND OF INFORMATION SHOULD BE READILY AVAILABLE AND REGULARLY UPDATED BY THE OBLIGED INSTITUTIONS?

Access to environmental information can often be obtained from the Internet sites of the public institutions, their information centers, printed bulletins, reports and other publications.

With the purpose of maximum facilitation of access to public information, the Access to Public Information Act and the Environmental Protection Act oblige every head of an administrative structure within the system of the executive power to publish on a regular basis up-to-date information:

- Under the APIA each administration is obliged to always have available and provide access to the following categories of up-to-date information:
 - 1 description of their powers as well as data on the organizational structure, the functions and the responsibilities of the administration;
 - 2 list of the administrative acts issued within the scope of their powers;
 - 3 description of the data structures and resources, used by the respective administration;
 - 4 the name, the address, the telephone number and the working hours of the respective administration's office or official, who is authorized to receive requests for access to public information.

- The Environmental Protection Act introduces an obligation for the Minister of Environment and Water to define with an order the description of the structures and resources, containing environmental information available in the Ministry and its branches (*See Appendix № IV*).

The description of these information structures is published on the web page of the Ministry of Environment and Water (<http://www.moew.government.bg>).

- ❑ Each year the Minister of Environment and Water prepares a **report**, which after being approved by the Bulgarian Parliament is published as an annual report on the state of the environment.
- ❑ The Minister of Environment and Water organizes and supervises the work of the National Environmental Monitoring System. The data collected and the assessments produced in the course of its work are published in **quarterly and annual bulletins**.
- ❑ **A Catalogue of Environmental Data Sources** - defined as a description of the structures and resources containing environmental information - is created and published on the web site of the Executive Environment Agency at the Ministry of Environment and Water. (See Appendix N^o V).

NB!



You might save time if you check whether the information you wish to obtain has already been published in some form or could be obtained from an information center or an Internet site. In this case you will not have to file a request to obtain the information.

IN WHAT CASES SHOULD THE OBLIGED INSTITUTIONS PUBLISH INFORMATION ON THEIR OWN INITIATIVE?

Upon accidental and other pollution, the emissions of harmful substances can endanger the health and property of those who live in the affected areas. Proper and timely measures for decreasing the harmful effects can only be taken if the affected persons are well informed about what is happening to the environment.

This is why the EPA introduces **an obligation** for the regional governors, mayors, the Regional Inspectorates of Environment and Water, the Basin Directorates, the Civil Defense State Agencies and - upon changes in the radiation situation - the Nuclear Regulatory Agency to inform immediately the Ministry of Health and the public. In those cases the responsible bodies are required to suggest specific measures for protection of human health and property.

HOW TO GET ACCESS TO INFORMATION?

The Environmental Protection Act refers to the procedure prescribed in the Access to Public Information Act for providing and obtaining access to environmental information. The EPA only introduces two distinctions:

- A. Environmental information is provided within 14 days after the date of informing the applicant about the decision of the competent body for providing access to the requested information.
- B. The decision for providing access to information should inform the requestor whether the disclosed information is already available or has been subsequently processed to meet the request, because in the latter case there is a difference in the access fees. The payment for providing subsequently processed information is **contracted on a case-by-case basis**.

1. Where can you request access to information?

When you want to submit a request for environmental information you should turn to an official, who has been authorized to accept those requests by an order of the institution head. In most cases you could ask your questions or submit your requests in one of the following departments:

- Reception for citizens;
- Press-center or PR;
- Record registry;
- Special department for accepting and handling information requests.

The Minister of Environment and Water has determined with an order the internal procedures for disclosing information by the MOEW. According to this order, all requests should be submitted in the Front office department, whose officials distribute them to the corresponding departments depending on the nature of the requested information. (*See Appendix N^o VI*).

2. How to request access to information?

Access to information requests can be submitted in written or verbal form. You could very well use both opportunities.

2.1. VERBAL information request

Your first step should be to find the official responsible for providing information. You may address him/her with your question and request that information is provided in the preferred form (*see item 3*).

The official must provide the requested information **immediately**. If the he/she is delaying the procedure, referring your question to someone else, requiring additional documents from you, giving you insufficient quality or quantity of information or simply refusing to make it available, you should file a written request.

2.2. WRITTEN request for information

In accordance with the APIA you may file a **written request**. The request is in a free form (handwritten, typed on a typing machine or a computer) and should contain:

- a) **Obligatory:** *your first, middle and family name; for legal entities - name and headquarters.*

NB!



When accepting requests, the officials have NO right to ask you to:

- Provide your personal ID number;
 - Provide the number, or date of issue of your ID;
 - Provide any ID;
 - Submit proof of your legal status - for legal entities;
 - Provide tax number and registration number - for legal entities.
- b) **Obligatory:** what **information** you wish to get access to. You can simply describe what are inquiring about (E.g. „I would like to receive all available information on the following issue:“). You don't

have to know the number and date of issue of the documents you are requesting. It would be sufficient to know enough so that the document in question can be adequately identified.

NB!



It is unlawful for the officials to request information about:

- What capacity are you acting in;
- How you will be using the requested information;
- Whether you have legal interest in requesting this information.

- c) **Obligatory:** correspondence address.
- d) You may specify in what form you want to receive the information in.

NB!



If you fail to fill in your names (name and headquarters for a legal entity), description of the requested information, or address for correspondence, your request will not be considered. It is not obligatory to specify the form in which you wish to receive the information.

NB!

Your request must be registered in the respective department and receive a log number. Do not forget to keep this number.



In case that the official refuses to register your request, send it by certified mail. Remember to keep the receipt, because it serves as a log number and will be required if you decide to file a court appeal against an eventual decision to withhold information.

(See Appendix N^o IX: An example access to information request).

3. What is the form we get access to information in?

In accordance with the law access to information can be provided in a number of **forms**. It is your decision to require any form of access to information and the respective institution is obliged to conform with it. You may ask for:

- verbal response;
- review of the available information that interests you in place;
- copy on paper or other technical medium.

You might request access to be provided in several forms in succession. If you need a large number of documents, you might like to review them first and then choose which of them you want copies of. This will save you money.

NB!



The officials are required to conform with the form of access that you have requested information in, except in cases when this is technically impossible, requires an unnecessary increase in the fees, could lead to illegal processing of this information or to violation of copyrights.

4. What to expect after the request is submitted?

You should receive a response to your information request within 14 days of its submission. The requested information is provided by virtue of a **decision** for its disclosure (*See Appendix N° VII*).

4.1 Decision to provide access to the requested information

The decision of the respective institution should indicate:

- what information you are provided access to;
- how many days you have to retrieve the requested information;
- where you can retrieve the requested information;
- the form in which access is provided;
- the kind of information provided (already available or purposefully processed);
- the fees you are required to pay (*See Appendix N° VIII*).

NB!



If you fail to meet the deadline for access (14 days from receiving the decision) or fail to pay the charges, you would lose your right to access the requested information, given to you by virtue of this decision. In this case you should resubmit your request no earlier than six months after your initial one.

You might receive several types of notifications from the institution, before the final decision on your information request:

4.2. Letter of clarification

You might receive a letter with a request to specify what information you need, typically when your request is considered too broad or unclear (for example, if you have requested: „Information about environmental pollution“).

This does not mean that you must indicate the exact document numbers and names, but you should rather try and specify your question, (e.g. „I would like to receive information about the air pollution in the town of X for a certain period ...“).

You should respond to a clarification letter within 30 days of receiving it. If you fail to do so, your initial request will not be reviewed.

NB!

After providing an answer to the letter of clarification, you should wait another 14 days for a response.



4.3. Letter of extension

The reason for this letter might be:

1. The consent of a third party is required in order that you receive the requested information. Bear in mind that this cannot prolong the term in which you should receive a decision by more than 14 days (or a total of 28 days since the submission date).

or

2. The information you requested might be contained in a large number of documents and more time would be needed for their collection and preparation. In this case the requestee should send a letter, explaining that he/she would need more time to collect the information and fulfill your request. Bear in mind that in such cases the decision term cannot be extended by more than 10 days (or a total of 24 days from the submission date).

NB!



The letter of extension must include the reason for the extension, and the deadline for granting the requested information.

4.4. Letter of forwarding the request

It is possible that the requestee does not hold the information you are requesting. In such cases he/she is required to forward your request to the institution, which is in possession of this information. In this case you are not supposed to resubmit your request. The 14-day deadline for decision is valid from the day you receive the notification of forwarding.

NB!

The notification of forwarding the request should indicate the name and address of the respective institution or legal entity to which your request has been forwarded.



4.5. Decision to withhold information

The refusal to disclose information should be made with a written decision in compliance with the law in form and content.

The decision must indicate:

- why information has been withheld, what exact legal provision has served as a restriction;
- date of the decision;
- the appeal procedure and appeal period of the decision.

The decision to withhold information is handed personally or is sent by certified mail with a return receipt.

NB!



- ❑ In practice it is possible not to receive any decision in response to the submitted request. This is the so-called „**silent refusal**“, which can be appealed in court.

The lack of a decision in the law-provided term is an administrative violation, which could lead to a fine of between 20 and 50 Lev (10-25 EUR) for the responsible official.

- ❑ You could receive a decision for providing access to only parts of the requested information, which constitutes the so-called „**partial access**“. In regard to those parts of the requested information, which were exempt from access this is a refusal, which could also be appealed.

HOW TO FILE A COURT APPEAL?

Every decision, concerning your right to access environmental information can be appealed in court.

In case you receive a decision for withholding information, you should file an appeal within 14 days from the date you **actually received it**.

In case you receive no answer to your information request (**i.e. in a case of a silent refusal**), you should file the court appeal within 28 days from the date you submitted the request.

You should appeal to the **regional court** (according to the headquarters of the institution, whose decision you are appealing) or the **Sofia City Court** (if the institution is in the city of Sofia). If the refusal comes from the Council of Ministers, the prime minister, another minister, or a deputy minister, head of an institution directly subordinate to the Council of Ministers, or a regional governor you should address your appeal to the **Supreme Administrative Court**.

NB!



The appeal is addressed to the respective court and is sent **to the institution**, withholding information, which has an obligation to resent it to the court.

You are supposed to take the following steps:

1. 1. Prepare two copies of the following documents:

- a) Request to the court (*See Appendix № X*);
- b) Enclosed: your information request;
- c) Enclosed: the decision to withhold information.

2. Submit both sets of documents to the institution registrar or send them by certified mail, indicating that you are filing an appeal against decision № from (date) of the institution. Do not forget to ask for a log number or keep the return receipt.

EXEMPTIONS FROM THE RIGHT TO ACCESS ENVIRONMENTAL INFORMATION

The exemptions from the right to environmental information which can be met in practice are connected with protection of trade secret, personal data, defense of the state and independence of institutions in the preparation of their orders and decisions (Art. 13 item 2). Depending whether the request relates to „environmental information“ under Environmental Protection Act (EPA) or concerns the environment more broadly, the applicable regulation is the EPA or the Access to Public Information Act.

CASES:

I. ACCESS TO INFORMATION ABOUT DISCUSSIONS OF THE SUPREME ENVIRONMENTAL EXPERT COUNCIL

Relevant Aarhus provisions:

- Art. 9, para. 1 -2; regarding the exemptions - art.4, para.4, b. „a“

Litigants:

- Plaintiff:** „For the Earth“ environmental association
- Respondent:** Minister of Environment and Water

Background facts:

A representative of „For the Earth“ environmental association requested in 2000 a copy of the verbatim record from a session of the Supreme Environmental Expert Council at the MOEW from 19.06.2000. The requested information was withheld on the basis of Art. 37 para. 1 item 1 of the recently adopted Access to Publish Information Act. Later it turned out that according to the MOEW court representative information was preparatory in regards to a final decision and was without a meaning on its own. That meant that the relevant provision was contained in Art. 13 para. 2 item 1 of APIA.

Procedural history:

The decision to withhold information was appealed. Later the MOEW representative submitted the requested protocol to the court file, which resulted in a decision of the court to stop the legal proceedings.

Outcome:

This case proves that the MOEW has started to establish the positive practice to disclose information in case there is no likelihood for harming a protected interest. The Ministry has shown an understanding that information in relation to the decision-taking process, especially by a collective body with representatives from public organizations, should not be and cannot be restricted from access.

Note: The exemption, provided in Art. 13 para. 2 of APIA should be applied with great care especially in cases when the request is for information about the environment. This is so because when the request is for environmental information under the definitions of the EPA, this exemption cannot be applied, because it is not provided in Art. 20 of EPA.

II. ACCESS TO INFORMATION ABOUT PLANNED HIGHWAY CONSTRUCTION

Relevant Aarhus provisions:

- Art. 9, para. 1-2; regarding the exemption - art.4, para.4, b. „d“

Litigants:

- Plaintiff:** „Balkans“ wild nature association
- Respondent:** Executive director of the Roads Executive Agency

Background facts:

In connection with the planned construction of the Struma highway, financed by the Phare Programme of the European Union, the Green Balkans Association requested access to documentation related to a sealed contract between the Roads executive Agency and the Italian company SPEA Ingegneria Europea, which has been entrusted with planning the highway construction.

The preparation of plans and assessments has been funded by over 3,000,000 Euro, while the work of the Italian company has been criticized not only by NGOs, but also by the Ministry of Environment and Water. The ministry itself declared that the work done by the Italian company is insufficient, no alternatives have been offered, although additional funds have been paid to SPEA to include the assessment of possible alternatives.

No decision for disclosure of the requested information has been issued in the law-provided term.

Procedural history:

An appeal was filed in the Sofia City Court against the silent refusal to take a decision on the information requests. In a court hearing the respondent presented a letter with which the Italian company disagreed with disclosing the requested information.

The Sofia City Court reversed the refusal of the Roads Executive Agency to disclose the assessment of the impact of the environment, but turned down the appeal in its other parts. This case is now pending before the Supreme Administrative Court of Bulgaria.

Outcome:

Although the case is still pending, the court will inevitably have to decide whether the refusal to disclose information was lawful. We are expecting the court to interpret the limits of commercial secret and its relation to the overriding public interest from information disclosure.

Note:

In practice, there have been a number of cases, where information has been withheld using the same exemption. Often the interests of the third party concerned are interpreted too broadly and are overly used, e.g. a refusal to provide information about the places for delivery and storage of blueberries, breeding sites of genetically modified plants, etc. In some cases measurements and analyses submitted to the RIEW have been defined as intellectual property. In other cases the public institutions or trade companies do not specify the protected interest, but rather state their general reluctance to disclose information, a behavior, which is contrary to the law. The EPA specifically lists the protected interests, which could serve as grounds for refusing access to information: commercial secret and intellectual property. For information outside the scope of EPA, the applicable law is the Access to Public Information Act, according to which the public institution is required to seek the consent of the trade company only after finding this necessary, i.e. in the above mentioned cases.

III. ACCESS TO AN ENVIRONMENTAL IMPACT ASSESSMENT

Relevant Aarhus provisions:

- Art. 9, para. 1 -2; regarding the exemption - art.4, b. „d“

Litigants:

Plaintiff: InfoEcoClub association for healthy environment - Vratsa (InfoEcoClub); Ivan Naydenov - a citizen;

- Respondent:** the mayor of Vratsa

Background facts:

In connection to the construction of a gas station by the company of Lukoil Bulgaria Ltd. in the town of Vratsa in 2001 the non-governmental organization InfoEcoClub and Ivan Naydenov have filed several information requests to the mayor of Vratsa. They requested copies of a number of documents, namely the construction permission, the Environmental Impact Assessment (EIA), the documents establishing the property over the construction site, etc. Under discretion, it was decided not to start a public participation procedure in this case. The request of InfoEcoClub was partially fulfilled, while the rest of the information was withheld with a written decision. The NGO received copies of the property documents of the municipality, and the decision of the municipal council for selling the part of the land owned by the municipality to Lukoil Bulgaria Ltd. Access to documentation about the other parts of the land sold was withheld. Ivan Naydenov received partial access to the requested information as well. Copies of the orders of the mayor were disclosed, as well as the protocol of the expert group on territorial regulation, containing a decision on the gas station construction. Access to the other two requested documents was withheld, because no consent of the third party concerned - in this case Lukoil - was received. Later, the permission for construction was provided, leaving the environmental impact assessment of the gas station construction, prepared in accordance with Order No. 1/Dec. 4, 1997 to be the only undisclosed document.

Procedural history:

Both refusals were appealed before the Regional court of Vratsa. The main arguments in the appeal were that the requests do not concern information, held or related to Lukoil Bulgaria Ltd. so it is unclear why the consent of the company was requested in the first place. The preparation of an environmental impact assessment is clearly based on the evaluation of certain circumstances with the aim of protecting the public interest - the basic human right of a clean environment. This refusal was reversed by the Regional court of Vratsa. In its decision, the court adopted the view that the refusal lacked reasoning; the responsible official had to provide an explanation on how the request would or was likely to harm the interest of the third party concerned, in order to claim that the explicit consent of Lukoil Bulgaria Ltd. was indeed necessary (*See Attachment № XV*).

In relation to the documents on the terrain property the court turned down the appeal, but has indicated, that that the requested information could be obtained from the municipal registration service.

Both decisions have not been appealed and have entered into force.

Outcome:

As a result of these two court decisions the NGO and the citizen have obtained all requested information, including the documentation on the terrain property, after referring to the municipal registration service. Following the court decisions, the municipal administrative secretary was authorized to handle access to information requests. A narrow interpretation of an exemption of the right to information access has been established.

IV. ACCESS TO DOCUMENTS IN RELATION TO VIOLATIONS AND FINES IMPOSED BY THE BODIES OF THE MOEW

Relevant Aarhus provisions:

- Art. 9, para. 1 - 2; regarding the exemptions - art.4, para.4, b. „f“

Litigants:

- Plaintiff:** Yordan Lazov
- Respondent:** Minister of Environment and Water

Background facts:

In 2001 the citizen Yordan Lazov requested from the Minister of Environment and Water access to copies of documents related to the measures taken by the Ministry concerning the company „Sawing Installations“ Ltd., solely owned by the municipality of Dupnitsa. The citizen has specifically requested copies of all penal ordinances, imposed on the company by MOEW officials. The grounds for the refusal were that an eventual disclosure would reveal personal data on those who had issued the ordinances and the witnesses (probably what was meant were their names and personal ID numbers).

Procedural history:

The Supreme Administrative Court of Bulgaria has reversed the refusal as contrary to the law, after determining that no personal data have been requested. The court also found that no consent of the third parties had been sought and no attempts to provide partial access have been made. (See *Attachment N° XIV*).

V. ACCESS TO INFORMATION ABOUT DESTROYING THE OBSOLETE MISSILES OF THE BULGARIAN ARMY

Relevant Aarhus provisions:

- Art. 9, para. 1 -2; regarding the exemptions - art.4, para.4, b. „b“

Litigants:

- Plaintiff:** Petar Penchev
- Respondent:** Minister of Defense

Background facts:

Official secret was the reason for withholding information requested by Petar Penchev, director of the regional Montana section of „Ecoglasnost“ National Movement in 2003. Petar Penchev requested information related to destroying obsolete missiles from the equipment of the Bulgarian Army near the village of Gabrovnica. Access to information was refused with a decision based on Order N° OH-420/ 08.07.2003 by the Minister of Defense, with which the Minister adopted a list of information about the Bulgarian army, classified as official secret. This list has not been promulgated or published in any way. According to information coming from other institutions, when burning the

engines of the SS-23 missiles, harmful emissions of gases are released into the atmosphere, causing serious risks for the public health.

Procedural history:

The decision to withhold information has been appealed. The cases is pending before the Supreme Administrative Court of Bulgaria.

Outcome:

It is important that the applicability of the official secret exemption has been challenged, specifically in a case related to the defense of the state. This case is also significant because it shows the importance of the precise usage of the exemptions and the implementation of the test of the Aarhus convention, according to which the exemptions from the right to information access cannot be applied, if there is a prevailing public interest from disclosure.

Appendix

List of important addresses:

ORGANIZATION	ADDRESS WEB SITE	TELEPHONE
Ministry of Environment and Water	Sofia; 67 Gladstone Str. http://moew.government.bg	02/ 940 6231; 980 0905; 940 6230
Environmental Executive Agency National Catalogue of Environmental Data Sources	Sofia; 136, Tsar Boris III Blvd. http://nfp-bg.eionet.eu.int/ncesd/index.html http://nfp-bg.eionet.eu.int/cds_bg/org_main.htm	02/ 955 9011
RIEW Blagoevgrad	1, Traicho Kitanchev Str, P.O.Box 163	073/ 885 160
RIEW Burgas	Lazur complex 67, Perushtica Str. Floor 3, P.O.Box 219	056/ 813 213; 813 199
RIEW Haskovo	14, Dobrudja Str., Floor 2	038/ 665 344
RIEW Montana	4, Alois Irasek Str.	096/ 300 961
RIEW Pazardjik	3, Gen, Gurko Str., Floor 4, P.O.Box 220	034/ 44 18 75
RIEW Pleven	1, Al. Stamboliiski Str.	064/ 800 711; 804 030
RIEW Plovdiv	122, Maritza Blvd. http://www.riosv-pd.hit.bg/	032/ 64 32 45
RIEW Russe	20, Pridunavski Blvd. P.O.Box 26 http://riosvrs.hit.bg	082/ 82 07 74
RIEW Shumen	71, Saedinenie Str., Floor 4	054/ 5 49 76
RIEW Smolyan	16, Dicho Petrov Str.	0301/ 60 100
RIEW Sofia	136, Tsar Boris III Blvd., Floor 4	02/ 856 5152

ORGANIZATION	ADDRESS WEB SITE	TELEPHONE
RIEW Stara Zagora	2, Stara Planina Str., P.O.Box 143 http://riosvsz.dir.bg	042/ 602 434
RIEW Varna	4, Yan Palah Str.	052/ 63 45 89
RIEW Veliko Turnovo	68, Nikola Gabrovski Str. P.O.Box 11 http://www.riosv-vt.hit.bg/	062/ 62 03 58
RIEW Vraca	81, Ekzarh Iosif Str.	092/ 62 92 11
Rila National Park Directorate	Blagoevgrad, 12B, Bistrica Str.	073/80 537; 048/863 160
Balkans National Park Directorate	Gabrovo, 3, Bodra Smyana Str.	066/801 285; 066/801 278
Pirin National Park Directorate	Bansko, 4, Bulgaria Str.	0744/38 204
Black Sea Region Basin Directorate	Varna, 4, Yan Palah Str.	052/631 449
Danube Region Basin Directorate	Pleven, 1, Vassil Levski Str., Floor 16 P.O.Box 1237	064/803 342
East-Eagean Sea Region Basin Directorate	Plovdiv, 26, Bulair Str., Floor 5	032/628 063
West-Eagean Sea Region Basin Directorate	Blagoevgrad, 18, Mitropolit Boris Str. P.O.Box 441	073/82 994
Ministry of Health	Sofia; 39, Al. Stamboliiski Str., P.O.Box 609 http://mh.government.bg/	02/ 930 1269; 981 1830
Ministry of Agriculture and Forestry	Sofia; 55, Hristo Botev Blvd. http://www.mzgar.government.bg/	02/ 985 11 255

ORGANIZATION	ADDRESS WEB SITE	TELEPHONE
Ministry of Economy	Sofia; 8, Slavyanska Str. http://mi.government.bg/	02/ 987 0290
Ministry of Transport and Communications	Sofia; 9, Dyakon Ignatii Str. http://www.mtc.government.bg/	02/ 940 9500
National Statistics Institute	Sofia; 2, Panayot Volov Str. http://www.nsi.bg	02/ 985 7761
Nuclear Regulatory Agency	Sofia; 69, Shipchenski Prohod Blvd. http://www.bnsa.bas.bg/	02/ 940 6948
State Agency for Civil protection	Sofia; 30, Nikola Gabrovski Str. http://www.cp.government.bg/	02/ 960 10 328
National Agency on Energy Efficiency	Sofia; 37, Ekzarh Iosif Str. http://www.seea.government.bg/	02/ 980 0644
Central Laboratory for General Ecology, Bulgarian Academy of Science (BAS	Sofia; 2, Gagarin Str.	02/ 722 154
Geophysical Institute, BAS	Sofia; Acad. Georgi Bonchev Str. Bldg. 3 http://www.geophys.bas.bg/index_bg.htm	02/ 971 3009; 979 3323; 971 3025; 979 3349
Forest Institute, BAS	Sofia; 132, St. Kliment Ohridski Str. http://forestin.bulnet.com/	02/ 962 0442
Institute of Water Problems, BAS	Sofia; Acad. Georgi Bonchev Str. Bldg. 1 http://www.iwp.bas.bg	02/ 979 3950

**State Secret
extracts from the Protection of Classified Information Act**

Protection of Classified Information Act

Promulgated in State Gazette, issue 45/30.04.2002,
amended issue 5/17.01.2003, amended issue 31/04.04.2003

Extract:

Chapter three

**KINDS OF CLASSIFIED INFORMATION AND LEVELS OF
CLASSIFICATION**

Section I

Classified information

Art. 25. State secret shall be the information, determined in the list of Appendix No. 1, the unregulated access to which would create danger or would damage the interests of the Republic of Bulgaria, connected with national security, defence of the state, foreign policy or protection of the constitutionally established order.

.....

Section II

Levels of classification for security of the information

Art 28. (1) The levels of classification for security of the information and their secrecy levels shall be:

1. „Top secret“;
2. „Secret“;
3. „Confidential“;

.....

Section III

Terms for protection of the classified information

Art. 34.(1) The following periods shall be determined for protection of the classified information, assumed from the date its creation:

1. For information, marked as „Top secret“ - 30 years;
2. For information, marked as „Secret“ - 15 years;
3. For information, marked as „Confidential“ - 5 years;

.....

(3) After the elapse of the terms under para 1 and 2 the level of classification shall be removed and the access to this information shall be provided under the procedures of the Access to Public Information Act.

Appendix No. 1 to Art. 25

Extract:

List of the categories of information, subject to classification as state secret

- I. Information, connected with the defence of the state.
- II. Information, connected with the foreign policy and the internal security of the country.
- III. Information, connected with the economic security of the country.

Official Secret
extracts from the Protection of Classified Information Act and the
RULES for the implementation
of the Protection of Classified Information Act

Protection of Classified Information Act

Promulgated in State Gazette, issue 45/30.04.2002,
amended in issue 5/17.01.2003, amended issue 31/04.04.2003

Extract:

Chapter three

KINDS OF CLASSIFIED INFORMATION AND LEVELS OF
CLASSIFICATION

Section I

Classified information

Art. 26. (1) Official secret shall be the information, created or held by the state bodies or the bodies of the local government, which is not state secret, the unregulated access to which would influence unfavourably the interests of the state or would hamper other legally protected interest.

(2) The information, subject to classification as official secret, shall be **prescribed by law.**

(3) The head of the respective organisational unit shall, within the framework of the law, announce a list of the categories of information under para 2 for the sphere of activity of the organisational unit. The order and the way for announcing of the list shall be determined in the regulation for implementation of the law.

Section II

Levels of classification for security of the information

.....

Art. 28. (3) The information, classified as official secret, shall be marked with level of secrecy „For official use“.

Section III

Terms for protection of the classified information

.....

Art. 34. (1) The following periods shall be determined for protection of the classified information, assumed from the date of creating it:

.....

4. for information, classified as official secret - 2 years.

.....

(3) After the elapse of the terms under para 1 and 2 the level of classification shall be removed and the access to this information shall be provided under the procedure of the Access to Public Information Act.

RULES for the implementation of the Protection of Classified Information Act

Adopted with a Council of Ministers Decree № 276/02.12.2002, promulgated in State Gazette issue 115/10.12.2002, in force form 10.12.2002, amended in issue 22/ 11.03.2003, in force from 11.03.2003

Extracts:

Chapter three

PROCEDURES FOR PUBLISHING THE CATEGORIES OF INFORMATION DEFINED AS OFFICIAL SECRET FOR THE SPHERE OF ACTIVITIES OF THE ORGANIZATIONAL UNIT

Art. 21. (1) The head of the respective organizational unit approves with an order the list of information categories, defined as official secret.

(2) The heads of public institutions, exercising the rights of ownership in companies in which the state has the predominant share, determines a list of categories of information, which constitute official secret for the branch or commercial activities.

(3) the list under para.1 should contain only those categories of information, created, collected and held by the organizational unit in accordance with Art. 26 of PCIA, defined as secret in **special legislation**.

(4) The scope of the list under para. 1 can be narrower than the scope provisioned in special legislation.

(5) the list under para.1 is public.

REPUBLIC OF BULGARIA

MINISTRY OF THE ENVIRONMENT AND WATER

ORDER

№ 111/11.02.2003

On the ground of art. 15, 2 of the Access to Public Information Act and art. 61, par. 2 of the Administration Act

I ORDER :

1. Within two weeks of the communication of the present order to be created registers of the filed written requests in the sense of art. 25 of APIA for access to public information, the instances of refusals to provide access to information, the reasons for this and the cases of appeal of the refusals, in the Ministry of the environment and water (MOEW) and its following departments:
 - Exedcutive Environment Agency (EEA);
 - RIEW (Regional inspectorate of the environment and water) Blagoevgrad;
 - RIEW Burgas;
 - RIEW Varna;
 - RIEW Veliko Tarnovo;
 - RIEW Vratsa;
 - RIEW Montana;

- RIEW Pazardjik;
- RIEW Pleven;
- RIEW Ruse;
- RIEW Sofia;
- RIEW Stara Zagora;
- RIEW Smoljan;
- RIEW Haskovo;
- RIEW Shumen;
- RIEW Plovdiv;
- Pirin National park Directorate;
- Rila National park Directorate;
- Central Balkan National park Directorate;
- East-Eagean Sea Region Basin Directorate;
- West-Eagean Sea Region Basin Directorate;
- Black Sea Region Basin Directorate;
- Danube Region Basin Directorate.

- 1.1 The registers to contain data about: the number of the filed requests for access to information, the type of the information requested and the number of decisions to give access to information, the number of refusals to give access to information with the respective reasons and the instances of appealed refusals according to Form № 1, which is an inseparable part of the present Order.
- 1.2 The Chief secretary of the Ministry of the environment and water and the heads of the departments of the Ministry under point 1 or persons authorized by them with written order manage the registers under point 1.1.
2. The information from the registers under point 1 is gathered and provided to the Chief secretary of the MOEW by the heads of the departments of the Ministry of the environment and water every semester, in the period between the 1st and 10th day of the month following the reported semester.

3. The minister of the environment and water presents annual reports about the data from the registers under point 1 and point 2 to the Minister of state administration as an inseparable part of the reports under art. 61, par. 2 of the Administration Act.
4. A list of the acts, issued in execution of the authority of the Minister of the environment and water and [in execution of the authority of the respective organization structures subordinated to him, to be created and published on the Internet page of the Ministry of the environment and water.
 - 4.1. The initial data about the List under point 4 are presented by the heads of the structure sections of MOEW to the „Strategy, European integration and international cooperation“ Department within three months from the communication of the present order.
 - 4.2. Every three months the List is updated by submitting information to the „Strategy, European integration and international cooperation“ Department between the first and the tenth day of the month, following the reported period.
5. The Director of the Executive Environment Agency (EEA) assigns the public official responding for the creation and maintenance on the Internet page of EEA of a description of information structures and resources containing information about the environment, defined as Catalogue of environmental data sources according to art. 25, par. 1 of the Environmental Protection Act.
6. The public official under point 5 creates and maintains a constant link to the National geoserver, where the respective information resources about the component „Land and soils“ are going to be available.
7. The Directors of departments in MOEW assign a public official from every section within their sector to give the information necessary for the description of the masses of information and of the resources containing information about the environment.
8. The Directors of departments in EEA assign a public official from every section within their sector to give the information necessary for the

description of the masses of information and of the resources containing information about the environment.

9. The Directors of the Regional inspectorates of the environment and water, the directors of national parks and the directors of basin directorates assign an expert to give the information necessary for the description of the information structures and of the resources containing environment information.
10. When the requests for access to information are filed in the registries of MOEW and its sections under point 1 the requests shall be distributed to the respective departments/sections according to the character of the information requested.
11. Department „Legal-normative services“ in MOEW gives its opinion on the refusals to access information.

MINISTER:

(Dolores Arsenova)

Form № 1

Register of the requests for access to information and their movement

Request №	Type of the information requested	Applicant				Decision to give access to information	Refusal to give access to information	Reasons for the refusal	Appeal
		3							
1	2	Journalists	Citizens	NGO	Others	4	5	6	7
		Total	Total	Total	Total				

Note:

- In column 3 a notice about the applicant must be made in the respective sub-column and the total number must be pointed in the end.
- Columns 4 and 5 must be filled in with YES or NO according to the case and the number of the respective decision or refusal must also be written down.
- Columns 5, 6 and 7 must be filled in on the condition that access has been refused, i.e. (if in column 3 there is NO. If there is YES - columns 5, 6 and 7 must not be filled in.
- Column 7 must be filled in with YES or NO and if there is YES the data of the case file must be written down.

**REPUBLIC OF BULGARIA
MINISTRY OF ENVIRONMENT AND WATER**

ORDER

№ 110/11.02.2003 г.

In accordance with Art. 25 and in relation to Art. 24 of the Environmental Protection Act and Art. 15 para. 1 item 3 of the Access to Public Information Act,

I ORDER:

1. For the creation and publishing on the web page of the Executive Environment Agency (EEA) at the Ministry of Environment and Water of a description of structures and resources containing environmental information, hereinafter referred to as Catalogue of Environmental Data Sources.
2. The Catalogue environmental data sources should be published in Bulgarian and English.
3. The Catalogue of Environmental Data Sources is a database, containing data about the location, type, form and procedures of access to environmental information in Bulgaria, which is collected and held by the administrative structures of the executive power.
4. Information in the Catalogue of Environmental Data Sources is organized in two categories:
 - 4.1. Institution address and contact person.
 - 4.2. Data about the information structures and resources, divided into the following basic classes:
 - 4.2.1. Electronic databases.
 - 4.2.2. Documents/registers - brochures, reports, papers, license registers, permits, etc, kept on paper or in some electronic format.

- 4.2.3. Maps - both on paper and those in geographical information systems.
- 4.2.4. Other similar information.
5. The Catalogue of Environmental Data Sources should contain data for the classes under item 4.2. about the following information resources:
- 5.1. Resources related to the elements of environment under Art. 4 of the Environmental Protection Act, such as air, atmosphere, water, soils, forests, land, landscape and natural sites, mineral diversity, biodiversity and its elements.
 - 5.2. Resources, related to factors, affecting or likely to affect the elements of the environment within the scope of Art. 5 of EPA, such as substances, processes, waste disposals, noise, vibrations, radiation, as well as genetically modified organisms.
 - 5.3. Resources, related to fines, sanctions, and other administrative measures, imposed on those, violating the environmental protection legislation.
 - 5.4. Resources in relation to concessions, licenses, and permits connected with the environment.
 - 5.5. Resources, related to investment, institutional or other environmental projects: databases and registers of environmental projects, either running or forthcoming.
 - 5.6. Resources, related to investment, institutional or other environmental programs: either running or forthcoming programs directly concerning the environment or connected with integration of environmental policies into other economical strategies (agriculture, transport, energy, tourism).
 - 5.7. Resources related to human health and safety, as long as they are or may be affected by the state of the elements of the environment.
6. Within one month of promulgation of this order in State Gazette, the heads of all administrative structures of the executive power should determine contact persons, who will be responsible for submitting initial data and annually updating the information in the Catalogue

of Environmental Data Sources. The institution heads should send the names of those contact persons to the Executive director of the EEA.

- 6.1. Initial data should be sent to the Executive Environment Agency by the persons under item 6 within three months of the promulgation of this order.
- 6.2. Information should be provided to the Catalogue of Environmental Data Sources by submitting the attached questionnaire, which is an inseparable part of this order. After filling in the questionnaires, they should be sent to the EEA by e-mail on the provided address.
- 6.3. The completed questionnaires could be viewed in electronic format on the web site, provided in the attachment.
- 6.4. The updating and maintenance of the Catalogue of Environmental Data Sources are performed annually between September 1 and October 31 following the procedures under item 6.2.
- 6.5. The data under item 6.1 and 6.2 from the regional branches of the administrative structures of the executive is collected, processed and submitted to the EEA by the corresponding central institutions under item 6.

MINSTER OF MOEW:
(Dolores Arsenova)

**REPUBLIC OF BULGARIA
MINISTRY OF THE ENVIRONMENT AND WATER**

ORDER

№ RD - 796

Sofia, 20.06.2003

Regarding the implementation of the Access to Public Information Act and with the purpose to improve the work of the administration of the Ministry of the environment and water in the provision of services to citizens and legal persons I

DETERMINE:

The following internal procedure to provide access to public information:

1. All the requests for access to public information shall be accepted by the servants in sector „Provision of services in a front office“ of the Ministry of the environment and water, Sofia, „Maria Louiza“ Boulevard 22.
2. The servants in sector „Provision of services in a front office“ shall distribute the requests filed to the respective divisions/departments, which must prepare it, according to the character of the requested information.
3. The experts from the respective divisions/departments shall calculate the amount of the expenses for the provision of information in the manner prescribed by the law. The due sum shall be paid by the applicant in the cash desk of sector „Provision of services in a front office“.
4. After the respective divisions/departments have prepared the information it shall be returned to sector „Provision of services in a front office“ in order to be given to the applicant.

5. Sector „Provision of services in a front office“ shall present the information to the applicant following payment of the expenses determined, presenting of document of payment and certification of the identity of the receiver with an identity card.
6. A protocol about the provide access to public information, which is to be signed by the respective servant in sector „Provision of services in a front office“ and the applicant, shall be composed. In the protocol ought to be written the following data: number and date of composition of the protocol, type of the information and the forms of its provision according to art. 26, par. 1 of APIA (the Access to Public Information Act), the three names of the applicant, respectively the name and seat of the legal person and the three names of its representative, address for correspondence of the applicant, name and duty of the servant from sector „Provision of services in a front office“. The protocols shall be kept in sector „Provision of services in a front office“.

The present order must be notified to all the servants in the Ministry of the environment and water for information and execution.

I confer the control over the execution of the order on the chief secretary.

MINISTER:

(Dolores Arsenova)

REPUBLIC OF BULGARIA
MINISTRY OF THE ENVIRONMENT AND WATER

ORDER

№ RD - 969
Sofia, 28.07.2003

On the ground of art. 21, par. 1 of the Environmental Protection Act (Promulgated in SG [State Gazette], issue 91/25.09.2002) and art. 3, par. 1 of the Access to Public Information Act (Promulgated in SG, issue 55/07.07.2000, last amendments SG, issue 45/30.04.2002) in conjunction with art. 28, par 2 of APIA and art. 4, par. 2 of the Constructive Regulation of the Ministry of the environment and water and with the purpose to improve the work of the administration of the Ministry of the environment and water in the provision of services to citizens and legal persons concerning the filed requests for access to public information I

ORDER:

1. In order to ensure access to public information, created or kept by the Ministry of the environment and water, under the Access to Public Information Act in conjunction with the Preservation of the Environment Act, a decision under art. 28, par. 2 of APIA is authorized to take the Chief secretary and every deputy minister, to whom it has been forwarded, as follows:
 - 1.1. **The Chief secretary** - to take decisions under art. 28, par. 2 in conjunction with art. 34 and art. 38 of APIA to give or to refuse to give access to public information, as well as (decisions) to give partial refusal, as well as to sign all the documents relating to the procedure.
 - 1.2. **Each of the deputy ministers** - to take decisions to give access to requested public information under art. 28, par. 2 in conjunction with art. 34 of APIA, as well as to sign all the documents relating to the procedure.

2. The Directors of departments, to whom a request for access to public information has been addressed or to whom it has been distributed, shall prepare the drafts for the correspondence under art. 29-33 of APIA, as well as all the other documents, connected with the course of the procedure, as well as (the drafts for) the decisions under art. 28, par. 2 in conjunction with art. 34 and art. 38 of APIA to give or to refuse to give access to information and shall forward them to the bodies under point 1 of the order to be signed. The bodies under point 1.1 and point 1.2 of the order shall sign the decisions and the other documents relating to the procedure and they (the documents) ought to be given outgoing numbers by sector "Provision of services in a front office" of the Ministry of the environment and water.
3. The activity concerning the organization and the general coordination of the process of access of the public to information shall be performed by the „Strategy, European integration and international cooperation“ department. The Chief secretary shall perform the control over the process of taking decisions to give or to refuse to give access to information under APIA.
4. The „Legal-normative services“ department in MOEW gives its opinion on the refusals to give access to information. If there is or if it is doubtful that there is a ground to refuse to provide access to information in the sense of art. 37 of APIA, including the cases of providing partial access, the respective experts, to whom the request for access to public information has been distributed, in the shortest term possible, but not later than seven days after the request has been filed, according to their competence shall present a copy of the request and the proposed reply to the request to the „Strategy, European integration and international cooperation“ department for opinion. The „Strategy, European integration and international cooperation“ department examines the request, gives a written statement on the conformity with the law and the correctness of the prepared refusal and if necessary adds to or changes the prepared draft for a reply. The statement ought to be given in the shortest term possible, but not later than three days after the request has been filed. After the „Legal-normative services“ department has received

- the statement the expert, to whom the request has been distributed, prepares a draft for a reply, taking into consideration the statement of the „Legal-normative services“ department.
5. Every director of department in the Ministry of the environment and water shall present a report about the requests for access to information filed in the respective department not later than 01.09.2003 to the „Strategy, European integration and international cooperation“ department in order a general report to the Chief secretary of the Ministry of the environment and water to be prepared.
 6. When the servants in the registries of the Ministry of the environment and water put outgoing numbers on decisions and refusals to access public information they must present a copy of the decision to the „Strategy, European integration and international cooperation“ department for the purpose of coordinating the activity concerning access to information.
 7. The director of the „Legal-normative services“ department presents to the „Strategy, European integration and international cooperation“ department a report about the decisions to refuse and to give access to public information, that have been appealed, as well as about the outcome of the court proceedings for the purpose of coordinating the activity concerning access to information.

The present order is issued in supplementation of № RD -111/11.02.2003 and of Order № RD -796/20.06.2003 of the Minister of the environment and water.

The present order is to be notified to the members of the Political office, the Chief secretary and the directors of departments in the ministry for information and execution.

I confer the control over the execution of the order on the Chief secretary.

MINISTER:

(Dolores Arsenova)

ORDER N° 10

of the Ministry of Finance from 10.01.2001

for determining the fees for disclosure of public information under the Access to Public Information depending on the information carrier

Issued by the Minister of Finance,
promulgated in State Gazette, issue 7 from Jan. 23, 2001.

In accordance with art. 115 of the Constitution of the Republic of Bulgaria and Art. 20 para. 2 of the Access to Public Information Act, I determine the following standard fees for disclosure of public information under the Access to Public Information Act, depending on the information carrier:

1. Floppy disc - 1,20 Lev;
2. CD - 5,00 Lev;
3. E-mail - 1 MB - 0,30 Lev.; for information in electronic form the fee is payable for each started MB;
4. Printing of one page (A4) - 0,12 Lev;
5. Photocopy per page (A4) - 0,09 Lev;
6. Fax per page (A4) - 0,60 Lev;
7. Video tape - 4,90 Lev per tape plus 0,25 Lev per one minute of recording;
8. Audio tape - 1,60 Lev per tape plus 0,25 Lev per one minute of recording;
9. Information provided verbally - 1,50 Lev for 15 minutes;
10. Written reference per page (A4) - 1,59 Lev.

The above fees do not include VAT.

EXAMPLE OF A REQUEST FOR ACCESS TO INFORMATION

To: (institution requested to grant information)

.....

(name of the city, if a territorial sub-entity)

.....

REQUEST TO ACCESS INFORMATION

From:

.....

(Names or title of legal entity)

(address)

(optional: telephone number)

Dear Sir/Madam/Gentlemen:

On the basis of the APIA I would like to be granted access to the information you hold regarding

On the basis of the APIA I would like to be granted the following documentation:

1.
2.
3.

I would like to receive the requested information in the following form

1. viewing the information - original or copy;
2. non-written consultation;
3. paper copies;
4. electronic copies.

Date:

Signature:

Model appeal!

THROUGH: FULL NAME OF THE BODY,
WHICH HAS REFUSED TO
PROVIDE ACCESS TO THE
REQUESTED INFORMATION

TO: THE COURT, TO WHICH YOU
ARE APPEALING

APPEAL

by

Your full name and personal ID number

Address:

AGAINST: decision to refuse access to
information by (the full name of the body, which
has issued the decision)

IN ACCORDANCE WITH: Art . 40 para. 1 of the
Access to Public Information Act

Honourable judges,

In accordance with art. 40 para. 1 of the Access to Public Information Act I am appealing within the law-provided term the decision of ... (full name of the body) to refuse access to environmental information, which I have requested.

You should briefly and clearly describe the facts related to the submission of your request. You should indicate:

1. On (date) I filed a request for access to environmental information with (log number) to (the full name of body, e.g. minister, mayor, executive agency director, etc.).

2. I requested information about (brief description of the requested information) in the form of (indicate the preferred form of access, e.g. paper copies, review of documents, etc.).

3. The respondent is clearly in possession of this information.

4. On (date) I received a letter (or decision N^o) from the respondent, with which access to the requested information was refused.

5. According to the decision (briefly name the grounds for refusal or quote the decision or letter of refusal). If you are appealing against a silent refusal, indicate the deadline for a decision and specify that you have not received any answer.

6. In accordance to Art. 17 of the Environmental Protection Act I have a right to access environmental information, and there is no legal provision restricting this right and providing an opportunity for withholding this information.

7. The refusal of the respondent is contrary to the law.

8. In view of the above, I plead that the Honourable judges to REVERSE the decision of (full name of the respondent), to JUDGE the case in substance, to ACKNOWLEDGE my right to information access and to OBLIGE the responded to provide it to me in the preferred form.

Attachments (should be submitted with the appeal)

1. Two copies of the submitted request .
2. Two copies of the letter/decision to refuse access to the requested information.
3. Copy of the appeal and the attachments for the respondent.
4. Copy of the receipt for paid state tax.

..... (place)

..... (date)

Respectfully yours:
(Appellant's signature)

ENVIRONMENTAL PROTECTION ACT

Promulgated in State Gazette issue 91 of 25.09.2002,
amended issue 98 of 18.10.2002, amended issue 86 of 30.09.2003

**Chapter two
ENVIRONMENTAL
INFORMATION**

Art. 17. Everyone shall have right to access to the available environmental information without having to prove his/her legal interest.

Art. 18. Environmental information shall be:

1. available raw information;
2. available processed information;
3. subsequently processed information.

Art. 19. Environmental information is any information in written, visual, audio, electronic or other material form about:

1. the state of the elements of art. 4 and the interaction between them;
2. the factors of art. 5, as well as the activities and/or the measures, including the administrative measures, international agreements, policies, legislation, plans and programs, which render or likely to render impact over the elements of environment;
3. the state of human health and the safety, as far as they are or are likely to be affected by the state of the elements of the environment or, through these elements, by the factors, the activities or the measures, stated in item 2;

4. sites of the cultural historic heritage, buildings and facilities, as far as they are or can be affected by the state of the elements of the environment or, through these elements, by the factors, the activities or the measures, stated in item 2;

5. analysis of the expenses and the benefits and other economic analyses and assumptions, used within the measures and the activities, stated in item 2;

6. emissions, discharges and other harmful impacts on the environment.

Art. 20.(1) Access to environmental information may be denied in cases, upon request of:

1. classified information, which constitutes state or official secret;
2. information, which constitutes production or commercial secret, prescribed by law;
3. information, which would harm or is likely to harm intellectual property rights;
4. information, which constitutes personal data, if the individual, whom this information concerns, does not agree to reveal it, and in compliance with the requirements, provided in the Personal data protection act;
5. information, which would influence negatively the interests of a third person, who has conceded the re-

quired information without having legal obligation to do this and without an opportunity of such obligation being imposed; and when the person does not agree with the disclosure of information;

6. information, which will influence adversely the elements of the environment.

(2) Information about the environment shall be conceded no later than 14 days after the date of informing the applicant about the decision of the competent body about providing access to the requested information.

(3) The persons, who give information about the environment to the competent bodies, shall be obliged to mark the information, about which some of the restrictions for conceding of para 1 exist.

(4) The competent body shall take into account the public interest from disclosure of this information when taking a decision for withholding information under para 1.

(5) In cases of restricted access, the existing information about the environment shall be disclosed in its parts, which can be separated from the information under para 1.

(6) The restriction of the right to information access shall not refer to emissions of harmful substances in the environment with values, defined in normative acts.

Art. 21. (1) The competent bodies under this chapter shall be the central

and the territorial bodies of the executive power, which collect and hold environmental information.

(2) Competent bodies in the sense of para 1 shall also be the other bodies and organizations, which dispose of the funds of the consolidated state budget and collect and hold environmental information, except the bodies of the legislative and the judicial power.

Art. 22. (1) The Council of Ministers shall submit every year to the National Assembly a report about the state of the environment, proposed by the Minister of Environment and Water, which after being approved shall be published as annual report about the state of the environment.

(2) The report under para 1 shall be submitted to the National Assembly in three- months term after conceding the data and information by the National Statistics Institute.

Art. 23. (1) Upon accidental or other pollution, when the standards of discharge of polluting substances in the environment, established with normative or individual administrative act are breached, the violators and those, in charge of observation of the standards, shall be obliged to immediately inform the respective regional governors, the mayors of the respective municipalities, RIEW, the basin directorates and the bodies of Civil Protection State agency and - upon changes in the radiation situation - Nuclear Regulatory Agency.

(2) The competent bodies under para. 1 shall be obliged immediately to inform the Ministry of Health and the influenced population in cases under para. 1, proposing measures for protection of human health and property.

Art. 24. Each head of administrative structure from the executive power shall annually publish data about the information structures and resources of processed environmental information under art. 18, item 2.

Art. 25. (1) The Minister of Environment and Water shall determine with an order the description of the information structures and resources of art. 15, para 1, item 3 of the Access to Public Information Act, when they contain information of art. 19.

(2) The order of para 1 shall be promulgated in State Gazette.

(3) The description of the information structures under para. 1 and art. 24 shall be published on the Internet site of the Ministry of Environment and Water.

Art. 26. (1) The procedure, provided in chapter three „Procedure for conceding of access to public information“ of the Access to Public Information Act shall be applied for providing access to environmental information.

(2) In the decision for providing access to information under art. 34, para. 1 of the Access to Public Information Act shall be pointed out whether specifically processed infor-

mation or other kind of information is disclosed.

Art. 27. The refusals to provide information, needed by the persons for preparation of their defense under the proceedings, provided in this act or in another law, shall be appealed under the Administrative Proceedings Act.

Art. 28. The information under art. 18, items 1 and 2, shall be paid for under the conditions and proceedings of Art. 20 - 22 of the Access to Public Information Act.

Art. 29. The payment for providing specifically processed information shall be contracted on a case-by-case basis.

Art. 30. The competent bodies shall distribute free of charge available primary and preliminary processed environmental information to each other, as well as to the municipalities, when this information is necessary for them to take decisions within their competence.

Art. 31. The national public radio and TV operators shall in their programs:

1. disseminate information about preservation and management of the environment;

2. ensure protection of the right to information about the state of the environment;

3. promote the knowledge and the scientific achievements in the field of preservation of the environment by transmitting Bulgarian and foreign educational programs.

ACCESS TO PUBLIC INFORMATION ACT

Promulgated in State Gazette issue 55/07.07.2000;
amended issue 1/04.01.2002, issue 45/30.04.2002

Chapter One BASIC PRINCIPLES

Section I Subject and scope Subject of the act

Art. 1. This act shall regulate the social relations relating to the access to public information.

Public information

Art. 2. (1) Within the meaning of this act, public information shall be 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 persons having obligations under this act.

(2) The information under sub-article 1 shall be deemed public irrespective of the kind of its physical bearer.

(3) This act shall not apply to the access to personal data.

Persons responsible for ensuring access to public information

Art. 3. (1) This act shall apply to access to public information that is created by or kept with the state bodies or the local self-governance bodies of the Republic of Bulgaria, hereinafter referred to as „the bodies“.

(2) This act shall also apply to the access to public information, which is created by and kept with:

1. bodies, subject to the public law, other than those under sub-art. 1;
2. individuals and legal entities as far as only their activities financed with funds from the consolidated state budget are concerned;
3. mass media, and relates to the transparency of their activities.

Persons entitled to the right of access to public information

Art. 4. (1) Any citizen of the Republic of Bulgaria is entitled to access to public information subject to the conditions and the procedure set forth in this act, unless another act provides for a special procedure to seek, receive and impart such information.

(2) Foreign citizens and individuals with no citizenship shall enjoy the right under sub-art. 1 in the Republic of Bulgaria.

(3) Legal entities shall enjoy the right under sub-art. 1 too.

Exercising the right of access to public information

Art. 5. The right of access to public information may not be exercised against others' rights and reputation,

as well as against the national security, public order, national health and the moral standards.

Basic principles

Art. 6. The basic principles governing the exercise of the right of access to public information shall be:

1. openness, correctness and comprehensiveness of the information;
2. securing equal conditions for access to public information;
3. securing conformity with the law of the process of seeking and receiving public information;
4. protection of the access to information right;
5. personal data protection;
6. guaranteed the security of the society and the state.

Permissible restrictions to the right of access to public information

Art. 7. (1) No restrictions to the right of access to public information shall be permissible, unless the latter is information classified as state or other kind of protected secrecy in cases provided for by an act of Parliament.

(2) Access to public information may either be full or partial.

Exemption from the scope of the act

Art. 8. This act shall not apply to information, which is:

1. obtainable in the course of provision of administrative services to citizens and legal entities;
2. kept with the State archives of the Republic of Bulgaria.

Section II

Official and administrative public information

Kinds of public information

Art. 9. (1) Public information, which is created and kept by the bodies and their administrative structures, is divided into official and administrative information.

(2) Where so provided in an act of Parliament, certain official or administrative information may be classified as state or administrative secret.

Official public information

Art. 10. Official information shall be deemed information contained in the acts of the state or local self-government bodies in the course of exercise of their powers.

Administrative public information

Art. 11. Administrative information shall be deemed information, which is collected, created and kept in connection with official information, as well as in the course of the activities of the bodies and their administrative structures.

Chapter Two

ACCESS TO PUBLIC INFORMATION

Section I

Access to Official and Administrative Public Information

Access to official public information

Art 12. (1) Access to official information, which is contained in normative

acts shall be provided by means of their promulgation.

(2) Access to other official information shall be provided by promulgating it if so provided in an act of parliament, or if so decided by the agency who created it.

(3) Access to official information in cases other than those provided in sub-art. 1 and 2 shall be unrestricted and shall be exercised in accordance with the procedure set forth in this act.

(4) In case of request for access to official information, which is promulgated, the respective body shall be obliged to state the number, the date and the name of the issue where the information was published.

Access to administrative public information

Art. 13. (1) Access to administrative public information shall be unrestricted.

(2) 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.

(3) The restrictions under sub-art. 2 shall not apply after a period of 2 years as from the creation of such information.

Duties for disclosing public information

Art. 14. (1) The bodies shall inform about its activities by making publications or using other form of announcements.

(2) The bodies shall be obliged to announce information, which has been collected, or came to its knowledge during the performance of their activities, where such information:

1. is of a nature to prevent some threat to the citizens' life, 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.

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 chief officer 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 the administration led by him/her.

2. list of the acts issued within the scope of its powers;

3. description of the data volumes and resources, used by the respective administration,

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

(2) Every chief officer under sub-art. 1 shall prepare an annual report on the requests for access to public information, which shall contain among others data on the refusals made and the reasons therefor. This annual report shall be part of the annual reports under art. 61, sub-art. 2 of the Administration Act.

Duties of the Minister of the state administration

Art. 16. (1) The Minister of the State administration shall publish an annual summary of the reports on the bodies and their administrations, containing the information under art. 15., as well as other information relating to the implementation of this act.

(2) The Minister of State administration shall be responsible for distributing the summary. The information contained in the summary shall be made available in every administration for review by the citizens.

Section II

Access to Other Public Information

Access to public information related to the activities of other persons responsible for its disclosure

Art. 17. (1) Access to public information relating to the activities of the responsible persons under art. 3, sub-arts. 2 shall be unrestricted.

(2) Information under sub-art. 1 that represents commercial secret or whose disclosure or dissemination is of a nature to result in unfair competition among business persons shall not be disclosed.

Access to public information for mass media

Art. 18. Public information for the mass media is only the information concerning:

1. the persons taking part in the management of the respective media or exercise effective control over its management or its activities;

2. business related parties taking part also in the management of other mass media, which allows them to exercise an effective control over their management or their activities;

3. the persons directly engaged in the mass media and which participate in the formation of its editorial policy;

4. the announced statements on the mass media' public goals, as well as principles and internal rules applied by the mass media to guarantee cor-

rectness and objectivity of disseminated information;

5. the financial results of the mass media's owner and the dissemination of its production.

Objectives of the access to public information for the mass media

Art. 19. The access to the information under art. 18 shall be exercised with compliance with and with balance of the principles of transparency and economic freedom, as well as of personal data protection, commercial secrecy and the secret of the sources of the mass media that wished to remain secret.

Section III

Free of charge access and costs related to the granting of public information

Art. 20. (1) The access to public information shall be free of charge.

(2) The expenses incurred for granting access to public information shall be recovered in accordance with tariffs determined by the Minister of Finance, and shall not exceed the actual costs incurred.

(3) A justification of the expenses under art. 2 shall be made to the applicant upon his/her request.

Informational obligations upon filing of requests for access

Art. 21. The responsible persons under art. 3 shall inform on the possible forms of granting access to public information on the spot where the requests are accepted, as well as on the

charges due and the means of their payment.

Free of charge corrections and amendments to the disclosed information

Art. 22. No additional expenses shall be charged for corrections and/or addendum to the granted public information in cases where the information is incorrect or incomplete and this has been requested by the applicant on stated grounds.

Revenues from granting of access to public information

Art. 23. The revenue received in the course of granting access to public information shall be for the account of the budget of the respective body.

Chapter Three

PROCEDURE FOR GRANTING ACCESS TO PUBLIC INFORMATION

Section I

Verbal inquiry for access to information

Art. 24. (1) The request for granting access to public information shall be made in the form of a written request or verbal inquiry.

(2) The request is deemed written also in cases where it is send electronically subject to conditions determined by the respective body.

(3) Where the applicant is not granted access to public information requested in oral form, or he/she considers the disclosed public informa-

tion insufficient, he/she may file a written request.

Content of the request of access to information

Art. 25. (1) The request for access to public information shall contain:

1. full name, or respectively the business name and the seat of the applicant;
2. description of the information requested;
3. the preferred form of access to the requested information;
4. the address for correspondence with the applicant.

(2) If any requisite under 1, 2 or 4 above is not present in the request, the latter shall be left without further consideration.

(3) Every filed request for access to public information shall be registered in accordance with the procedure adopted by the relevant agency.

Forms for granting of access to public information

Art. 26. (1) Access to public information shall be granted in the following forms:

1. examination of the information - original or copy
2. verbal explanation;
3. paper copy;
4. copy on technical bearer.

(2) Access to public information may be granted in one or more of the forms sub-art. 1.

(3) Where the preferred form of access to public information is the one described in sub-art. 1, point 4, the

technical parameters for the recording of the information should be defined.

(4) Persons with impaired sight, hearing or speech are entitled to request access in a form that corresponds to their ability to communicate.

Obligation to comply with the preferred form of access

Art. 27. (1) The bodies shall comply with the requested form of access to public information, except where:

1. it cannot be satisfied due to technical reasons;
2. it results in unjustified increase of costs of disclosure;
3. creates opportunities for unlawful processing of the information or for infringement of intellectual property rights.

(2) In the cases provided under sub-art. 1, access shall be granted in a form decided by the respective agency.

Section II

Consideration of Application and Granting Access to Public Information

Consideration of requests for access

Art. 28. (1) Each request for access to public information shall be considered within the shortest possible time, but not later than 14 days as of date of registration.

(2) Within the time period set in sub-art. 1, the body, or person explicitly authorized by them, shall decide on whether to grant or deny access to

public information and shall notify in writing the applicant of the decision.

Specification of the request for access

Art. 29. (1) Where it is not clear what information is being requested or it is too broadly defined, the applicant shall be advised accordingly and shall be provided an opportunity to specify the requested information. The time period set in the preceding article shall start running as of the date when the requested public information was specified.

(2) If the applicant failed to specify the requested public information within a period of 30 days, the request shall not be considered.

Permissible extension of the term for granting of access

Art. 30. (1) The time period set in art. 28, sub-art. 1 may be extended with no more than 10 days, where the requested information as specified in the request is substantial in volume and additional time for its preparation is needed.

(2) The notification under art. 29, sub-art. 1 should state the reasons for the extension of the term in which the access to the public information shall be granted.

Extension of the term for reasons of protection of third parties' interests

Art. 31. (1) The time period set in art. 28, sub-art. 1 may be extended with not more than 14 days also where the requested information is a

matter of concern to a third party and his/her consent is needed for its disclosure.

(2) In the cases under sub.art. 1, the respective body shall seek the explicit written consent of the third party within 7 days as from the registration of the request under art. 24.

(3) When it takes the decision under art. 28, sub-art. 2, the respective body shall be obliged to comply strictly with the conditions under which the third party has consented to the disclosure of the information that concerns him/her.

(4) In the absence of consent by the third party within the term specified in sub-art. 1 or in case of explicit refusal by the third party to give its consent, the respective body may disclose the requested public information in scope and in a manner so as not to disclose the information concerning the third party.

(5) The consent of the third party is not required where it is a responsible person and the information concerned is a public information under this act.

Forwarding of the request for access

Art. 32. (1) When the body does not have the requested information, but is aware of its location, it shall re-resent the request within 14 days as of receipt of the request and shall notify the applicant of the re-sending. The notification must always specify the

name and the address of the respective agency or legal entity.

(2) In the case described in sub-art. 1, the time period set in art. 28, sub-art. 1, shall start running as of the receipt of forwarding the request.

Notification of unavailability of the requested public information

Art. 33. If the body does not have the requested information and is not aware of its location, it shall notify the applicant accordingly within 14 days.

Decision to grant access to public information

Art. 34. (1) The decision under art. 28, sub-art. 2, by which access to public information is granted must state:

1. the degree of the ensured access to the requested public information;
2. the time within which access to the requested public information is available;
3. the location where the requested information will be disclosed;
4. the form in which access to the requested public information will be granted;
5. the costs for granting access to the requested public information.

(2) The decision may also state other bodies, organizations and persons who have more complete information available.

(3) The decision to grant access to the requested public information shall be handed over to the applicant against his/her signature or sent by registered mail.

(4) The time period described in sub-art. 1, point 2 may not be less than 30 days as of receipt of the decision.

Granting of access to the requested public information

Art. 35. (1) Access to public information shall be granted after payment of the specified costs and after presentation of document evidencing their payment.

(2) A record shall be drawn upon provision of access to public information, which shall be signed by the applicant and the relevant civil servant.

Refusal of the applicant of the granted access

Art. 36. If within the time specified in art. 34, sub-art. 4 the applicant fails to appear or to pay the required costs, either of his failures shall be considered a refusal of the granted right of access to public information.

Section III

Refusal to Grant Access to Public Information Grounds for refusals to grant access

Art. 37. (1) Grounds for refusal to grant access to public information is in place where:

1. the information requested is information classified as state or administrative secret, as well as in cases described in art. 13, sub-art. 2;
2. the access is of a nature to affect third party's interests and the third party did not give its explicit written

consent for the disclosure of the requested public information;

3. access to the requested public information was provided to the applicant within the preceding six months.

4. (2) In the cases described in sub-art. 1, partial access may be granted to such parts of the information, access to which is not restricted.

Content of the decision to refuse to grant access

Art. 38. A decision refusing access to public information shall state the legal and factual grounds for the refusal under this act, the date of the decision and the procedure for its appeal.

Hand-over of the decision for refusal of access

Art. 39. A decision refusing access to public information shall be handed over to the applicant against his/her signature or sent by registered mail.

Section IV Appeals of Decisions to Refuse to Grant Access to Public Information Jurisdiction over appeals of the decisions relating to access or to refusal of access

Art. 40. (1) The decisions for granting access to public information or for refusals to grant access to public information may be appealed before the regional courts or before the Supreme Administrative Court depending on the body, which issued the decision, under the provisions of the

Administrative Procedure Act or the Supreme Administrative Court Act.

(2) The decisions of the persons under art. 3, sub-art. 2 to grant access to public information or to refuse to grant access to public information may be appealed before the regional courts in accordance with the Administrative Procedure Act.

Competencies of the court considering the appealed decisions

Art. 41. (1) If a court finds that a refusal is not in conformity with the law, it shall repeal in full or in part, or shall amend, the decision for refusal and shall instruct the body to grant the request for access to public information.

(2) In the cases described in sub-art. 1, access to public information shall be provided in accordance with the procedure set forth in this act.

(3) Upon appeal of refusal to grant access to public information on the grounds of art. 37, sub-art. 1, point 1, the court may, in closed hearing, request from the body the necessary evidences.

(4) In cases under sub-art. 3 the court shall decide on the lawfulness of the refusal and on the marking of the information as classified.

Administrative penalty provisions

Art. 42. (1) If not subject to a harsher penalty, a civil servant who failed to respond within the specified time limits to a request for access to public information without exculpatory rea-

son, shall be fined between 20 and 50 leva.

(2) If not subject to a harsher penalty, a civil servant who did not follow a court order to grant access to public information shall be fined between 100 and 300 leva.

(3) Any failure to meet the obligations under art. 31, sub-art. 3 shall be punished with a fine between 50 and 100 leva for physical persons or between 100 and 200 leva for legal entities.

(4) For failure to provide access to public information by the persons described in art. 3 sub-art. 2, the punishment shall be a fine between 100 and 200 leva.

Bodies entitled to impose sanctions

Art. 43. The penalty acts shall be issued as follows:

1. under art. 42, sub-art. 3 - by the respective agency, and if the responsible person is one described in art. 3, sub-art. 2 - by the Minister of Justice or an authorized official.

2. under art. 42, sub-art. 4 - by the Minister of Justice or an authorized official.

Applicable law

Art. 44. Any offense shall be established, penalty shall be imposed, appealed and executed in accordance with the Administrative Offenses and Penalties Act.

ADDITIONAL PROVISION

§ 1. Within the meaning of this act:

1. „material bearer of public information“ shall be a text, plan, map, photograph, image, diskette, audio- or video cassette and other of this kind;

2. „personal data“ shall be any data relating to a given individual, whose identity could be directly or indirectly established, irrespective of its form and way of recording and revealing his/her physical, psychological, intellectual, economical, cultural or social identity, as well as the information containing the said data for non-incorporated groups of individuals, as well as data for personal, economical, cultural or social identity of legal entities, created directly or indirectly by physical persons, the procedure for which collection, processing, protection, and access is determined in law.

FINAL PROVISION

§ 2. This act revokes:

The Decree No. 1086 / 12.07.1977 of the State Council on the work with the criticizing publications (prom. State Gazette issue 56 of 1977)

2. Arts. 14 and 19, as well as point 2 of sub-art. 1 to art. 57 of the Suggestions, Notices, Complaints and Requests Act (prom. State Gazette issue 52 / 04.07.1980, amended issue 68 / 02.09.1988).

This act is adopted on 22 June 2000 and is published in State Gazette on 7 July 2000.

**CONVENTION ON ACCESS TO INFORMATION,
PUBLIC PARTICIPATION IN DECISION-MAKING
AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS**

**done at Aarhus, Denmark,
on 25 June 1998**

Article 4

**ACCESS TO ENVIRONMENTAL
INFORMATION**

1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

(a) Without an interest having to be stated;

(b) In the form requested unless:

(i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or

(ii) The information is already publicly available in another form.

2. The environmental information referred to in paragraph 1 above shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

3. A request for environmental information may be refused if:

(a) The public authority to which the request is addressed does not hold the environmental information requested;

(b) The request is manifestly unreasonable or formulated in too general a manner; or

(c) The request concerns material in the course of completion or concerns

internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.

4. A request for environmental information may be refused if the disclosure would adversely affect:

(a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;

(b) International relations, national defence or public security;

(c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;

(d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;

(e) Intellectual property rights;

(f) The confidentiality of personal data and/or files relating to a natural per-

son where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;

(g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or

(h) The environment to which the information relates, such as the breeding sites of rare species.

The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.

5. Where a public authority does not hold the environmental information requested, this public authority shall, as promptly as possible, inform the applicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.

6. Each Party shall ensure that, if information exempted from disclosure under paragraphs 3 (c) and 4 above can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested.

7. A refusal of a request shall be in writing if the request was in writing or the applicant so requests. A refusal shall state the reasons for the refusal and give information on access to the review procedure provided for in accordance with article 9. The refusal shall be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

8. Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount. Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the sup-

ply of information is conditional on the advance payment of such a charge.

Article 9

ACCESS TO JUSTICE

1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law. In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law. Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.

2. Each Party shall, within the framework of its national legislation, ensure

that members of the public concerned

(a) Having a sufficient interest or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention. What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above. The provisions of this paragraph 2 shall not exclude the possi-

bility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

5. In order to further the effectiveness of the provisions of this ar-

ticle, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall con-

sider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

On Oct. 14.2003z. an Act for Ratification of the CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS done at Aarhus, Denmark, on 25 June 1998 was promulgated in State Gazette issue 91/2003. We are awaiting the promulgation of the text of the Convention and its enforcement.

JUDGMENT
No. 9822, Sofia 18.12.2001
IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Bench in a hearing on November six of the year two thousand and one, composed of:

Chairperson: Ekaterina Gruncharova
Members: Milka Pancheva, Diana Dobрева

With Secretary Maria Popinska and in the attendance of the Public Prosecutor Maria Begumova

heard the report of Judge Diana Dobрева on administrative lawsuit No. 5736 /2001.

It has been instituted on a appeal served by Yordan Stamenov Lazov of the city of Sofia against decision No. 6/28.03.2001 of the Minister of the Environment and Water with which he is refused access to public information in response to his request with a ref. No. G-137/20.03.2001. The refusal is substantiated on the grounds that the copies of documents requested by the complainant contain personal information on the compilers and the witnesses. The provision of article 2, paragraph 1 in connection with § 1, item 2 of the Public Information Access Act is specified as legal grounds for the refusal. According to the complainant the challenged refusal has been enacted in breach of substantive law. On the basis of the considerations set forth he requests its revocation and the recognition of his right of access to the requested public information and to order the Minister of the Environment and Water to grant it.

The respondent to the complaint has not expressed an opinion.

The representative of the Supreme Administration Prosecutor's Office deems the complaint justified.

The Supreme Administrative Court, Fifth Bench in its present composition accepts the complaint as procedurally admissible and considered in substance as justified.

It is clear from the request of the plaintiff that he has requested the granting of information concerning the actions of the Ministry vis-a-vis „Presevni Instalatzii“ Ltd. with a single owner of the capital the Dupnitsa Municipality. It represents copies of all acts of violations and the resulting penal enactments compiled by the bodies of the Ministry of the Environment and Water that have been specified by the Minister in a reply to a topical question of a Member of Parliament during the last year; a copy of order No. 131/29.03.2000 of the Ministry of the Environment and Water on stopping the extracting installation of the above company and the other production equipment; a copy of the act with which the continuation of the extraction has been allowed; a copy of all acts of the Ministry of the Environment and Water authorities on sanctioning the illegal extraction of mineral materials after stopping the operation of the installation.

It is clear from the explanations of the complainant in the courtroom that his interest is motivated by the extraction of sand and gravel that has been going on for forty years from the bed of the river Djerman as a result of which the whole eco-system has been destroyed. These data are to be used before the Chief Prosecutor's Office where an investigation is under way on this case. He submits copies of a protocol and of an act of the Regional Environment Inspectorate in Sofia, which have been granted to another person while to him have been refused.

In the opinion of the Court it has been established from the evidence that the requested information is public in its essence. The provision of article 2, paragraph 1 of the Public Information Access Act defines the notion of „public information“ as „any information connected with public life in the Republic of Bulgaria and allowing citizens to form an independent opinion concerning the activities of the subjects obliged by the law“. However, there is no legal definition of the notions „information connected with public life“ and of what characteristics should a piece of information have in order to conclude that it „allows citizens to form an independent opinion“. This opens a wide scope for discretionary judgments by the administrative authorities concerning the provision of citizens with public information and this causes problems in law enforcement.

The law differentiates two type of public information - public and official. Public is the information contained in the acts of government and local authorities issued in the course of performing their functions provided for by law - article 10 of the PIAA. Official information is the one, which is collected, composes and kept in connection with the public information and on occasion of the activity of the authorities and their administrations - article 11 of the PIAA.

Apparently in this particular case what is requested is access to official public information and the applicable provision is the one of article 12, paragraph 3 of the PIAA. The access to this information is free and takes place under the procedure of this law while the grounds for refusing its granting are referred to in article 37, paragraph 1 of the PIAA - when the information represents state or official secret, concerns the interests of a third party and it has not given its express agreement or the requested information has been granted to the applicant during the preceding six months.

There is no indication in the administrative file of the existence of the first or the third access limitations. It is clear from the substantiation of the refusal that is being appealed against that the Minister of the Environment and Water has considered that the requested information contains data concerning third parties whose interests may be infringed upon. The persons are expressly specified - compilers and witnesses, who have participated in the drafting of the requested acts on establishing administrative violations and the ordinances issued on the basis of them. There are no arguments concerning the refusal of the other requested documents.

It is the opinion of the Court that the Minister's referral to § 1, item 2 of the PIAA as grounds for the refusal is incorrect. The provision defines the notion of „personal information“ which the complainant has not requested to be provided with. It is true, however, that in a large portion of the requested documents there exists personal data such as addresses, positions, etc. of the compilers and the witnesses. If the obliged subject in the face of the Minister of the Environment and Water had nevertheless considered that revealing personal data would infringe upon the interests of third parties he could have implemented the procedure of article 31, paragraph 2 of the PIAA. There is no such data in the file. Besides, even had there been express refusal by the third parties to grant information concerning their persons, in the premise of article 31, paragraph 4 of the PIAA the Minister could have granted the re-

requested information in a scope and in a manner, which would not have revealed the information about the third parties. In this case this is entirely possible and there is nothing to prove that there are grounds for a refusal under the conditions of article 37, paragraph 1, item 2 of the PIAA. Therefore the refusal is contrary to the law.

In view of the conclusions drawn decision No. 6/28.03.2001 of the Minister of the Environment and Water that is being appealed against should be repealed and the Minister should be obliged to grant the complainant the requested information taking into consideration the substantiation of this judgment.

Led by the above and on the grounds of article 28 of the Supreme Administrative Court Act and in connection with article 42, paragraph 3 of the Administrative Proceedings Act and article 41, paragraph 1 of the Public Information Access Act the Supreme Administrative Court - Fifth Bench

RULES:

Repeals decision No. 6/28.03.2001 of the Minister of the Environment and Water with which Yordan Stamenov Lazov of Sofia, 36 Smolyanska Street, block 47, entrance B is refused access to public information under his request ref. no. G-137/20.03.2001.

Refers the file back to the Ministry and obliges it to grant the requested information, taking into consideration the substantiation of this judgment.

This judgment may be appealed against with a cassation appeal before a five member bench of the Supreme Administrative Court within fourteen days from the notification of its drafting.

True to the original,

Chairperson:	(signed) Ekaterina Gruncharova
Members:	(signed) Milka Rancheva, Diana Dobрева

JUDGMENT

City of Vratsa, 26.06.02

IN THE NAME OF THE PEOPLE

The VRATSA REGIONAL COURT - Administrative Bench in an open hearing held on 19 April 2002 consisting of:

Presiding judge: Maria Adjemova

Members: Ivan Radenkov, Miroslav Dosov

with the participation of the Secretary Christina Tsekova and the Public Prosecutor Dilkov after considering administrative lawsuit No. 44/02 in the register of the Vratsa Regional Court, reported by M. Adjemova in order to pass judgment took into consideration the following:

The proceedings are taking place on the basis of article 40, paragraph 2 of the Public Information Access Act - PIAA, and in connection with article 33 and the following of the Administrative Procedures Act

Ivan N. Najdenov from the city of Vratsa had appealed a refusal of the Secretary of the City of Vratsa Municipality, communicated in letter with ref. No.3/2.1.02. He refused to grant access to environment assessment report from 29.10.2001 prepared by engineer Ivan Isaev. The plaintiff asserts that he had filed an information request for access to documents related to the construction of a petrol station of „Lukoil Bulgaria“ Ltd. over part of the terrain in quarter 44-a of the city of Vratsa. The request was registered No 3 from 5.12.2001. He requested copies of 4 documents, 3 of which was given and the 4th was denied on the ground of lack of consent of „Lukoil Bulgaria“ Ltd.

The plaintiff pleads both there are grounds to annul the denial (on reasons of lack of authority) and to claim it was contrary to the law. On the second ground he asks the court to revert the denial and to order Vratsa Municipality to provide access to the requested information.

The respondent - the Vratsa Municipality, is represented by a lawyer, who disputes the complaint without arguments on the merits.

The third party concerned „Lukoil Bulgaria“ Ltd. is not being represented and has not expressed an opinion either.

The representative of the District Public Prosecutor's Office deems the complaint unjustified.

The court proceeds under Art. 40, para. 2 of the Access to Public Information Act (APIA).

The documents of the administrative proceedings following the appellant's request are enclosed to the court file.

After analyzing the collected written evidence in connection with the arguments of the parties in the case the Regional Court finds the following from factual and legal point a view:

The complaint is procedurally admissible being served within the time frame prescribed by law.

The plaintiff has requested from the city of Vratsa Municipality with a request filed on 5.12.2001 to be granted among other copies of documents the environment assessment report from 29.10.2001 prepared by engineer Ivan Isaev

With a letter registered No. 3 /12.12.01 the Secretary of the Vratsa Municipality informed the plaintiff that he requested consent from the third party concerned in accordance with Art. 31, para. 1-4 of the Access to Public Information Act (APIA). With a letter registered No 10046 from 18.12.2001 the third party concerned „Lukoil Bulgaria“ Ltd. informed Vratsa Municipality that it deems the requested information confidential.

With a letter No. 3/2.1.02 the plaintiff was informed of the refusal of „Lukoil Bulgaria“ to give consent for granting the information and in fact is refused access to the requested information.

The court finds the refusal was issued by a competent authority referring to Order No 3000 from 23.03.2001 enclosed on page 23 of the court file, with which the Secretary of the Vratsa Municipality was authorized [to deal with information requests and therefore there is not any ground to annul the denial].

However the denial is unlawful at least on one ground. There are no reasons written in it. The official had to bring arguments to explain how would the plaintiff's request affect or would affect the interests of „Lukoil Bulgaria“ Ltd.

and thus to justify the necessity of expressive consent of the company. Such evidence is not adduced before the court by Vratsa Municipality while it bears the burden to prove this fact before the court.

In view of the above and based on Art.41 of APIA the Regional Court

DECIDED:

DECLARES the refusal of the Secretary of Vratsa Municipality communicated in a letter No. 3 from 02.01.02 unlawful and REVERTS it.

SENDS back the administrative documents to Vratsa Municipality and ORDERS it to provide the plaintiff with access to the environment assessment report from 29.10.2001 prepared by engineer Ivan Isaev.

This judgment is subject to appeal before the Supreme Administrative Court within 14 days from the notification to the parties that it has been drafted.

Note: The decision has not been appealed.

PRESIDING JUDGE:

MEMBERS:

How to get access to environmental information?
Handbook

English
First edition
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