



ACCESS TO INFORMATION PROGRAMME

**ACCESS
TO INFORMATION
IN BULGARIA**

2006

SOFIA 2007

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ACCESS TO INFORMATION
PROGRAMME

Access to Information in Bulgaria 2006 Report

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ACCESS TO INFORMATION IN BULGARIA 2006

CONTENT

FOREWORD	5
RECOMMENDATIONS	7
CHANGES IN THE REGULATION OF FREEDOM OF INFORMATION IN BULGARIA	11
Access to Information Legislation.....	12
Access to Individual Categories of Government-Held Information	13
Active Provision of Some Categories of Government-Held Information	13
Information about the Environment	14
Information Important for the Prevention of Corruption	15
CHANGES OF THE REGULATION OF PERSONAL DATA PROTECTION	19
INFORMATION PUBLISHED BY BULGARIAN INSTITUTIONS ON THEIR OWN INITIATIVE	22
Aim of the Present Survey	22
Survey Outcomes	24
CONCLUSION.....	45
CASES	46
APPENDIX	
Statistics from the electronic database	
Access to Information Programme	55
LITIGATION	57
APPENDIX	
Litigation - case notes	62

FOREWORD

The Access to Information Programme (AIP) presents its annual report Access to Information in Bulgaria 2006.

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

It is clear that Bulgarian law needs to be amended to be in line not only with the Council of Europe standards, but also developing case law. However, in 2006, several attempts were made to weaken FOI legislation through amendments to access to information legislation. This is why the first part of this report is dedicated to the analysis of draft proposals for legislative amendments that would affect the right of free access to information.

The second issue that the report addresses is the scheme for active disclosure of information by executive branch bodies in the context of the strategies and programs that are continually being proposed for the development of electronic government. These strategies and programs should consider the existing legal obligations of governmental institutions. At the beginning of 2007, the AIP team conducted a special monitoring study for the second successive year on the Internet sites of executive branch institutions from the point of view of the Access to Public Information Act. A comparison of the 2006 and 2007 monitoring results are presented in the second part of the report.

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

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

Our seven years of experience with the implementation of the law shows (and the legislative events from the end of February confirm) that the conclusions presented in the Foreword of the 2006 Report are still valid: „Changes in the political leadership frequently result in the alteration of good practices, and sometimes in their elimination. This issue raises the question of beginning the work on the amendments to the Access to Public Information Act. It is necessary that we remember the principles on which the legislation was grounded. These are principles that should become part of the policies and that should not be constantly endangered. These principles are related to the foundations of a democratic society.“

As we have realized, if these standards are neglected, all kinds of changes in the legislation become possible. On February 28, 2007, a draft law was introduced in the National Assembly. It proposes amendments completely different from the ones needed on the basis of implementation practices and according to international and regional standards in access to information legislation.

At the time of this report, the draft law is heading unimpeded towards its first reading. Our recommendations, as well as the massive reaction by the media and nongovernmental organizations that was expressed in a petition to the Members of Parliament, were arrogantly disregarded.

We continue to hope that our recommendations will be taken into consideration and will facilitate the promotion of access to information in Bulgaria.

Gergana Jouleva, PhD
Executive Director of Access to Information Programme
April, 2007

RECOMMENDATIONS

I. LEGISLATIVE RECOMMENDATIONS

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

- Establishment of an obligation for the active disclosure of information under Art. 14 and Art. 15, Paras. 1 and 2 of the APIA, including through the Internet. This is necessary with regard to the introduction of Directive 2003/98/EC of the European Parliament and of the Council.
- Increase in the number of bodies obliged under the law. Introduction of the obligation of commercial companies that perform public services to provide particular categories of information. Such an introduction requires an amendment to Art. 3, Para. 2 of the Access to Public Information Act.
- Change of the definition of „public information.“
The definition of public information as information that is generated and held by the institutions listed in Art.3 of the APIA.
- Abolition of the distinction between official and administrative public information. The current distinction (stipulated by Art. 10 and 11 of the APIA) corresponds to an understanding of the functions of the administration and the rights of citizens that undermines democratic principles for the free flow of information.
- Introduction of European standards with regard to exemptions to the access to information.
Introduction of the principle that information may be refused only if its disclosure would harm or would be likely to harm other protected interests and only if there is no overriding public interest in the disclosure.
- Transparency in the administration's decision-making process.
The statements and discussions about draft regulations and other documents of public interest should be accessible in their initial stages, unless exemptions are applicable (amendment to Art. 13, para. 2).
- Establishment of an explicit obligation for the implementation of the law by the Minister of State Administration and Administrative Reforms.
- Establishment of an obligation for the appointment of an information official.
- Establishment of clear and heavier sanctions for failures to observe the law.
Appointment of officials who would report on violations under the APIA and appointment of officials who would impose sanctions. It is necessary to increase the sanctions imposed for noncompliance with legal obligations and orders of the court. The latter would require amendments to the administrative-penal provisions of the APIA.

Necessary Amendments to Related Legislation:

- ❑ Provision of unrestricted public access to concession and public procurement contracts through their mandatory publication in respective registers pursuant to the Concessions Act and the Public Procurement Act.
- ❑ Closer coordination of anti-corruption legislation with access to information legislation. In this regard, the following amendments are suggested:
 - amendments to the Civil Servants Act to allow for unrestricted access to the conflict of interest declarations of public servants;
 - amendments to the Environmental Protection Act to allow for unrestricted access to the conflict of interest declarations of the experts who perform Environmental Impact Assessments.
- ❑ Unification of the procedures for access to public registers. This is necessary with regard to the introduction of Directive 2003/98/EC of the European Parliament and of the Council.
- ❑ Unification of access fees for public registers by only charging for the material expenses incurred in granting access, according to the principle in Art. 20 of the APIA. The fees shall be brought into compliance with the maximum amount determined by Order No. 10 of the Minister of Finance.
- ❑ Establishment of a specific obligation for the publication of draft regulations within a particular timeframe before their public discussion; time limits for public discussion; opinion statements from consultations and discussions; obligation for the body that drafts the regulations to respond to every opinion statement expressed and to publish that response before the introduction of the draft to the Parliament. To effect this, the prompt adoption of the Draft Amendments to the Statutes Act introduced by the MPs Martin Dimitrov and Phillip Dimitrov, Reference No. 654-01-46 as of April 4, 2006, is required.
- ❑ Ensuring free access to the content of the State Gazette on the Internet. To effect this, the prompt adoption of the Draft Amendments to the State Gazette Act introduced by MP Ilko Dimitrov and other MPs, Reference No. 654-01-143 as of November 3, 2006, is required.

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

- ❑ Restoration of Art. 35 of the Personal Data Protection Act (PDPA), which was repealed in 2006 and which explicitly provided for the possibility for personal data to be freely provided to third parties in cases in which the sources of these data are public registers or documents containing public information.
- ❑ Restoration of the simpler registration procedure for personal data controllers more precisely, the obligation for registration should apply only to controllers who process so-called sensitive personal data or who maintain voluminous personal data registers.

- ❑ We hereby uphold the recommendation given in the reports *Access to Information in Bulgaria 2004 and 2005* that personal data protection legislation should be brought into line with international standards in the area. We recommend the adoption of the principle that citizens' right to their own personal data be restricted only as an exception. This requires the following:
 - Amendment to the provision of Art. 34, Para. 3 of the PDPA to institute the requirement that controllers apply the three-part test contained in Art. 8, Para. 2 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) in cases of conflict between the right of access to personal data and the protection of national security;
 - Institution of the requirement that controllers who apply the three-part test under Art. 8, Para. 2 of the ECHR provide their motivations in writing, as well as explaining the factual basis for their decisions.

- ❑ Adoption of comprehensive regulations on access to information for personal data in the healthcare sector; more precisely, to provide for patients' right of access to their own medical records.

- ❑ Establishment of an online register of personal data controllers, the possibility of electronic registration for controllers, as well as the possibility of searching within this register.

II. APIA IMPLEMENTATION RECOMMENDATIONS

- ❑ Unification of the regulations for the provision of access to information within governmental institutions, which should be expressed by common guidelines for the implementation of the effective access to information law by the Minister of State Administration and Administrative Reform. These guidelines should include:
 - Guidelines for the adoption of internal rules for the implementation of the Access to Public Information Act (APIA) where these are still missing and for the publication of these internal rules, including on the Internet.
 - Guidelines for the mandatory training of public servants regarding the APIA, the standards in the area, and the relation between the APIA, the PCIA, and the PDPA.
 - Guidelines for the appointment of an information official or unit within each institution.
 - Guidelines for the publication of materials on how to exercise the right of access to information in easily accessible places, including the Internet.
 - Guidelines for a model of publication schemes under the provisions of Art. 14 and 15 of the APIA, including the report on APIA implementation and on the websites of the affected institutions. These guidelines should be precise, including the timeframes for updates and the safekeeping of the information.
 - Guidelines for the establishment of an easy and convenient payment mechanism to allow citizens to pay fees for access to information at institutions.

- Effective management of existing information to make it easily accessible to public servants is necessary, so that they could provide available information immediately upon oral request.

III. RECOMMENDATIONS CONCERNING THE IMPLEMENTATION OF FREEDOM OF INFORMATION LEGISLATION

- ❑ Adoption of a straightforward policy for the provision of unrestricted and unconditional access to PUBLIC registers, including on the Internet.
- ❑ Measures need to be taken to ensure the publication on the Internet of the lists of categories of information subject to classification as an administrative secret under the requirements of Chapter III of the Regulations for the Implementation of the Protection of Classified Information Act.
- ❑ Special efforts need to be made to satisfy the requirement stipulated by § 9 of the Final and Transitional Provisions of the Protection of Classified Information Act (PCIA) that all of the documents classified before the adoption of the law should be reviewed. Lists of all declassified documents, as well as those under Art. 26 of the PCIA, should be accessible on the websites of the relevant institutions.

CHANGES IN THE REGULATION OF FREEDOM OF INFORMATION IN BULGARIA

Trends in 2006

A number of laws and pieces of secondary legislation were adopted in 2006 that affect the right of access to information. The AIP team actively participated in the discussions of these draft regulations, presenting comments and publicly expressing our opinion.

Although quite extensive, the campaign to change and amend the legal framework of freedom of information did not follow a specific concept developed by the executive or legislative bodies for the improvement of access to information regulations. It was rather a function of the active process of adopting new laws and introducing amendments with the purpose of fulfilling the requirements for EU membership. In the course of this intensive process, it was necessary to carefully follow legislative activities and to oppose changes that would lead to inconsistencies between different laws or contradictions with the fundamental access to information principles. In this context, coordinated efforts towards significant improvement of the legal framework of access to information were possible only in exceptional cases.

This situation seems logical, keeping in mind that European accession was a priority for Bulgaria in 2006. At the same time, however, there is a need for concentrated efforts to improve freedom of information legislation in Bulgaria to ensure wider access to information, a narrower interpretation of the exemptions from access, the creation of transparent and accountable governance and possibilities for wider public discussion of policies and draft regulations.

Despite all these problems, we should note some positive amendments in several access to information regulations in 2006. There is still work to be done both to complete the legal framework of access to information and to ensure compliance with the existing regulations by the bodies of the executive power and other public authorities required to provide information.

In 2006, the Access to Information Programme expressed an opinion on the following laws and regulations concerning access to government-held information: the Access to Public Information Act; the Companies Register Act; the State Gazette Act; the Public Disclosure of Property Owned by High Government Officials Act; the Public Procurement Act; the Personal Data Protection Act; the Electronic Government Draft Act; the draft act for Access and Disclosure of Documents and for Revealing Affiliation of Bulgarian Citizens with the State Security and Intelligence Services of the Bulgarian Army, the National Archives Draft Act; and the Regulation of the Judicial Administration of the Regional, District, Military and Appellate Courts.

AIP's advocacy in 2006 was not always successful. There were cases in which legislators fully accepted our views on some important issues, such as our recommendation to change the Companies Register Act to allow for free online access to the Company Register. In other cases, our recommendations were initially accepted, but were followed by subtle last-minute alterations of the text, which resulted in significant changes (for example, the draft act for Access and Disclosure of Documents and for Revealing Affiliation of Bulgarian

Citizens with the State Security and Intelligence Services of the Bulgarian Army). In still other cases our recommendations were completely ignored (Electronic Government Draft Act). In Bulgaria, there is no clear and detailed procedure for public discussion of draft laws; therefore, it is difficult to understand what changes the attitudes of legislators and to assess the success of an advocacy campaign that is paired with specific recommendations. Other factors that can influence the legislative process obviously include strong media campaigns, partners who provide their support in upholding certain principles, the existence of public interest, and a clearly formulated public opinion. We are left with the impression that the statements and opinions of AIP are often taken into account and that our expertise is appreciated and often actively sought by the executive and legislative authorities. We have been invited to present opinions or to take part in the discussions of draft laws on a number of occasions. In this respect we can note that the practices of discussing and adopting draft freedom of information regulations are moving in a positive direction.

Access to Information Legislation in 2006

In 2006 a group of MPs introduced in Parliament a draft act for amending the Access to Public Information Act. The draft act was rejected by the leading parliamentary committee - the Civil Society and Media Committee - and did not even reach first reading. According to the legislative memorandum, the amendments aimed at „guaranteeing free access to public information,“ which required that „public databases should not be tied to a single software distributor.“ The amendment would require public authorities to provide electronic access to information in different formats, at least one of them being *open source*.

The Access to Information Programme presented an opinion on the draft law to the Civil Society and Media Committee. AIP believed that the requirement for public authorities to publish information in an electronic format had to be tied to the principle of maximum availability of information, rather than with the obligation to support *open source* formats. It is also necessary to oblige public authorities to publish in electronic formats information listed in Art. 14 and 15 of the APIA. The Access to Information Programme will continue its advocacy campaign in this direction in 2007.¹

On November 23, 2006, the Council of Ministers introduced to Parliament a draft law on Electronic Government. The Access to Information Programme was invited to present a statement on the draft law before it was introduced to Parliament. In August 2006, we submitted a statement to the Ministry of State Administration and Administrative Reform, the institution which was responsible for the preparation of the draft law. We stated our belief that electronic government includes - by definition - the active provision of public information with the purpose of ensuring the transparency and accountability of governance. In support of our thesis we referred to the European Commission's *eGovernment Action Plan: Accelerating eGovernment in Europe for the Benefit of All - COM(2006)173 final*. The Action Plan sees a clear connection between increased public trust and the provision of public information and services from public authorities. AIP suggested that the scope of the law be widened, so that it would cover not only electronic services but also the provision of public information by electronic means and include an

¹ The full text of AIP's opinion on the draft law is available in Bulgarian at the following address: http://www.aip-bg.org/pdf/statement_zdoi.pdf

obligation for public authorities to publish the information listed in Art. 14 and 15 of the APIA on their web sites. As was obvious from the text of the draft law that was introduced to Parliament, none of AIP's recommendations had been taken into account. In this way, the text of the draft law was not brought in line with contemporary legal principles, which require public authorities to provide access to information by electronic means, including by publishing documents online.² It is possible that the failure to include these recommendations was prompted by the understanding that electronic access to information and the provision of electronic services should be regulated by different laws. Even in this case, electronic access to information in Bulgaria must be regulated as soon as possible.

The requirement that public authorities make available online the information listed in Art. 14 and 15 of the APIA can be created with only a minimal amendment of the Access to Public Information Act.

Access to Individual Categories of Government-Held Information

In Bulgaria, as in some other legal systems, public access to certain individual categories of information is regulated by specialized legislation. This is the case with information contained in public registers, information about the environment, documents from the former security services, etc.

Active Provision of Some Categories of Government-Held Information

With the rapid development of the Internet, publishing documents online has become an ever-easier way to make information accessible to the public at large. In this respect it is crucial to make information contained in public registers available online to the maximum extent possible. In 2006 the Bulgarian Parliament adopted the Companies Register Act, which provides for online availability of the Register. The draft text suggested the collection of fees for online access to the register, but after the submission of various statements and opinions against paid access, including an opinion from AIP, Parliament decided to provide for free online access.

The Public Procurements Register, which is freely accessible online, is an important step forward with regard to publishing government-held information. In the second half of 2006, the State Gazette Draft Act was introduced for discussion in Parliament. The Act would establish free online access to all normative acts and all other pieces of legislation that are subject to promulgation.

² The full text of AIP's opinion on the draft law is available in Bulgarian at the following address: http://www.aip-bg.org/pdf/stanovishte_zeu.pdf

Information about the Environment

A definition of information about the environment is provided by the Environmental Protection Act (EPA, Art. 19). The concept is in conformity with the *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* done in Aarhus and ratified by Bulgaria. With the regard to the procedure for access to information and handling of requests, the Environmental Protection Act refers to the Access to Public Information Act.

In 2006, we have noticed that many public authorities apply the general norms of the APIA, instead of the special regulations of the EPA. Specifically, often public authorities disregard the principle of publicity of the decision-making process on environmental matters³ and apply the exemption of Art. 13, para. 2 item 1 of APIA (information relating to the preparatory work of an act of the bodies, which has no significance in itself: opinions and recommendations prepared by or for the body, reports and consultations). Public authorities also often use the requirement of the third-party consent to withhold information, without taking into account that the special norm of Art. 20 para. 1 of EPA stipulates only four specific situations in which the interests of the third party might be endangered by providing access. It is unacceptable for the administration to refuse access to information outside the scope of these four hypotheses. The provision of Art. 20, Para 4, of the EPA stipulates that public interest must be taken into account when the administration takes a decision to withhold access to information. However, we have not seen this provision implemented in practice, i.e. public authorities do not provide information about the environment, which might otherwise be secret, because of an overwhelming public interest.

The above problems indicate a need for the adoption of detailed instructions on the implementation of APIA and EPA provisions, making clear distinctions in the applicability of the two laws. We must also note here the violation of the Access to Public Information Act by the Minister of Environment and Water who has issued an order requiring citizens to sign requests digitally when submitting them online. This is how, instead of facilitating citizens and requiring them to fill in minimum amount of information when submitting requests (see Art. 25 of APIA), the Minister has limited the exercise of the right by *everyone* by introducing technical and financial burdens for information seekers.

³ In 2006 a five-member panel of the Supreme Administrative Court repealed a refusal by the Ministry of Environment and Water to provide access to the minutes and opinions expressed during a public discussion. The refusal was grounded on the exemption of Art. 13, para.2, item 1 of APIA.

Information Important for the Prevention of Corruption

In early 2006, the Council of Ministers adopted a National Strategy for Transparent Governance and Corruption Prevention for 2006 - 2008, which was accompanied with an Implementation Plan for 2006. Obviously, transparent governance was established as a high-priority principle of the strategy, which requires the implementation of further specific measures. In our annual report from last year, we identified certain sectors that would benefit most from wide access to information in order to prevent poor governance and corrupt practices. They are related to contracts between public authorities and the private sector, asset declarations of high level government officials, conflict of interest declarations by public officials, as well as audit reports and other activities conducted by the state financial control agencies.

Contracts

Access to contracts between state and local authorities and the private sector continues to be difficult in practice. As we have already noted in our previous annual reports, this is caused by two legislative weaknesses: the unclear requirement for active publishing of information and the protection of third-party interests. Indeed, as a requirement of the Public Procurement Act (last amended in 2006) and the recently adopted Concessions Act, two new online registers were created, which is a significant step in the right direction. Paragraph 1 item 20 of the Transitional and Final Provision of the Public Procurement Act (PPA), adopted in 2006, gives a definition of a „contractor profile“ and gives public authorities the opportunity to publish contracts online. This legal text protects the administration against potential claims by contractors when their contracts are disclosed to third parties.⁴

At the same time, significant categories of information related to the implementation of procurement contracts is not made available. Indeed, at this stage the European legislation⁵ regulating public procurements lacks a requirement for publishing such information.⁶ This is a requirement which needs to be established in Bulgarian law for the purpose of ensuring transparency and public control over the implementation of public procurement contracts, which would also lead to increased transparency of the overall procurement process.

⁴ Despite this legal protection, in practice public authorities publish contract summaries, instead of full-text contracts.

⁵ Directive 2004/17/EC of the European Parliament and the Council, which coordinates procedures for orders for firms active in the water, energy and transport sectors, the postal services sector, as well as the Commission's Regulation (EC) No 1874 of 2004 that amends the Directive.

⁶ This is probably the reason why the amendments made to the PPA in 2006 strictly followed the two Directives (see the previous footnote).

Declarations Filed by Public Officials Pursuant to Art. 29a of the Civil Servants Act

Currently, there is no requirement that conflict of interest declarations filed by civil servants must be published, which is why they have not been disclosed in practice. The requirement for filing conflict of interest declarations was established in 2003 with the purpose of meeting international standards in the sphere of public administration. The next step was made with the definition of „conflict of interests“ made in 2006 in Art. 4 of the Civil Servants Act. It is still unclear, however, whether the administration has the capacity to implement this law and prevent possible conflicts of interests by civil servants. In this respect, making the conflict of interests declarations public, or at least disclosing the information contained within them, would not only extend the right of everyone to access information, but would also lead to more effective control over the requirement to submit conflict of interest declarations and would ultimately prevent conflict of interest situations.

Asset Declarations by High-Level Government Officials

Last year, Parliament amended the Public Disclosure of Property Owned by High Government Officials Act. Lawmakers established the right of everyone to access information contained in the asset declarations. This was a positive step, because the old text of the law established a right of access only for the media. The amendments, which were adopted by Parliament in September 2006, require that the National Audit Office publish information contained in the asset declarations online, which is undoubtedly a step in the right direction. However, the reform of the law was incomplete and insufficient, because asset declarations filed before December 31, 2004, are still subject to limitations (see § 4, Art. 1 of the Transitional and Final Provisions of the law). In addition, lawmakers did not repeal the provision from 2004 that restricts access to information that identifies certain properties and assets of high-level officials.

We must note that restrictions like the ones mentioned above contradict the purpose of the law. The purpose of laws regulating access to asset declarations is to give everyone an opportunity to follow any changes in the properties and assets possessed by high-level officials over time. Corruption prevention is one of the most important effects of the law. By removing the opportunity to compare different asset declarations, lawmakers have weakened the anti-corruption effect of the law, especially for the period between 2000 (the year in which the law was adopted) and 2004.

In 2006, a number of institutions from the executive and judicial branches have published asset declarations online, largely as a result of public pressure and specifically of the active advocacy by the Access to Information Programme. Without a doubt, this is a positive practice that should be continued by public authorities in order to comply with the purpose of the law.

Financial Control

In 2006, the system of state-internal financial control saw some radical changes. Parliament closed the Public Internal Financial Control Agency (PIFCA) and adopted a law for the creation of a State Financial Inspection Agency, as well as internal departments for financial control in each institution within the executive branch, which would be subordinate to the institution heads. Since the State Financial Inspection Agency had only existed for a few short months at the time this report was written, it is not possible to offer a comprehensive evaluation of how transparent its activities are. However, we expect the new agency to maintain the high standards of transparency and provision of access to information that had been achieved by the PIFCA.

Access to Documents of the Former State Security Services

After a heated debate, in 2006 the Bulgarian Parliament adopted the Act for Access and Disclosure of Documents and for Revealing Affiliation of Bulgarian Citizens with the State Security and Intelligence Services of the Bulgarian Army. AIP took active part in the discussion, submitted an official statement to Parliament and also offered suggestions for specific changes to the draft law. Finally, after a five-year regulatory vacuum in this sphere, the law was adopted. For the first time it has established a procedure for passing the archives of the former state security services over to a newly established committee. According to an explicit provision of the law, information about full-time and part-time agents (collaborators) of the secret services do not constitute personal data. Another provision establishes that the archive of the former security services does not constitute classified information. The newly established committee (which will be formed after Parliament votes on the nominated committee members from all parliamentary groups) will be responsible for reviewing and publishing documents from the archive. The Committee will check whether those holding high-level official positions, which are thoroughly listed in the law, have collaborated with the former state security services.

The law regulates the right of everyone to access not only information about themselves and immediate relatives, but also guarantees access to information to those doing scientific research or working on publications. Access to documents from the archive cannot be fully restricted; instead, partial access is provided even when the interests of third parties are concerned (personal data). We are slightly concerned with the opportunity provided to the Committee to withhold information in cases when disclosure might harm the interests of the Republic of Bulgaria and its international relations, or when disclosure could put someone's life in danger. The decision about whether to disclose information will be made by the Committee after considering the opinion of the secret services. Obviously, this restriction of the right to access is not clearly formulated and - keeping in mind that the decisions of the Committee cannot be appealed before the court - creates an opportunity for problems in the future.

Access to Draft Laws and Regulations

Other important issues that should be criticized include the lack of a legal framework regulating access to information about draft laws, policies, strategies, and regulations, as well as opportunities for public participation in the decision-making process on important social topics. In practice, draft regulations, strategies and policies are often not made public, and even if some of them are made available, it is unclear what criteria has been used for deciding which ones to publish. Public authorities often refer to the exemption of Art. 13, Para. 1, item 1 of APIA and restrict access to opinions on regulations, draft strategies and programs, thus creating serious obstacles to free public discussion of draft regulations and other decisions affecting society. In democratic countries, active public participation in the decision-making process is a standard practice.

Some legislative changes were made in this direction in 2006, including the adoption of the Administrative Procedures Act (APA), which entered into force last year (with the exception of Chapter III). Pursuant to Art. 69 of the APA, the public body in charge of preparing the draft regulation is required to determine the forms of discussion open to interested parties, one of the forms being public discussion. At the same time, the Bulgarian Parliament discussed a draft law for amending the Statutes Act, which would establish a procedure for the discussion of draft regulations and statutes. The process for creating the legal framework for regulating public participation in the decision-making process and for the publication of the draft regulations, policies, and strategies in Bulgaria still needs to be finalized.

CHANGES OF THE REGULATION OF PERSONAL DATA PROTECTION

During the last year, the regulation of personal data protection was amended yet again. The Personal Data Protection Act (PDPA) has undergone some significant changes related to access to personal data and the registration regime for personal data controllers.

It should be noted that the proposed amendments to the law regulating the protection of personal data were adopted very rapidly without any public debate. The draft law was introduced to Parliament on September 13, 2006, and the final text was adopted on October 26, 2006. As in previous instances in which the regulation of personal data protection has been amended, the changes were justified by the need to synchronize Bulgarian legislation with Directive 46/95/EC. As has often happened before with initiatives to transpose European legislation into Bulgarian law, the changes adopted by the Bulgarian Parliament had a negative effect on the regulation of access to information and the protection of personal data. The lack of public debate on the draft text meant that there was no opportunity for discussing them and improving them in a positive way.

We must note that the regulation of personal data protection has been changed in quite inconsistent ways. The Personal Data Protection Act (adopted in 2002) was amended in 2004, 2005, and 2006; each time, some of the provisions of the law were changed in contradictory directions. For example, the initial text of the law introduced the requirement that a wide range of data controllers register with the Personal Data Protection Commission. In 2005 the range of data controllers was narrowed down, while in 2006 it was expanded again. In 2005, after a public debate between the first and second readings, Parliament disapproved of the suggestion to repeal Art. 35 of the law, which guaranteed free access to personal data as long as they are part of a public register or are contained in public documents. In 2006, however, Art. 35 was repealed, which meant that access to such data would be regulated by the general access to information regime and that the consent of the data subject would be required. An important document in this respect is Decision No. 7 of 1996 of the Bulgarian Constitutional Court on constitutional court case No. 1 from 1996, which established that public figures should be subject to increased scrutiny as compared to other citizens. At the same time, Art. 4, Para. 1 item 5 of the PDPA allows for the processing of personal data when data controllers act in public interest. The provisions in Art. 35 gave data controllers some clarity, which can only be restored with the establishment of good practices.

Although the PDPA was amended in 2006, the necessity for changes that resulted from the implementation practices were not actually addressed (the poor implementation of PDPA was amongst the most serious critiques in the two Regular Reports on Bulgaria's progress towards EU accession by the European Commission published in May and October of 2006). Likewise, according to the annual report of the Personal Data Protection Commission for 2006, which was published in January 2007, the Commission had issued 14,279 registration certificates for data controllers. The Commission has also delivered an opinion on 61 requests for the trans-border flow of personal data, including between Bulgaria and other member-states of the EU (which is the most important reason why there is a Personal Data Protection Act in Bulgaria!). In other words, poor implementation has resulted not from the failure of the Commission to act, but rather from its useless activities. The correct course of action in this situation should have been to decrease the

number of data controllers who were required to register with the Commission, rather than increasing it; to publish the data controllers register online (eliminating the need for certificates); and to implement the free transfer of personal data between Bulgaria and the EU member states before the deadline of January 1, 2007.

The problematic amendments to the PDPA in 2006 were:

Changes in the Registration Regime of Personal Data Controllers (Art. 17, Art. 17a, and Art. 17b)

The changes to the Personal Data Protection Act from 2006 have expanded the range of data controllers who are required to register with the Personal Data Protection Committee. In 2005 the law had been amended to narrow this range, leaving the requirement for registration only for data controllers who process so-called sensitive personal data or who keep large databases of personal data. The amendments from 2005 were logical and rational, since they abolished the registration requirement for small companies having only one or two employees.

The amendments from 2006 not only re-introduced the registration requirement for a wide range of data controllers, but this was done without providing any clear arguments as to its necessity. The legislative memorandum stated that the aim of the amendments was to „introduce a simpler procedure for the registration of data controllers“; however, the legislators did just the opposite. In addition, they adopted a new Article 17b, pursuant to which data controllers who wish to process sensitive personal data are subject to mandatory investigation by the Personal Data Protection Commission before they can be certified (in the previous text of the law the investigation was optional). Judging from the slowness of the registration process before the simplification of the regime in 2005, it is likely that the finalization of the data controllers registration regime will not be completed in the near future.⁷

Changes in the Regime of Access to Personal Data of Third Persons

In 2006, the Bulgarian Parliament abolished Art. 35 of the law, which established the right of free access to personal data when they were part of public registers or when they were contained in public documents. Notably, even with the existence of the above-mentioned provision, we have identified quite a few refusals to provide access to public documents because they contained personal data.

⁷ According to the annual report of the Commission for 2006, out of a total of 274,446 registration requests submitted between 2003 and 2006, the Commission certified 31,970 of them, i.e. a little over 10% for four years.

A possible danger that we foresee with the abolition of Art. 35 of the law is that access to public documents containing personal data will be refused with increasing frequency. In practice, there have been many cases in which entire documents have been withheld because they contain the full name of a public figure. Practically, the current text of the law leaves access to information contained in public registries and access to public documents to the discretion of information officials. This will limit the transparency of the activities of public figures, which has an effect on a large sphere of public life, where current practices in this respect are already quite poor.

INFORMATION PUBLISHED BY BULGARIAN INSTITUTIONS ON THEIR OWN INITIATIVE

„I can say it without going into tautology,“ says Pierre Menard, from Borges’ story „Pierre Menard, Author of The Quixote.“

(Report on the results from a study of the websites of Bulgarian public institutions)

The report from our study of the websites of Bulgarian public institutions this year is similar to Borges' story „Pierre Menard, Author of The Quixote.“ Just like Pierre Menard, we have published almost the exact same report as last year.⁸ The reason for this is that Bulgarian public institutions have shown almost no development in the implementation of their obligations to publish information on their own initiative. This lack of progress on the part of public authorities speaks volumes not only about their attitude towards implementing their obligations, but also about the governmental policy of transparency as a whole. The background has changed over the last year, but most of the public institutions have not. Some facts that could be reasonably explained a year ago and some things for which institutions might have been given credit last year are now unacceptable. All of this means that the overall situation is getting worse.

The Bulgarian Access to Public Information Act obliges all institutions of the executive branch to regularly publish information on their own initiative. The Access to Information Programme has monitored the implementation of this obligation since 2000, the year when the law was adopted.⁹

Since then AIP has conducted several studies on the implementation of APIA, summarizing and publishing the study results as part of our annual reports on access to information in Bulgaria.¹⁰ Since the adoption of APIA, we have been using the outcomes of these specialized surveys and analyses of implementation and litigation practices to formulate recommendations for improving access to information legislation and practices within government institutions.

Aim of the Present Survey

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

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

⁸ „Pierre Menard, Author of The Quixote“ by Jorge Luis Borges.

⁹ See *Current Situation of the Access to Public Information in Bulgaria 2000 - Report*, AIP, Sofia, 2001 at <http://www.aip-bg.org/pdf/report01.pdf>

¹⁰ http://www.aip-bg.org/l_reports.htm

The aim of this study, which was conducted by AIP in early 2007, was to check how local governmental authorities and institutions of the executive branch make use of the Internet to publish important information on their own initiative and whether citizens are being accommodated when seeking information on the official institutional websites. The results from 2007 were compared with the results from an identical survey done in 2006.¹¹

Methodology

The study was conducted between March 24 and March 31 of 2007. Like last year, 411 public institutions were selected for review from the official Register of Administrative Structures¹² and can be broken down by type as follows:

Table 1. Reviewed Institutions

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

We believe that the study is sufficiently representative, since it covers all ministries, all regional governors, all municipalities and most of the other administrative structures in Bulgaria. A full list of the institutions reviewed can be found on AIP's website, where one can also see the complete set of outcomes.¹³

The first task of the seven reviewers - all of them members of the AIP team - was to find out whether each institution maintained its own Internet site. Official websites were maintained by 319 of the public institutions.

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

¹¹ Results from the 2006 survey were published in our report from last year.

¹² <http://www1.government.bg/ras/>

¹³ http://www.aip-bg.org/documents/monitoring_web.htm

Survey Outcomes

Table 2. Does the institution maintain its own official website?

Does the institution maintain an official web site?				Total
		2006	2007	
Institution type	Municipalities	157	186	264
	Ministries	16	17	17
	State agencies	9	10	10
	State commissions	4	4	4
	Executive agencies	31	33	38
	Institutions established by an act of Parliament	38	42	50
	Regional governors	26	27	28
Total		281	319	411

The survey results summarized in the table above confirm last year's tendency, namely that a greater percentage of the central governmental institutions maintain their own websites as compared to local governmental institutions.

Last year's explanation of this fact was that a number of small municipalities could not afford to create and maintain a website. At the same time, a study done in the same year by the National Centre for the Study of Public Opinion (NCSPPO) revealed that a very small percentage of the Bulgarian population - 3,6% - uses the Internet to obtain information about the work of public institutions.¹⁴ More recent studies conducted in the summer 2006 show that this percentage has increased to 15%,¹⁵ which is still low in comparison to other countries of the European Union.

Conclusions concerning the Internet sites of central governmental authorities can be found in the „Information Technologies“ section of the annual *Report on the State of Bulgarian Administration for 2005* published by the Minister of State Administration and Administrative Reform. According to the text of the report, IT units are a prerequisite for the development of information and communication technologies and are crucial for keeping information up to date. The report also recommends that „opportunities must be sought for the unification of the institutional web sites.“¹⁶

¹⁴ Results from the nationwide study *Public Opinion about the Administrative Reforms in Bulgaria and Administrative Services for Citizens and Business Organizations* conducted by the NCSPPO in March 2005.

¹⁵ Data from a nationwide representative survey *Public Opinion about the Administrative Reforms in Bulgaria and Administrative Services for Citizens and Business Organizations* conducted by the NCSPPO in March 2005 and a study from 2006, available at <http://www.mdaar.government.bg/topical.php?id=4>).

¹⁶ <http://www.mdaar.government.bg/docs/Annual%20Report%20%202005.pdf>, p. 140.

After identifying an official institutional website, our reviewers were asked to establish some facts, by answering 46 questions, grouped under three general topics:

- How had the institution implemented its obligations as set up by the Access to Public Information Act? (20 questions);
- Was there a specialized freedom of information subsection on the institutional website? (18 questions);
- What other information was made available by the institution pursuant to other obligations? (8 questions).

Information Subject to Mandatory Publication

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

Publication of up-to-date public information

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

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

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

Although all of the questions required the establishment of certain facts, most of them also required a judgement by the reviewers. For example, they were required to differentiate between statutory acts and decisions before answering the question „Are statutes regulating the functions of the institution available on-line?“ Institution heads have the power to issue both statutory acts and decisions, however the law uses „acts“ as a generic term. Likewise, many municipalities publish decisions by the local council and regulations approved by the local council, but fail to publish a list of the mayor's decisions. In such cases, we have indicated that the institution *has* published its regulations online. A similar issue arose with questions aimed at discovering whether institutions publish information about their authorities, functions, and responsibilities. Our reviewers had to

evaluate whether institutions had made the statutory acts regulating its work, its structure, and its functions available online. When evaluating this indicator, we have also given some credit to public authorities.¹⁷ Despite this, the following charts do not show an improvement of the results compared to last year:

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

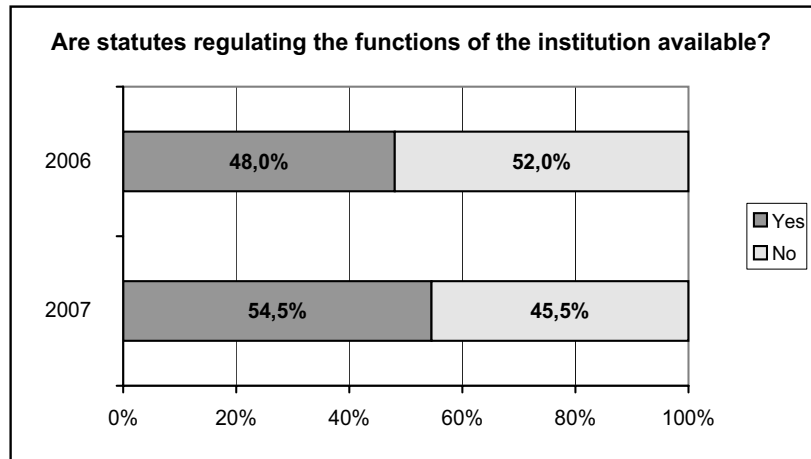
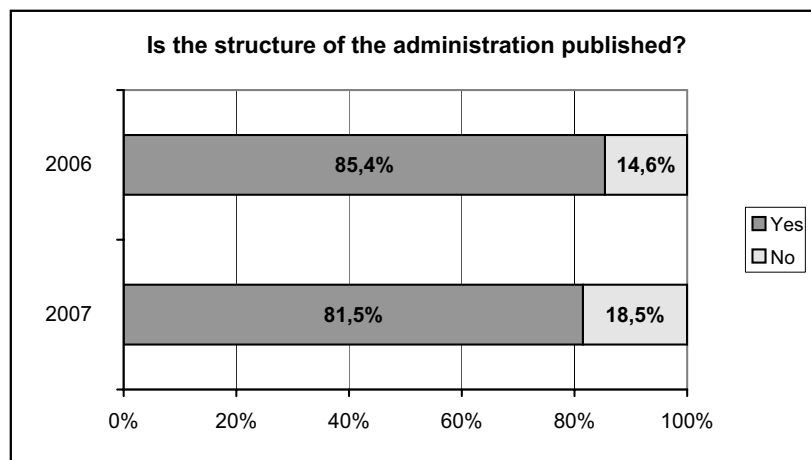
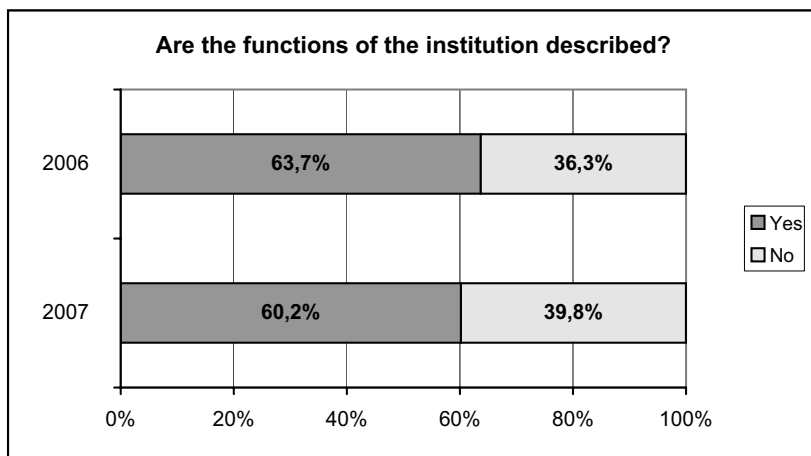


Chart 2. Is the structure of the administration published?



¹⁷ For example, we could infer information about the functions of some institutions by reading the description of the services they provide or their internal regulations. Although in many cases the functions had not been clearly (and separately) described, we considered those institutions to be in compliance with APIA for the purposes of the survey.

Chart 3. Are the functions of the institution described?



The obligation for publishing a list of acts and decisions delivered by institution heads under their authority would seem to be an easy task to implement. However, in many cases - as can be seen from the outcomes of the study - decisions by the authorities are not available online. While 63% of the institutions have made statutory acts available on their official websites (even though in some cases institutions were given credit for obsolete or partial information), only 34% of them publish some of the decisions made by their heads.

Below you can see a comparison between the results in 2006 and 2007.

Chart 4. Is a list of regulations available online?

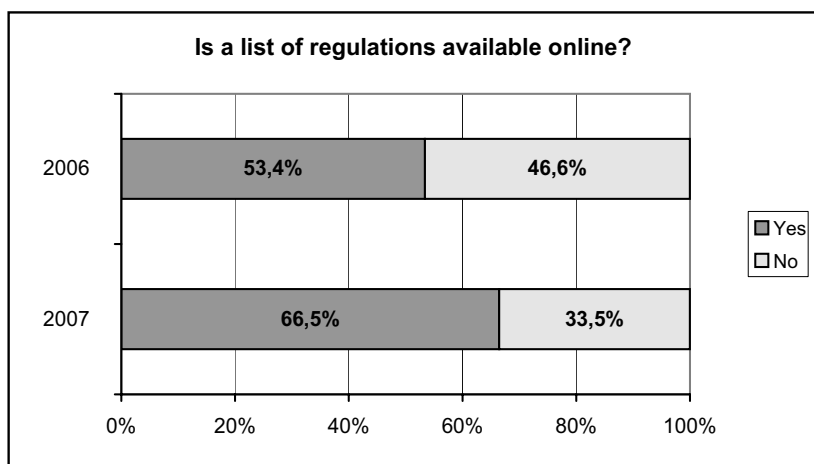


Chart 5. Are statutory acts available?

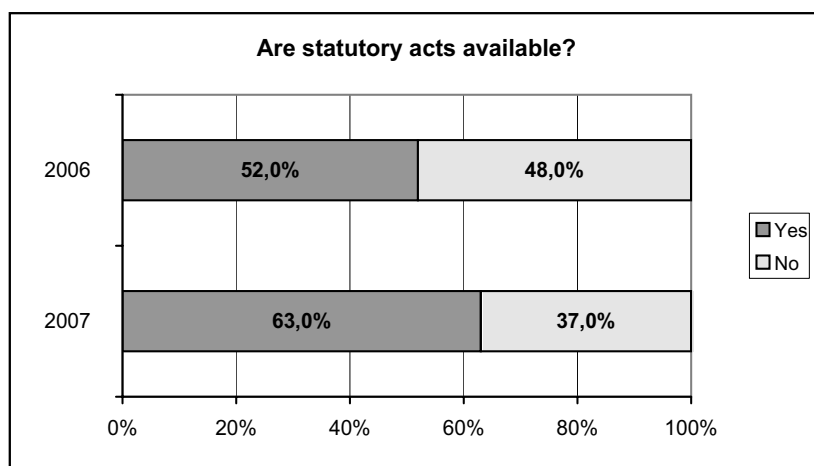
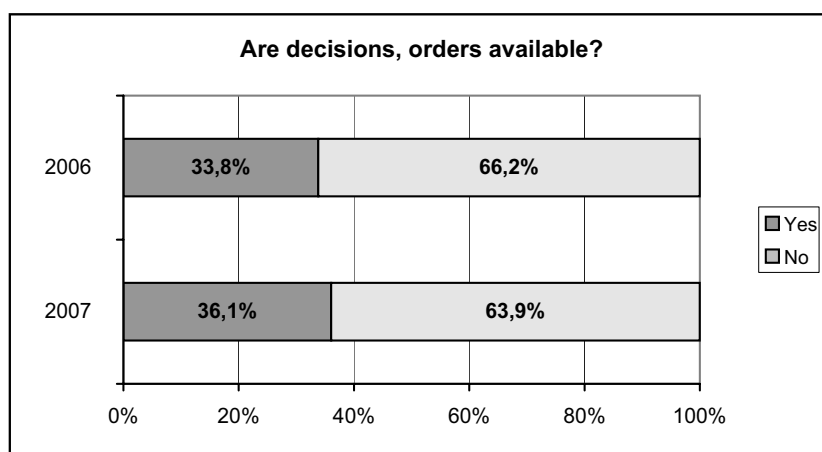


Chart 6. Are decisions, orders available?

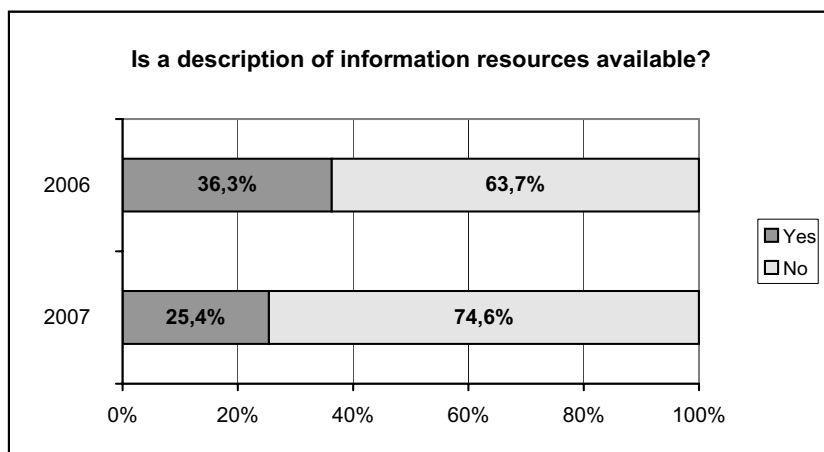


Obviously most public institutions do not feel obliged to publish information about the information resources they keep, such as registers and databases. Only 25% of the reviewed institutions have made a description of their information resources available online, which marks a decrease compared to last year's results, which indicated that 36% of the reviewed institutions had done so.¹⁸

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

¹⁸ In comparison, the study conducted by AIP in 2001 revealed that 38% of the 303 reviewed institutions appeared to have implemented their obligation to publish a description of their information resources. See the report *Current Situation of the Access to Public Information in Bulgaria 2000 - Report*, AIP, Sofia 2001.

Chart 7. Is a description of information resources available?



Pursuant to Art. 15 of the APIA, public authorities are required to publish their contact information. The study used several parameters to assess how this requirement had been implemented, for example, whether the contact address, name and reception hours of the unit „which is authorized to receive and handle access to public information requests“ was available online. Lawmakers have only created an implicit requirement for the establishment of such a unit, without regulating its functions and responsibilities. Consequently, such units or officials and their responsibilities have to be determined by a decision by the institution's head.

The results from the study of these parameters show a decrease in the percentage of institutions that have published contact information online in comparison to 2006:

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

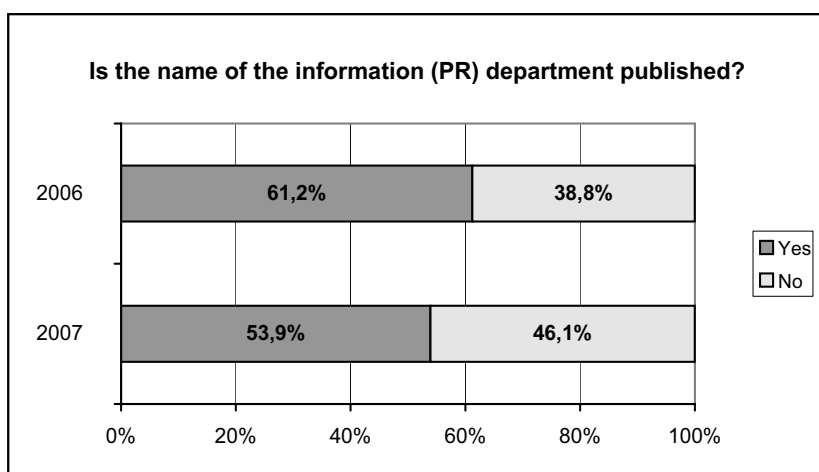
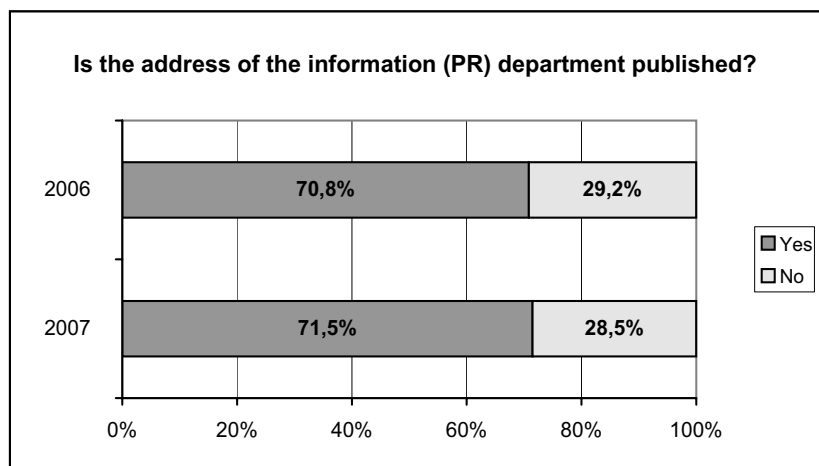
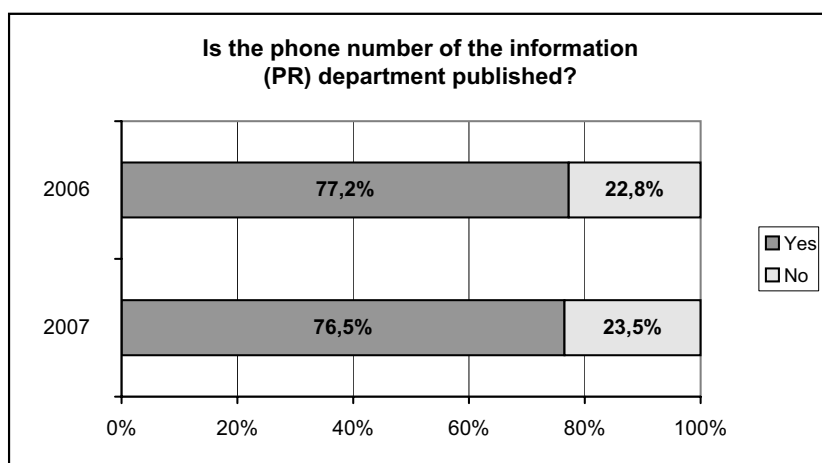


Chart 9. Is the name of the information (PR) department published?



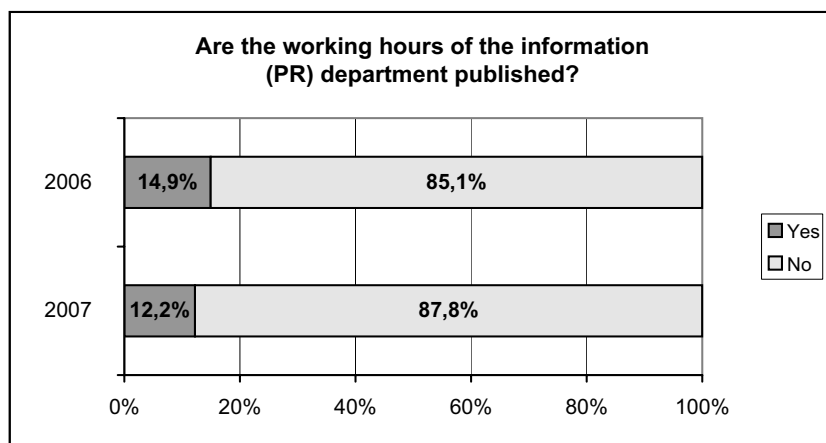
The same is valid for institutions that have published the phone number of the information (PR) department:

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



The results about the business hours of the information (PR) department are even more dissatisfactory. Last year only 15% of the institutions reviewed had published such information online; this year the percentage is even lower. Obviously even simple legal requirements cannot be implemented without a controlling institution and a political will for their implementation.

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



Was the available information up-to-date?

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

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

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

For example, when the structure or functioning of an institution changes, this should be clearly indicated and the statutory act regulating the changes should be made available online. Such information is clearly necessary for citizens, because it is sometimes hard for them to follow emerging or disappearing institutions and the creation, closing, or transfer of information resources containing valuable information.¹⁹

The following table displays the results in response to the question of whether information about the authorities, functions, and responsibilities of public institutions (Art. 15, Para.

¹⁹ In connection with the recent pathetic attempts to transpose Directive 98/2003/EC by amending the Bulgarian Access to Public Information Act, we have to note that in Hungary the Directive was transposed by introducing a comprehensive list of information categories that Hungarian Public Institutions must publish online. The Hungarian list includes categories comparable to the ones found in Art. 15 of APIA: organisational and staffing information - 10 categories; information concerning activities and operation - 18 categories; information on financial management - 6 categories. The Hungarian list contains an attachment with requirements for keeping the information up-to-date and safekeeping rules (see the general Publication Scheme - an attachment list to Art. 7 of the Hungarian Act XC of 2005 on the Freedom of Information by Electronic Means http://www.freedominfo.org/documents/hu_trans_2005tyy90.doc).

1, item 1 of APIA) is up-to-date. Up-to-date information about the information resources would mean information indicating the creation of new databases and registers and the changes in them.

The need for making available up-to-date information about the address, phone number and business hours of the information department is obvious. Citizens require correct contact information; thus, each change should be indicated, along with the date from which the change is valid.

Other Requirements for Making Information Available

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

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

Ministry of Interior

http://www.mvr.bg/RegulatoryFramework/spisak_sl_taina.htm

Ministry of Agriculture and Forestry

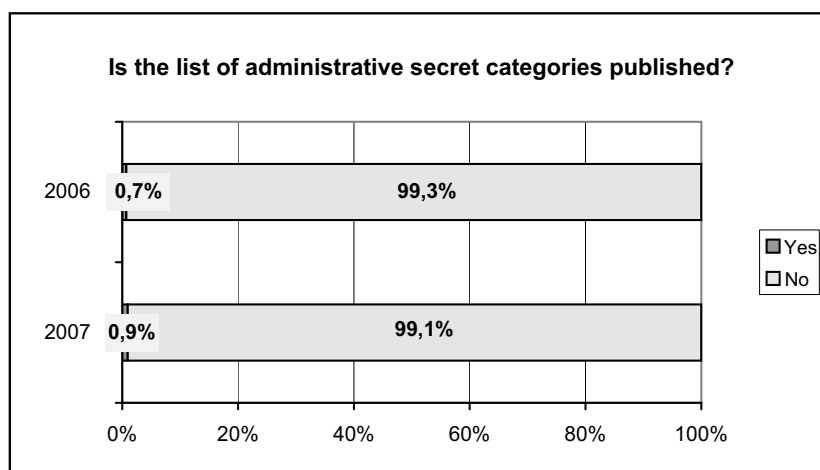
<http://www.mzgar.government.bg/Begin/inform.htm>

Municipality of Dragoman

http://dragomanbg.com/obshtinski_savet/Zapoved_Slujebna_taina.doc

The following chart offers a comparison between the two surveys:

Chart 12. Is the list of administrative secret categories published?

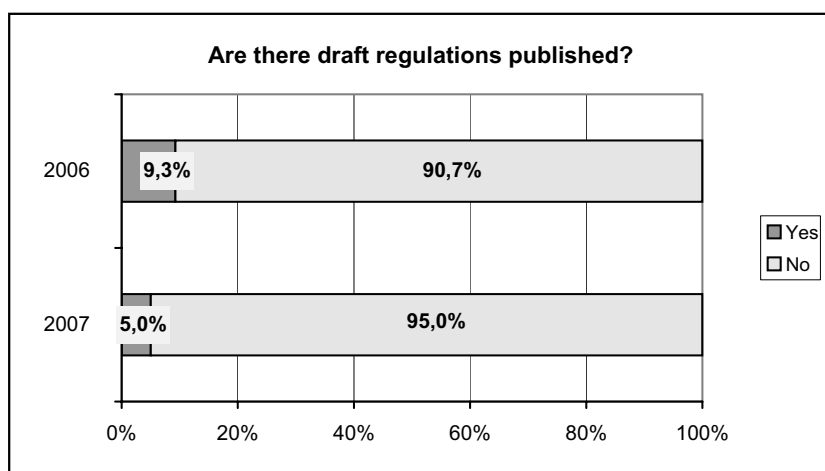


The persistent failure of public institutions to comply with this requirement of the law leads us to suspect that some unpublished recommendations exist against the preparation and publication of such lists.

Another important indicator of a democratic society is the opportunity for the public and interested groups in particular to participate in the discussion of draft laws. As in the previous case, we believe that the easiest way to provide such an opportunity is to publish the text of the draft laws online. We must emphasize yet again that the easiest way for institutions to publish draft laws is on their official websites. Yet again, the survey results on this issue are disturbing, proving that with no legal requirement and with no political will for openness and for providing opportunities for public participation in the decision-making process, the situation is only getting worse. In this respect, the way in which three MPs recently introduced a draft law for amending the Access to Public Information Act - secretly and without publishing it online - was quite characteristic.²⁰ Only after AIP started a public campaign against the amendments did the lawmakers begin „ceremonial dances“²¹ that resembled a public discussion. Even after a round table was announced in the parliamentary Transport and Communications Committee, the text of the draft law was not published online (neither on the website of the State Agency for Information Technology and Communications, nor on the website of the National Assembly).

Here are the comparative results:

Chart 13. Are there draft regulations published?



²⁰ Details about the campaign led by AIP against the draft amendments is available at www.aip-bg.org.

²¹ We are here referring to a ninety-minute „discussion“ on the proposed amendments that was announced only one day before it was to take place.

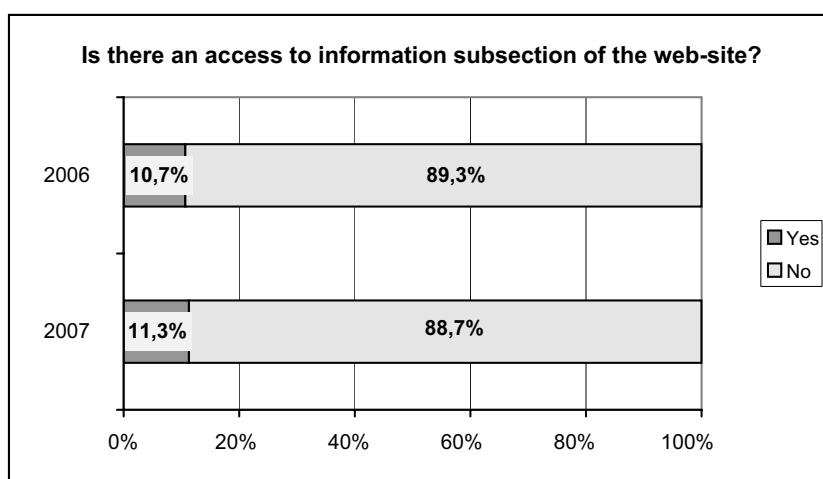
Access to Information Subsection

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

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

Compared to last year the number of institutions that maintain an access to information subsection on their web-sites has increased by six. Last year there were thirty, while this year such subsections number thirty-six.

Chart 14. Is there an access to information subsection of the web-site?



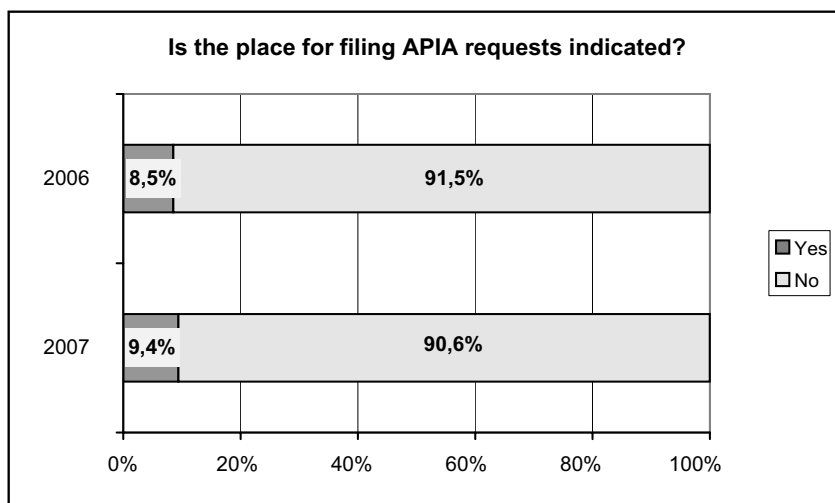
We will now discuss the outcomes of this study related to information subject to mandatory disclosure that could fit within an ATI website subsection.

The Access to Public Information Act requires that responsible institutions should announce the place where information requests can be filed (which assumes that such a place has already been designated), as well as providing information about the acceptable forms for submitting requests, access fees and methods of payment.²²

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

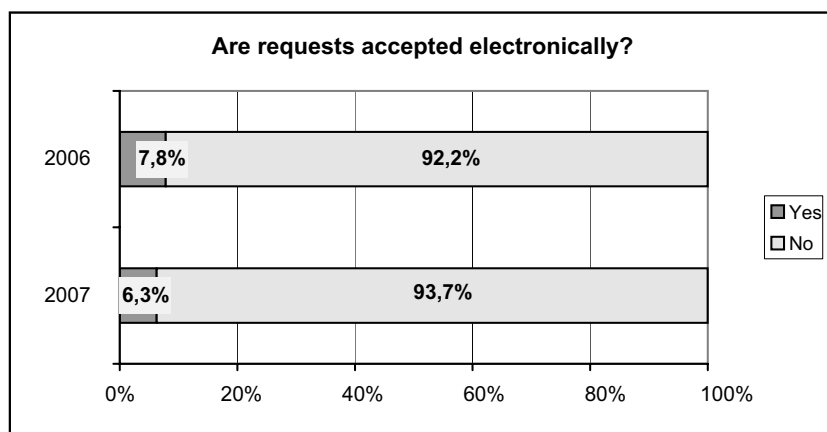
²² See for example art. 21 and art. 25 para. 3 of APIA.

Chart 15. Is the place for filing APIA requests indicated?



We are especially worried by the decreasing number of institutions that state that they accept information requests electronically. While some of the other indicators studied are related to the policy of openness, the requirement to accept electronic requests is stipulated by law.²³ The failure by public institutions to implement their obligations and create opportunities for the submission of electronic access to information requests can no longer be tolerated. The fact that some public institutions require electronic requests to be digitally signed is even more disturbing²⁴ - this is a serious violation of the right to information and is regulated by the Access to Public Information Act.

Chart 16. Are requests accepted electronically?



²³ Art. 24, Para. 2 of APIA states: „The application is deemed written also in cases where it is sent electronically subject to conditions determined by the respective body.“ See specific examples in Chapter 3 of this report on p. 53.

²⁴ See specific examples in Chapter 3 of this report on p. 54.

Chart 17. Is the phone number of the information official/unit published?

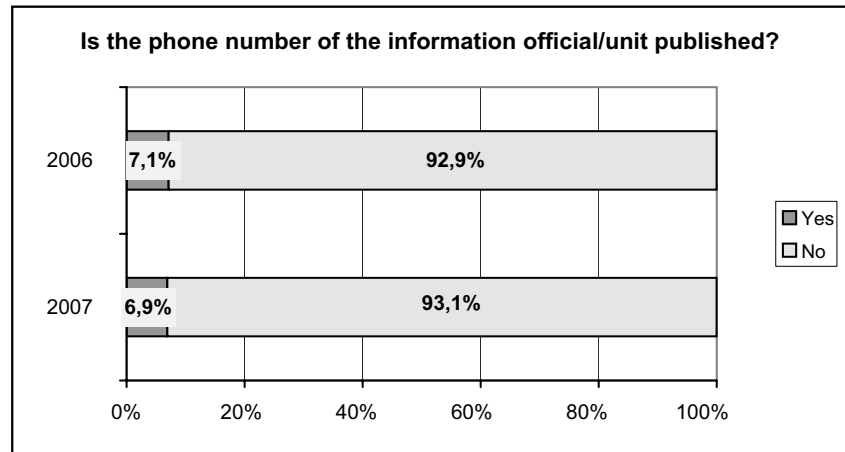


Chart 18. Is the name of the information official/unit published?

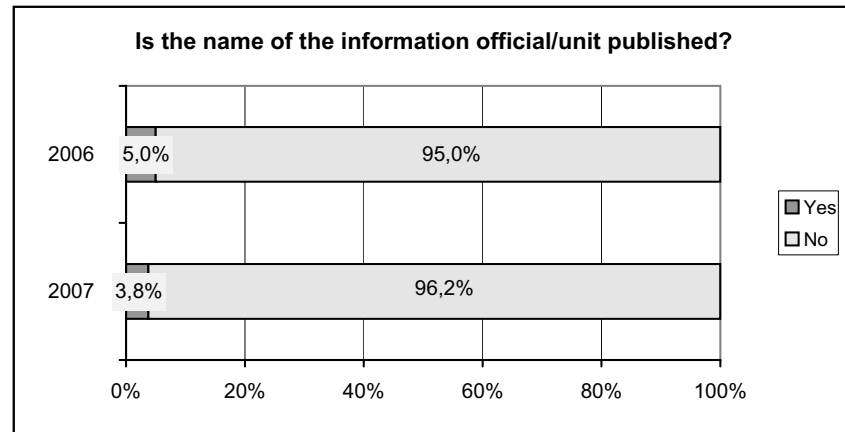


Chart 19. Is the address of the information official/unit published?

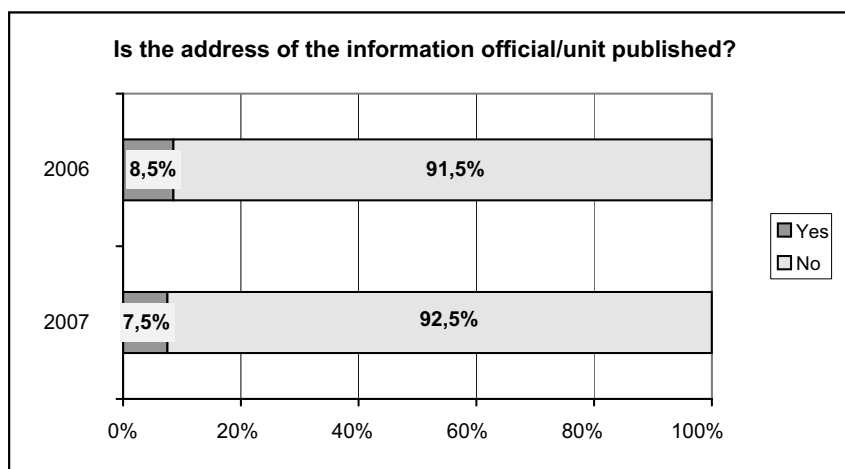


Chart 20. Is the e-mail of the information official/unit published?

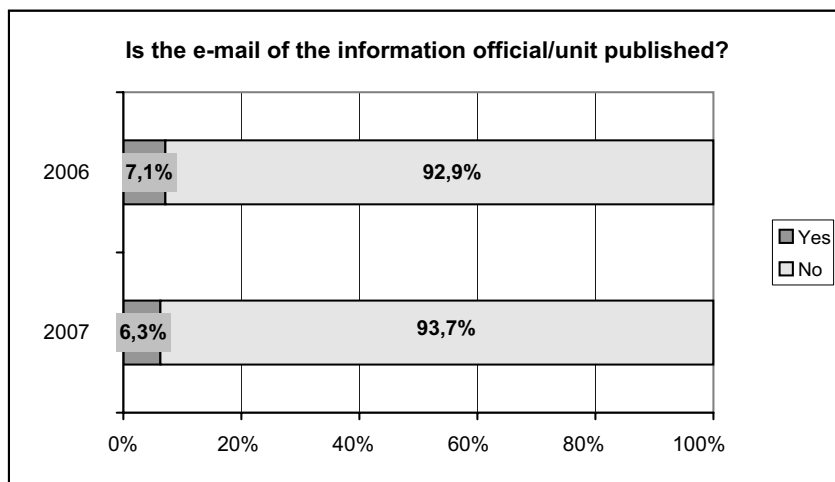
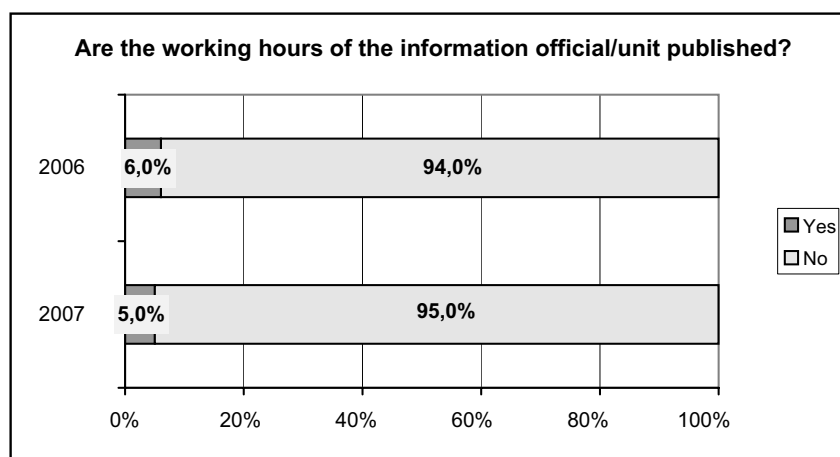


Chart 21. Are the working hours of the information official/unit published?

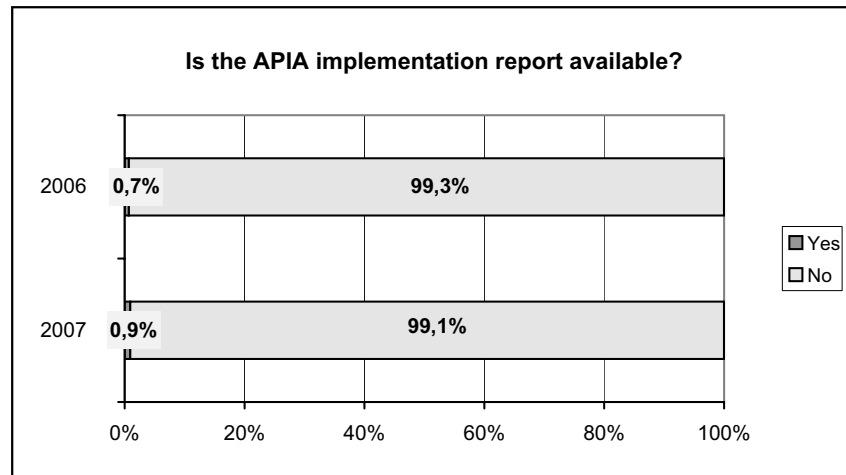


The Access to Public Information Act requires public authorities to prepare and submit to the Minister of State Administration and Administrative Reform annual reports on the implementation of the law. The annual ATI reports should also be made available to the public, as required by Art. 16 in relation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

Pursuant to Art. 15, Para. 2 of the law, annual ATI reports should also include information about the number of information requests submitted, the number of information refusals made and the grounds for refusal. Obviously, most public institutions prepare such reports and submit them to the Minister of State Administration and Administrative Reform, who publishes an annual report on the work of the Bulgarian public administration. For the last two years at least, these ATI reports have been sent to the Minister electronically, making it even easier for institutions to also publish them online. We can infer from this situation that the Minister of State Administration and Administrative Reform is clearly unaware that the publication of this information is an obligation under Art. 16, Para. 2 of the APIA. Otherwise, we would expect the Minister to take some measures to urge other

administrative structures - although not directly subordinate to him - to implement their obligations. Such a scenario is not unheard of, given that the Minister of State Administration and Administrative Reform has started a campaign urging all public authorities to place anti-corruption banners on their websites. Despite the absence of a legal requirement, the Minister has succeeded in making almost all institutions put such banners on their websites merely by announcing the Cabinet's political will (although it was initiated from outside the Cabinet). Here are the results of this indicator:

Chart 22. Is the APIA implementation report available?



Since only three institutions have published a report on the implementation of APIA online, it is obviously pointless to show and discuss the results from the other related indicators: whether institutions publish online the number of information requests received, the number of refusals, the reasons therefor, etc.

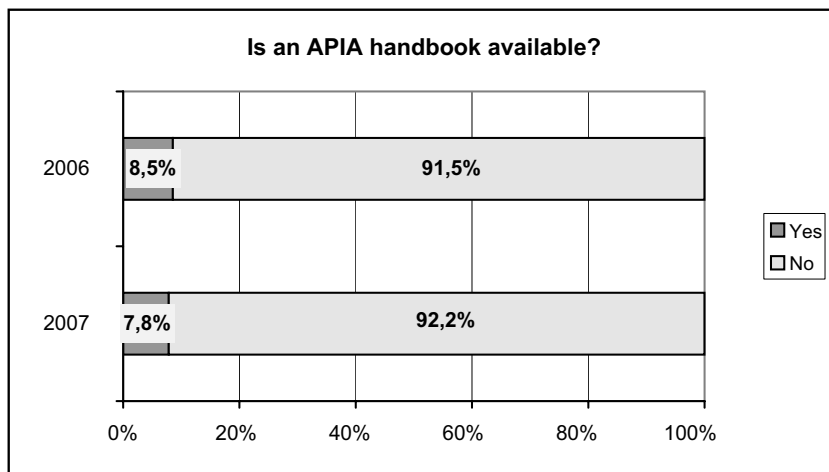
One of the three public authorities who have made the annual ATI report available online is the Minister of State Administration and Administrative Reform, who published it as part of the report on the work of the Bulgarian administration, which must be published annually.

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

Another important part of an access to information subsection on a website is the availability of request forms and materials explaining the public right to information. Many freedom of information laws adopted after the Bulgarian APIA require public institutions to publish a handbook for information seekers. The number of institutions who have published FOI reference materials online has increased by one. This means that the results have not changed positively, because the number of institutions who maintain official websites has increased by thirty-eight. This indicates that the Minister of

State Administration and Administrative Reform has offered no guidance in this respect for those public institutions that are in the process of creating official websites.

Chart 23. Is an APIA handbook available?



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

Institutions that have made access to information handbooks available online:

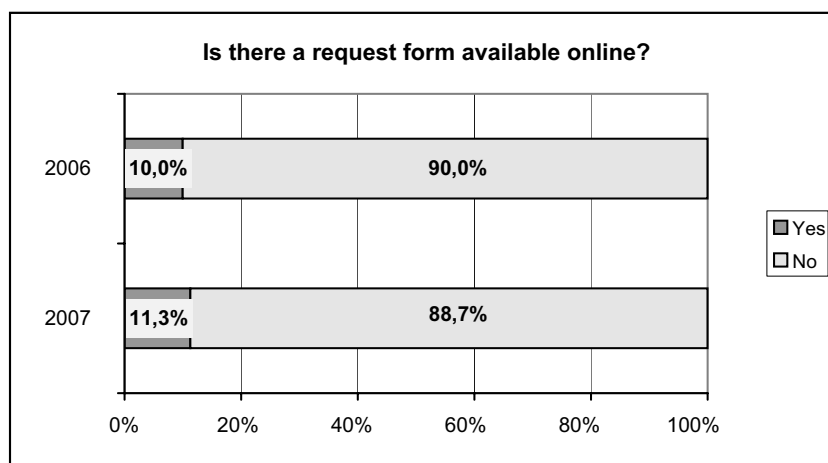
- Ministries**
Ministry of Defense, Ministry of Environment and Water
- State Commissions**
State Energy and Water Regulatory Commission
- Agencies**
State Agency for Child Protection
- Basin Directorates**
Basin Directorate - Blagoevgrad
Basin Directorate - Plovdiv
- Regional Governors**
Veliko Turnovo and Yambol
- Municipalities**
Burgas, Lukovit, Maritsa, Russe, Sliven, Straldja, Tundja

Some institutions - such as the Ministry of Health, the Regional Governors of Plovdiv and Razgrad, and the Municipality of Mezdra - have published texts about the exercise of freedom of information rights in their *Client Charters*. It is hardly obvious to „clients“ of these institutions, however, that such texts concerning his/her freedom of information rights are available there.

Other institutions like the Ministry of Finance and the Regional Governors of Sliven and Yambol have published short freedom of information reference guides in the „Administrative Services“ sections of their websites. We are at a loss to explain why the Ministry of Justice, the Ministry of Foreign Affairs, and other institutions have removed FOI reference materials from their websites.

Other useful documents, which are not subject to mandatory publication, include request forms and models for decisions on information requests. Those model documents and other APIA-related forms appear on some institutional websites.

Chart 24. Is there a request form available online?



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

First, some of the forms require information seekers to indicate the reasons why they are seeking information. This requirement is illegal and confusing for information seekers. Such request forms should be brought in compliance with the legal norms and should correspond to the main principle of the Access to Public Information Act. i.e. that everyone has the right to free access to government held information, without having to explain the reasons for his/her request.

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

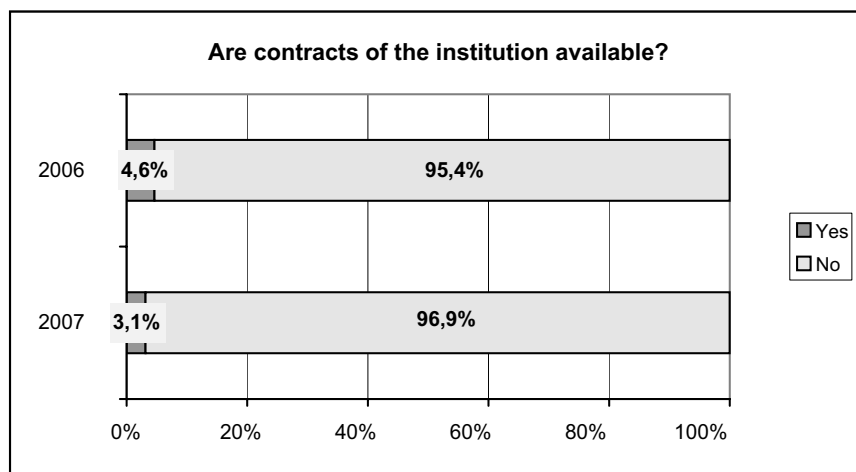
When reviewing the structure and content of institutional websites from the point of view of the Access to Public Information Act, we decided to check whether institutions have made available certain other categories of information that are not subject to mandatory disclosure. However, such information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

The purpose of these questions was to evaluate and outline some of the good practices of Bulgarian institutions, from the point of view of international standards and national freedom of information litigation. The results indicate that there is a need for public debate over future changes in the Access to Public Information Act.

In the practice of many countries that have specialized regulation of electronic access to information, public institutions make information that has been repeatedly requested available online. For example, U.S. institutions are advised to publish information online after it has been requested three times by different requests. In other countries the publication schemes include a requirement for publishing frequently requested information. When trying to determine what kind of information categories to include in the present review of Bulgarian websites, we focused on the information most frequently sought by citizens. The fact that these were indeed the most frequently sought documents was confirmed by the annual report for the last year by the Minister of State Administration and Administrative Reform.²⁵

In this regard, we were interested whether the following information was published:

Chart 25. Are contracts of the institution available?



²⁵ *Report on the State of the Administration, 2005; Facing the People, 2006*, Ministry of State Administration and Administrative Reform, p. 113.

Chart 26. Are reports for the work of the institution available?

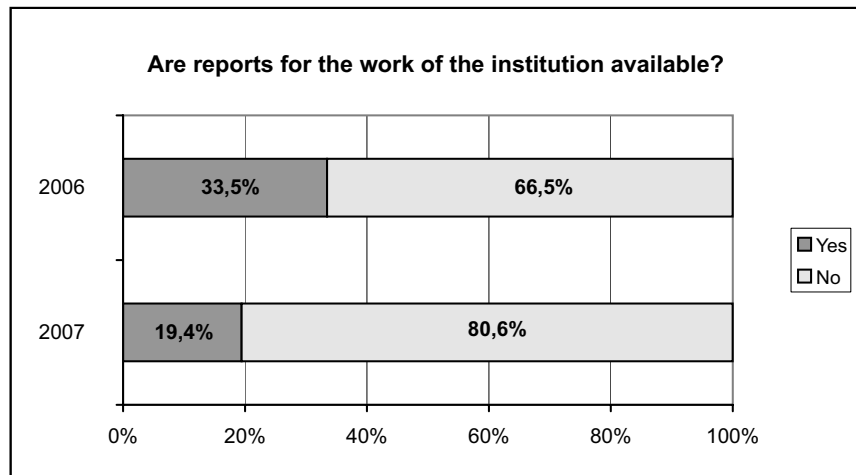


Chart 27. Are programs and development plans available?

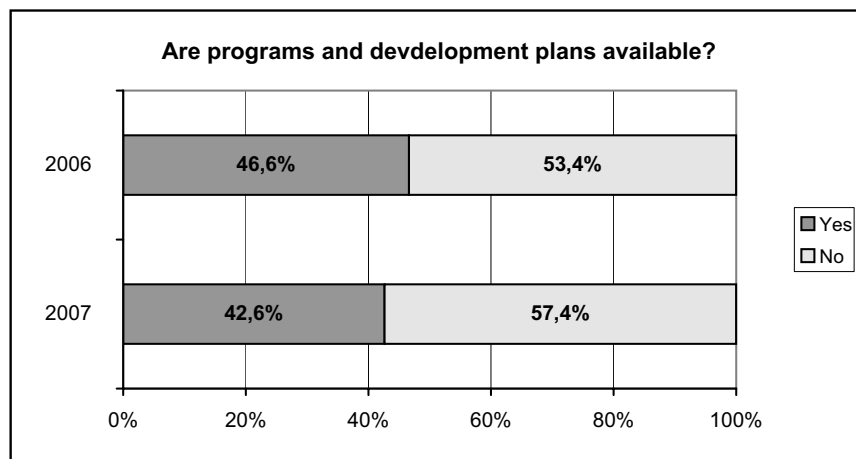


Chart 28. Is the description of services provided by the institution published?

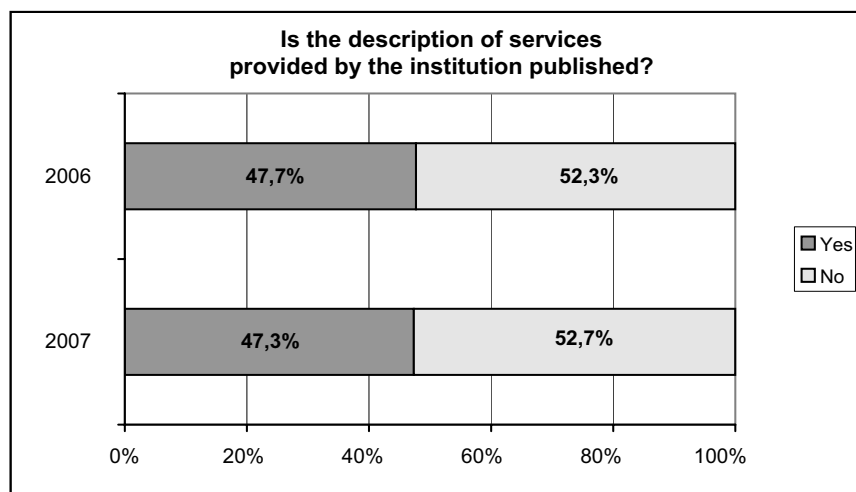
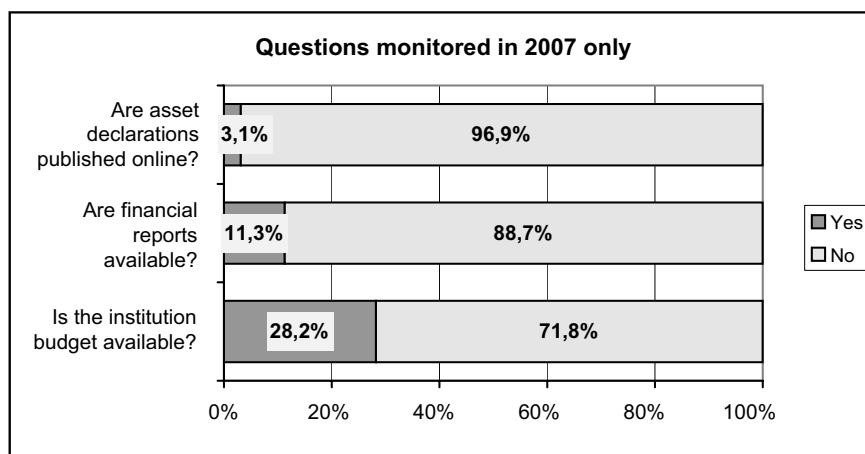


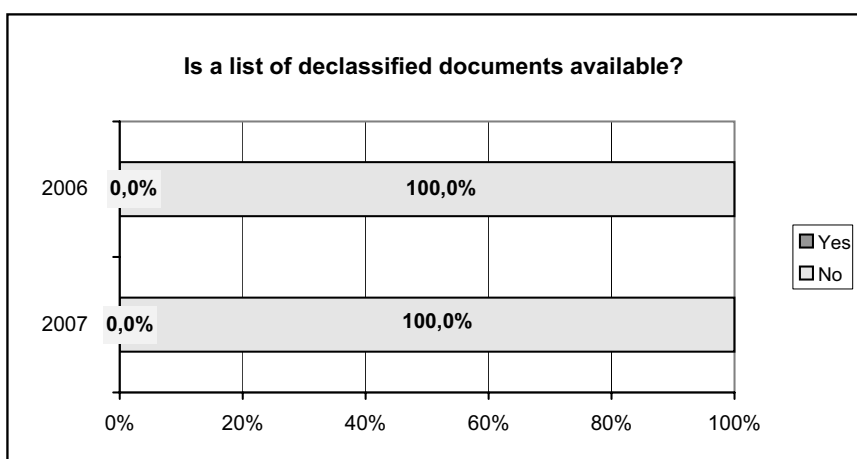
Chart 29. Questions monitored in 2007 only



The attitude of the administration towards the past and its willingness to turn the page on secretive practices is an indicator of a shift towards openness and overcoming the culture of secrecy. After 2002, a regulation was established for reviewing all secret documents. Public authorities had an opportunity to announce lists of declassified documents online,²⁶ since the process of declassification was obviously ongoing within the institutions.

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

Chart 30. Is a list of declassified documents available?



²⁶ The requirement to review classified documents was introduced by §9 of the Transitional and Final Provisions of the PCIA.

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

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

CONCLUSION

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

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

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

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

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

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

CASES

Introduction and General Characteristics

Providing free legal help for information seekers has been one of the priorities of the Access to Information Programme for over ten years. During the past year, journalists, non-governmental organizations, and citizens who faced problems with the implementation of their access to information rights turned to the legal team of AIP for assistance. From the cases referred to us in 2006, we have noticed that a decreasing number of people have been seeking our assistance in the very beginning of their access to information struggle, such as when they need help in formulating their requests or in identifying the public authority they should turn to, or simply because they do not know what to expect after submission. Ever more frequently, people turn to us after formulating the request correctly and after submitting it to the correct institution following the procedure of the APIA. This is a fact that can only please us, because it indicates increased awareness of the right to information access regulated by the APIA, especially among the citizens of Sofia and the largest Bulgarian cities.²⁷ On the other hand, we can infer that public authorities have also developed in a positive direction and - almost seven years after the adoption of the law - generally do not view information seekers as intruders who have no right to inquire about the work of public institutions.

Number of Cases Referred to AIP for Assistance:

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

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

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

Statistical reports show that the number of cases registered in our database has decreased: in 2005, we provided assistance in 408 cases, while in 2006 they numbered only 350. This tendency is characteristic for the last few years and can be largely attributed to the experience gained by public authorities in the process of implementing the Access to

²⁷ Unfortunately, we cannot say the same for smaller towns and villages, where the most active seekers of information are typically journalists and NGOs.

Public Information Act for nearly seven years now. Immediately after the adoption of the law in 2000, even the simplest information request caused complex problems and provoked many inadequate responses from public institutions, forcing information seekers to request our legal advice as the only solution to their problems with access to government-held information. In no way do the above numbers mean that problems with the implementation of freedom of information legislation have started to disappear; rather, the implementation of the law has entered a new stage, in which - seemingly - purely procedural and formal obstacles to the right to information have gradually been dealt with.

From Which Public Institutions Do Information Seekers Mainly Request Information?

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

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

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

The total number of refusals by public authorities to provide access to information registered in our database for 2006 is 156. They can be roughly divided into: oral refusals to provide access to information following an oral request, and refusals to provide access to written requests. Most frequently public authorities provide no legal grounds when refusing to provide information orally. The total number of unfounded refusals for 2006 was 33. The second most frequent category of registered complaints is that of *silent refusals*, which numbered 24 in 2006.²⁸

When considering only the written information requests filed in 2006, the largest number of refusals were grounded in the need to protect third-party interests. For example, in 19 cases, public authorities explicitly used the exemption of Art. 37 Para. 1 item 2 of the APIA, which refers to information concerning a third person who has not given his/her consent for disclosure. In still 15 other cases, information was refused using the protection of personal data exemption, while in eight cases public authorities referred to the exemption for trade secrets. The exemptions in Art. 13 Para. 2 of the APIA, which defines

²⁸ The majority of silent refusals follow oral requests, but there are still cases in which written requests receive absolutely no response.

two different exemptions of access to administrative information,²⁹ was used 13 times by public authorities to withhold access in 2006. The exemption of administrative information has been used relatively rarely to withhold access to information of public interest, being cited in only four registered cases in 2006.³⁰

Who Requested the Assistance of AIP in 2006?

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

Information Most Frequently Sought in 2006:

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

Access to Contracts Between Public Institutions and External Contractors

Contracts signed between public authorities and private companies have been a major subject of public interest in 2006. Our observations show that as in the previous year, the obstacles to information access are directly proportional to the amount of money public authorities pay out according to the signed contracts. Registers of public procurements and concession contracts do exist, but the data they contain is quite scarce. Access to public information is limited to the names of the private companies and a short summary of the contract terms.

Unfortunately, all the examples we give here are indicative of common practices nationwide. An example is the unsuccessful campaign by journalists from the town of Pernik, who have repeatedly requested at least the names of the companies with which mayor Antoaneta Georgieva signed contracts for cleaning and planting trees. In 2006, the mayor of the town of Sliven refused to provide a copy of the contract for a twenty-year concession for maintenance of the street lighting facilities. The question of publishing the full text of the above-mentioned contract was raised during a meeting of the local council; however, the mayor replied that local councilors could read the contract only after signing a declaration that they would not disclose it afterwards. Journalists from the Sliven-based newspaper *Sedmica* had requested access to the contract between the

²⁹ The provision of. Art. 13 Para. 2 stipulates the following:

Access to administrative public information may be restricted, if it:

- 1. relates to the preparatory work of an act of the bodies and has no significance in itself (opinions and recommendations prepared by or for the body, reports and consultations);*
- 2. contains opinions and statements related to on-going or prospective negotiations to be led by the body or on its behalf, as well as any data relating thereto, and was prepared by the respective bodies' administrations.*

³⁰ Complete statistics are available in the attachment.

municipality and the company that maintains and cleans the snow off the municipal roads. The mayor turned down the request, arguing that the whole contract contained commercial secrets.

We are still not aware of a single case of a public institution disclosing the full text of a contract it has signed with a private company. Access to information has been refused using many different reasons, but most often institutions refer to the need to protect a third-party interest, that of the private company.

Access to Information in Cases of Illegal Construction

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

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

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

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

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

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

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

Access to Information in the Sphere of Healthcare

In the first half of 2006, three different non-governmental organizations turned to us for assistance with almost identical cases in which the National Health Insurance Fund (NHIF) failed to publish on its own initiative information of great public importance. In the beginning of each year, the NHIF publishes a National Framework Agreement (NFA) signed between the NHIF, the Bulgarian Medical Association (NMA), and the Bulgarian Dentists Union (BDU). The framework agreement is supplemented with free healthcare plans related to certain diseases. According to the 2006 NFA, each healthcare plan must contain the criteria for inclusion of patients in the plan and should list all documents that patients are required to submit in order to get free medicine. After the official adoption of the 2006 NFA, the free health care plans were changed through a decision by the NHIF board. The changes however, were not made public, which was a serious violation of Art. 14 Para. 2 of the APIA.³¹ Because of this many patients prepared their documents in vain and had no right to be included in the free healthcare plans, which cost them money, time and a lot of stress. The situation outlined above refers to the following three healthcare plans for 2006, which were described to us by three different patients:

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

³¹ The provisions of Art. 14 Para 2 require public authorities to publish information on their own initiative when such information: 1. is of a nature to prevent some threat to citizens' lives, health or security, or to their property; 2. disproves a previously disseminated incorrect information that affects important social interests; 3. is, or could be, of interest to the public; 4. must be prepared and released by virtue of law.

Access to Personal Data

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

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

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

Existing Practices of APIA Implementation

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

1. It is difficult or practically impossible for seekers to receive certain information based only on an oral request - this is obvious not only from AIP's experience, but also from the cases referred to us by our nationwide network of coordinators. The opportunity of requesting information orally is envisaged by Art. 24 Para. 1 of APIA, which establishes that access to information is provided after a written request or an oral inquiry. In case the information seeker does not receive information or is unhappy with the information he/she received based on his/her oral inquiry, he/she can formulate the request in written form, according to Para. 3 of Art. 24. In practice, however, most oral inquiries are turned down and information seekers are forced to submit their applications in writing, even when they seek information that can be easily retrieved and provided. It is hardly necessary for information seekers to wait for two weeks for a copy of a town ordinance, the institutional budget, a decision of the local council, the protocol from a public discussion, or other easily retrievable public documents. Furthermore, all of the above documents

contain information of public interest and should be made available on the institutions' websites, so that all interested parties can easily get acquainted with them without having to contact the information officials or having to request it from the institution. Documents that have been repeatedly requested from the institution (frequently requested records) also should be made available online, since this would save the administration the effort of having to respond to further information requests for the same information.³²

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

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

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

³² Requirements for publishing information of public interest online are established by the amendments to the US Freedom of Information Act (known as eFOIA, adopted in 1996), in the Public Information Act of Estonia (adopted in 2000), and in the Hungarian Act XC of 2005 on the Freedom of Information by Electronic Means from 2005.

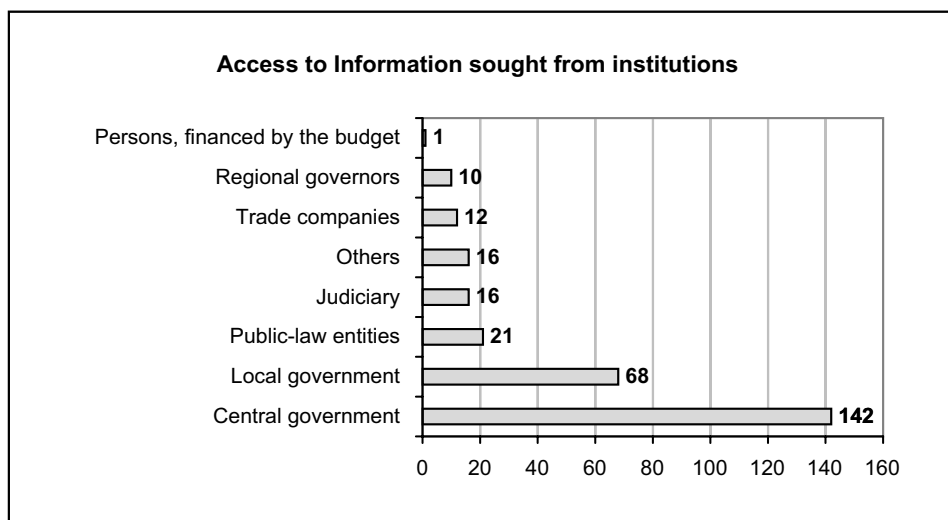
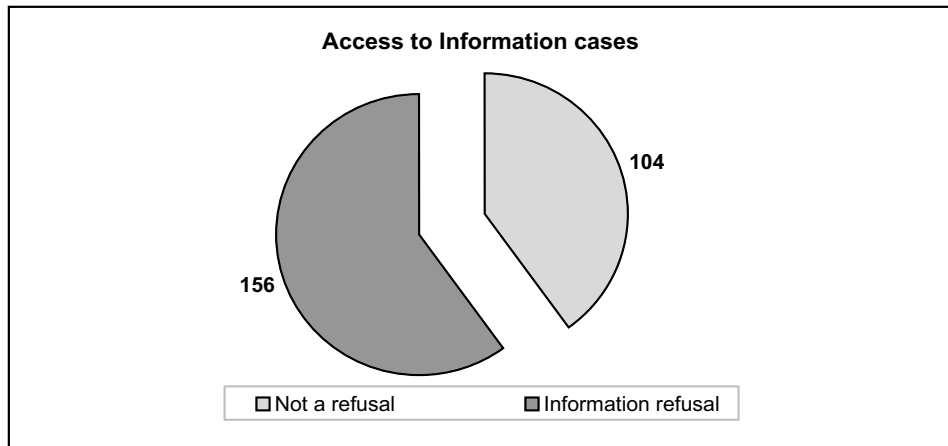
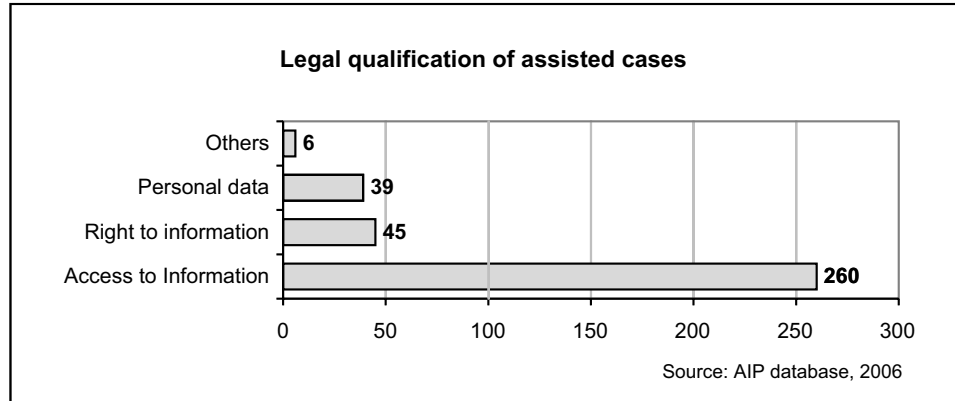
This is not what happens in practice, however. Instead of opting for a practical and more convenient solution, quite a few institutions have complicated the procedure for filing electronic requests by introducing a new requirement for information seekers that requires that requests filed by e-mail must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

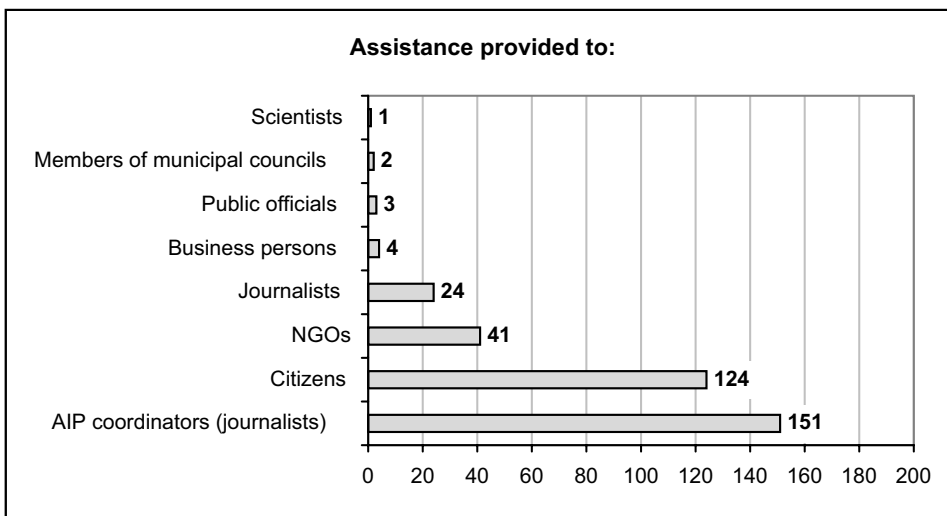
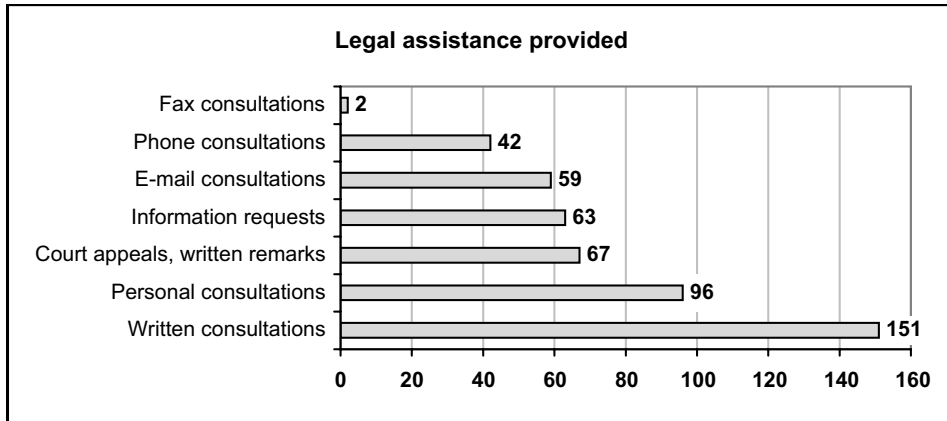
The above procedures exist, for example, in the Ministry of Environment and Water (MOEW) where „access to information requests signed with a digital signature are submitted in the same way as electronic documents.“ We have also identified a requirement for information seekers to digitally sign electronic requests in the Ministry of Finance, the Regional Governor of Gabrovo, and the Agency for Economic Analyses and Forecasting.

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

APPENDIX

Statistics from the electronic database Access to Information Programme, 2006





LITIGATION

A considerable part of the legal help that the AIP legal team provides is the preparation of complaints to the court and representation of the claimants who have sought the help of AIP.

In 2006, the AIP legal team prepared **51 complaints**, assisting citizens, journalists, and organizations who sought the protection of their right of access to information before the court. During the year, the AIP legal team provided **legal representation in 25 cases** to challenge refusals for access to information provisions. During that period, the legal team of AIP prepared **11 written defenses** for litigation supported by the organization.

In 2006, the Supreme Administrative Court (SAC) delivered a number of decisions concerning the interpretation of various restrictions to the right of access to information, and more particularly, to their scope and relevance in certain cases.

One of the most problematic restrictions (or *exemptions*, as the Constitutional Court defines them) to the right of access to information is related to the so-called „**preparatory documents**,“ provided for by Art. 13, Para. 2, Item 1 of the Access to Public Information Act (APIA). According to other national legislation, the purpose of this provision is to protect the independence of the consultation process during administrative assessment until the finalization of a particular procedure. According to the APIA, this restriction cannot last more than two years after the creation of a document. The broad application of this restriction (according to the annual reports of the Minister of State Administration and Administrative Reform, it is the second-most frequently applied restriction) required a more precise definition of its scope of application by the court. Thus a three-member panel of the Supreme Administrative Court ruled that the records of public discussions organized within the Environmental Impact Assessment (EIA) of projects and activities should not be refused on the grounds of Art. 13, Para. 2, Item 1 of the APIA: „A public discussion organized under the procedure of the Environmental Protection Act is an independent phase of the procedure for decision making on EIA by the competent body. Therefore, the records created during that phase do not have the characteristics of preparatory documents prepared by a subordinate body and as part of the procedure for the adoption of the final act.“³³ In their interpretation of the term *information with no significance of its own* used in Art. 13, the justices applied the principle drawn by the Constitutional Court in their Decision No. 7 of 1996 regarding the narrow interpretation of the exemptions to the right of access to information.

The possibilities of broad application of the provision of Art. 13, Para. 2, Item 1 of the APIA that would be contrary to the purpose of the law were limited through another decision of the SAC, this time by a five-member panel. Statements and other documents from the Ministry of Foreign Affairs regarding the dismantling of a just-erected statue of Khan Asparuh in the town of Zaporozhie, Ukraine, may not be refused on the grounds of *preparatory documents*. According to the court panel, „the information contained is not directly related to the preparation of a final act from which the requestor could receive

³³ Decision No. 4239/2006, administrative case No. 10628/2005, SAC, Fifth Division, Judge-rapporteur Yulia Kovacheva.

the information he is interested in.³⁴ In other words, according to the court interpretation, statements and consultations that are not related to the adoption of a final act assume a significance of their own, since citizens may form an opinion of the work of the administration on the basis of these, which is the purpose of the APIA.

In the past, there were cases in which the Public Internal Financial Control Agency refused to provide audit (financial inspection) reports on the grounds that they constituted an administrative secret. The Agency has been providing such information for quite a long time under the provisions of the APIA, however, the mayor of the Municipality of Tutrakan refused to provide it during the past year. According to the justices, access to a copy of a final audit report is free and may not be restricted under the pretext of protection of the preparatory documents (Art. 13, Para. 2, Item 1 of the APIA).³⁵

Several court decisions from 2006 concern the issue of so-called **classified information**, i.e. state or administrative secrets. The decision delivered by a three-member panel of the SAC on the first working day of the new year, January 3, 2006, regarding access to the security services report concerning the involvement of Bulgarian firms in oil trading with Iraqi companies during the regime of Saddam Hussein deserves particular attention: „In the current case, the subject of the request for access was not the operational work of the services, but the result of that work“; hence, the justices claimed in their judgment that the issue was not about classified information.³⁶ Pursuant to Appendix 1 under Art. 25 of the Protection of Classified Information Act (PCIA), only reports on the operational work of the security services may be classified as a state secret. The judgment of the court panel ends as follows: „Even if we assume that the announcement of the result would run the risk of disclosing information protected under Item 9, this risk may be averted by granting partial access to information under the provision of Art. 37, Para. 2 of the APIA.“ For the first time, the court gave a clear interpretation that takes into account the balance between the right of access to information and the protection of state secrets and did not allow for the total privileging of the secret over the right. Such an interpretation is particularly important in view of widespread administrative practices instituted after the adoption of the PCIA.

Two other three-member panels of the SAC dismissed the administration's argument that the contracts signed by the Minister of Finance with the British consultancy Crown Agents and by the Minister of Regional Development and Public Works with Highway Trakia JSC, as well as the analyses of the concession, were classified information. Concerning the first contract, which had been marked with a *confidential* stamp, the court „finds the grounds (stated by the Minister of Finance) that the contract in its entirety contains classified information, which constitutes a state secret, unjustified.“³⁷ Regarding the second contract, according to the court, there was no evidence that it constituted an administrative secret since „the administrative body did not quote a legal provision that identifies the

³⁴ Decision No. 2308/ 2006, administrative case No. 10940/ 2005, SAC, Five-member panel, Judge-rapporteur Tanya Vacheva.

³⁵ Decision No. 9898 of October 12, 2006, administrative case No. 4401/2006, SAC, Fifth Division.

³⁶ Decision No. 5/ 2006, administrative case No. 4268/ 2005, SAC, Fifth Division, Judge-rapporteur Vanya Ancheva.

³⁷ Decision No. 1554/ 2006, administrative case No. 4596/ 2005, SAC, Fifth Division, Judge-rapporteur Tanya Vacheva, appealed.

information as such, neither a list of approved categories of information subject to a state secret exemption within the structure of the Ministry.³⁸

Subsequently, a five-member panel of the SAC confirmed court practice in cases in which an administrative body claims that certain information is an administrative secret. Information subject to classification as an administrative secret should be defined by law. Furthermore, any refusal should state the respective law and the category from the list of information subject to administrative secrecy adopted by the respective head of the administration. Factual grounds for defining the information as an administrative secret should be also stated. According to the court, the mere claim that the information contained in the concession contract between the Minister of Regional Development and Public Works and Highway Trakia JSC and in the analyses under Art. 6 of the already-repealed Concessions Act fell under the category of administrative secrets did not necessarily identify the information as such.³⁹

Another interesting judgment was that by the Sofia City Court, which repealed the Director of the National Intelligence Services' refusal to provide information related to the assassination of the Bulgarian dissident writer Georgi Markov in London. According to the court, if an administrative body does not present evidence that it has reviewed documents classified in the past pursuant to Section 9, Para. 2 of the Final and Transitional Provisions of the PCIA, the documents become public information after the expiration of the protection period.⁴⁰

The practices established in cases regarding commercial interests (or commercial secret) and personal data were not so consistent. In the four decisions delivered on cases regarding the protection of **personal data** and six related to the protection of commercial interests, the courts assumed different interpretations of the various provisions. In some cases, the court deems that in cases of conflict between the right to information and the right to personal data protection, the latter overrides, regardless of the fact that such data pertain to public persons because of Art. 2, Para. 3 of the APIA.⁴¹ Another decision was balanced in the opposite direction: the number, purpose, duration of the mayor's official trips, as well as the related expenses incurred, may not be defined as personal data under the provision of Art. 2 of the Personal Data Protection Act.⁴² In yet another decision, the SAC held that conflict of interest declarations by experts who perform Environmental Impact Assessment do not contain only personal data and thus may be requested under the APIA.⁴³

³⁸ Decision No. 5451/ 2006, administrative case No. 6363/ 2005, SAC, Fifth Division, Judge-rapporteur Janetta Petrova.

³⁹ Decision No. 10731 of November 1, 2006, on administrative case No. 7669/2006, SAC, Five-Member Panel, which upheld the decision of the Three-Member Panel.

⁴⁰ Decision on administrative case No. C - 31/ 2005, SCC, Panel III-D, Judge-rapporteur Haigusha Bodikyan, appealed.

⁴¹ Decision No. 6438/ 2006 on administrative case No. 2527/ 2006, SAC, Fifth Division, Judge-rapporteur Andrey Ikononov.

⁴² Decision No. 3101/ 2006 on administrative case No. 8452/ 2005, SAC, Fifth Division, Judge-rapporteur Violeta Glavinova.

⁴³ Decision No. 2910/ 2006 on administrative case No. 10371/ 2005, SAC, Fifth Division, Judge-rapporteur Andrey Ikononov.

Another decision by the SAC again repealed a refusal to provide information about the education and qualification of the deputy ministers, the head of the administration of the Ministry of Education and Science (MES), and the members of the political cabinet of the Minister of Education and Science. All these officials are listed in the public register under the Disclosure of Property Owned by High Government Officials Act; consequently, their names were publicly accessible. According to the court, data about their education and qualifications, even though they are not included in the public register, are necessary to form personal opinions as to whether the political and executive governing team in the scientific and educational sphere in Bulgaria has the required scholarly and professional qualifications to efficiently exercise state power in this particular sphere of life.⁴⁴ The decision complies with the spirit of the law and the public interest. We must note, however, that it came about in a hostile legal environment. The frequent amendments to the Personal Data Protection Act are evidence that the misunderstanding of its provisions by those who introduce the legislation creates confusion in the implementation of the law. One particularly scandalous recent amendment was the repeal of Art. 35 of the PDPA. In an identical debate during 2005, AIP experts and other representatives of civil society had persuaded legislators that such a step was in violation of access to information and protection of personal data principles.

Regarding the issue of **commercial secret**, some court panels still uphold the position that a third party may independently and absolutely freely define which information should be publicly accessible and which should not. More recent decisions, however, emphasize that certain information, which has been defined as public by law, may not subsequently be claimed to be the secret of a private person.⁴⁵ According to a three-member panel of the SAC, companies that perform transportation activities within the territory of a municipality funded with money from the state budget are obliged bodies under the provisions of Art.3, Para. 2, Item 2 of the APIA, since they are financed by the state budget.⁴⁶ That is why it is not necessary to ask for their consent. In the specific case, the information requested included the name of the beneficiary, the amount of monthly payments and the grounds on which the respective amount had been paid. The court panel assumed that the information did not affect the legitimate rights and interests of companies as third persons. The court further emphasized that if the documents had contained commercial secrets, access could have been provided in a form and manner that would guarantee the two competing rights.⁴⁷

It should be noted that the above-stated understanding of the restrictive interpretation of the third party's (i.e. the company's) interests is a logical continuation of the practice established in the summer of 2006. In its decision, the SAC ruled that companies as third parties may not block the disclosure of concession contracts, since the legislator had explicitly regulated that data about concessions, including the main clauses of concession

⁴⁴ Decision No. 9486 of October 4, 2006 on administrative case No. 3505/2006, SAC, Five-Member Panel.

⁴⁵ Decision No. 8190/2006 on administrative case No. 3112/2006, SAC, Fifth Division, Judge-rapporteur Julia Kovacheva.

⁴⁶ Decision No. 11726 of November 27, 2006, on administrative case No. 6705/2006, SAC, Fifth Division.

⁴⁷ In this regards, the court confirmed its practice established in Decision No. 4716 of May 25, 2004, on administrative case No. 8751/2003, SAC, Fifth Division and Decision No. 4717 of May 25, 2004, on administrative case No. 8752/2003, SAC, Fifth Division.

contracts, may be provided under the provisions of the APIA: „In a questionable case, priority is given to the principle of transparency and publicity of activities financed with money from the municipality budget, which [in this case] was collected as a garbage tax from citizens.“⁴⁸ The quoted court decisions are a definite step towards a narrow interpretation of this restriction to the access to information. However, there is still a long way to go until an adequate interpretation of the the concept „commercial secret“ is reached. In democratic countries, it cannot be used as a cloak to conceal the budget or other state expenses.

From this yearly litigation review, we can conclude that the overall tendency is towards narrow interpretations of the exemptions to the right of information. This tendency is clear in the interpretation of the terms „state and administrative secret“ and „preparatory documents.“ In terms of personal data and commercial secret, however, a clearer position is needed in order to take into account the fact that such restrictions to the right of access to information are exemptions to the principle and thus should be interpreted narrowly.

⁴⁸ Decision No. 8190 of July 20, 2006, on administrative case No. 3112/2006, SAC, Fifth Division.

APPENDIX

LITIGATION - CASE NOTES

1. Alexenia Dimitrova (*24 Hours Newspaper*) vs. the Ministry of Foreign Affairs

First Instance-administrative court case No. 4070/2006, Sofia City Court, Administrative Division, Panel III-A

Request:

In July 2006, Alexenia Dimitrova, a journalist from *24 Chasa (24 Hours)* daily newspaper, submitted a request for access to information to the Minister of Foreign Affairs. She demanded access to information about two contracts for lobbying services signed by the Ministry of Foreign Affairs (MFA) in relation to Bulgaria's accession to the European Union. Dimitrova requested the title pages and the last two pages of the two contracts, in order to acquire information about the contracting parties, the dates the contracts were signed, the subject matter of the contracts and the persons who had signed them.

Refusal:

A letter from the interim head of the MFA administration informed Alexenia Dimitrova about the extension of the period for answering the request, since the information affected third parties' interest, thus their consent had to be obtained for its disclosure. The letter did not specify the identity or the number of third parties. Access to the requested information was refused with an order as of August 18, 2006, on the grounds that no consent had been received by the third parties within the legally prescribed time frames.

Complaint:

The refusal was challenged before the Sofia City Court (SCC) with the argument that the information requested was public since it would help to form an opinion about the work of the MFA regarding the lobbying activities related to Bulgaria's accession to the European Union. Such activities were obviously public and of particular importance for the foreign policy of the country during the last several years. The complaint also pointed out that the refusal did not contain any factual grounds, such as information about who the third parties were who were asked for their consent or which data contained on the requested pages were regarded as secret. Thus, the refusal was ungrounded, lacking factual grounds and precise legal conclusions.

Developments in the Court of First Instance:

Proceedings were stayed for the collection of evidence.

A hearing of the case was scheduled for October 2007.

2. Alexenia Dimitrova (*24 Hours Newspaper*) vs. the Council of Ministers

First Instance-administrative court case No. 4070/2006, Sofia City Court, Administrative Division, Panel III-D

Request:

In May 2006, Alexenia Dimitrova, a journalist from *24 Chasa (24 Hours)* daily newspaper, submitted a request for access to information under the provisions of the Access to Public Information Act (APIA). She demanded access to a copy of the Council of Ministers' decision(s) that delegated to the Minister of Finance the signing of contracts related to the payment of Iraqi debts to Bulgaria. Dimitrova also requested documentation related to the decision(s).

Refusal:

With a letter dated May 30, 2006, the Director of the Government Information Services (GIS) refused access to the requested information. The letter confirmed that the requested information existed, since the GIS had found that the issue had been discussed during closed sessions of the Council of Ministers. According to the letter, the documents had been marked with a stamp *Confidential* according to the Protection of Classified Information Act (PCIA).

Complaint:

The refusal was challenged before the Sofia City Court (SCC). The main argument advanced by the petitioner was that neither factual nor legal grounds were given for the classification of the requested information. The refusal did not even state the number of the Council of Ministers' decision that contained the requested information. The argument continued by pointing out that the APIA and the PCIA required that information be classified under the conditions stipulated by the PCIA, i.e. only if the information fell under a category specified in the appendix to Art. 25 of the PCIA and only if the disclosure could result in harm to national security, defense, foreign policy or constitutionally established order. The refusal did not state any of the above-quoted grounds, neither legal nor factual.

Developments in the Court of First Instance:

The case was heard in an open court session and was scheduled for judgment. In the meantime, the court panel repealed their decision to proceed with the case and required that the defendant, GIS, present evidence about the classification of the requested information.

A new hearing of the case was scheduled for March 2007.

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

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

Second Instance-administrative case No.3455/2006, Supreme Administrative Court, Fifth Division

Request:

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

Refusal:

A written decision was issued by the NIS refusing access to the requested information on the grounds that it had been classified as a state secret. The decision stated that the archival materials that were being kept by NIS regarding this issue constituted a collection of documents with different types of classification, the highest level being *top secret*. Consequently, the whole collection was under protection for a period of 30 years. Furthermore, the decision noted that the Personal Data Protection Act (PDPA) also imposed restrictions on free access to these archival materials since the documents contained personal data.

Complaint:

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

Developments in the Court of First Instance:

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

Appeal Against the Ruling:

The ruling of the SCC that terminated the proceedings was appealed before the Supreme Administrative Court.

Ruling:

With Ruling No. 4991, as of May 11, 2006, a panel of the SAC repealed the ruling of the SCC and returned the case to the first instance for further court proceedings. In their judgment, the justices stated that the SCC had wrongly judged that the complainant had not proved the contents of the parcel post (the letter of complaint). The documents that had been sent by the complainant and received by the administrative body on the dates stamped on the delivery receipt note were missing. The administrative body itself had not presented any evidence in this regard, which is why the first instance court's assumption that the delivery receipt note presented as evidence did not prove that the complaint was sent to the institution within the legally prescribed time frame was based on an incorrect interpretation of the data.

Developments in the Court of First Instance (again):

The case was heard in a single open court session on November 15, 2006, and was scheduled for judgment.

Court Decision:

In a decision on February 5, 2007, a panel of the SCC declared the Director of the National Intelligence Services' refusal null and void. In their judgment, the justices stated that the refusal had been signed with a comma and that evidence about the authority of the person who had signed the refusal instead of the Director was missing.

The decision was not appealed and thus came into effect. A new decision on the request is pending.

4. *Trud Daily* vs. the Ministry of Agriculture and Forestry

First Instance-administrative court case No. 5776/2006, Supreme Administrative Court, Fifth Division

Request:

The facts of the case study are the following: The Land Commission in the town of Samokov refused to provide information following an oral request by a journalist from *Trud Daily*. Subsequently, the Editor-in-Chief of the newspaper, Mr. Tosho Toshev, submitted a written request under the procedures of the Access to Public Information Act (APIA) to the Minister of Agriculture and Forestry. He demanded access to the documents (decisions, requests, and annexed documents that certify the right of property and inheritance) related to the restitution of forest lands in the Rila Mountains by the former prime minister, Mr. Simeon Saxe-Coburg-Gotha.

Refusal:

With a letter from April 2006, the Minister of Agriculture and Forestry refused access to the requested information. Art. 37, Para. 1, Item 2 of the APIA was stated as grounds for the refusal: disclosure of the requested information would affect a third party's interests. It was pointed out that Mr. Simeon Saxe-Coburg-Gotha's consent for the disclosure of the information had been requested with a letter as of March 28, 2006. The refusal further stated that no response from Mr. Saxe-Coburg-Gotha had been received by the Record Management Department of the Ministry of Agriculture and Forestry within the

time frame stipulated by Art. 31, Para. 1 of the APIA (regarding Art. 28, Para.1 of the APIA).

Complaint:

The refusal was challenged before the Supreme Administrative Court (SAC) with the argument that the requested documents constituted decisions of a state body (the Land Commission), thus a private person's interests were not involved, even in an administrative decision that contained a statement of the recognition of the property rights of a particular person (Mr. Saxe-Coburg-Gotha in this particular case). Consequently, the decisions requested were public information, thus keeping them secret was inadmissible. The decision concerned an action by a state body; such action is subject to civil evaluation according to Art. 2, Para. 1 of the APIA. The argument that protected personal data were affected was also inadmissible since according to the Personal Data Protection Act (PDPA), if the requested data were part of a public register, the consent of the individual these data related to was not required. Pursuant to Art. 29, Para. 1 of the Forestry Act (FA), the National Forestry Directory kept a register of all forest lands; this register contained data about the proprietors, the area of the land, the type of the forest, as well as any changes in these. Pursuant to Art. 2 of the FA, the register was public. The complaint emphasized that data about the property and income of Mr. Saxe-Coburg-Gotha for the period 2001 - 2005, during his term as Prime Minister, were also public according to the Public Disclosure of Property Owned by High Government Officials Act.

The complaint also stated that the information requested was not simply related to Mr. Saxe-Coburg-Gotha personally, but involved the public issue regarding the lawfulness of the procedure of the recognition of property rights on forests. This issue was undoubtedly of great public importance, especially since a special Parliamentary Commission had been established to address this issue. Consequently, the provision of all the information about the case would give the public opportunity to form their own opinion about the way the law had been respected during the restitution process, as well as about the extent to which the Parliamentary Commission worked on the issues raised by these documents.

Developments in the Court of First Instance:

At the October 2006 court session, the representative of the Minister of Agriculture and Forestry objected that the complaint had been overdue, regardless of the fact that the obligation for collecting and submitting the administrative documents about the case fell upon the administrative body. The court postponed the proceedings and gave the complainant an opportunity to present evidence of the date of submission of the complaint.

Meanwhile, the complainant claimed in a formal letter that the complaint had been submitted by post as of May 3, 2006, which was within the legally prescribed time frame. The receipt note of delivery was attached as evidence. The representative of the complainant requested that the court sue the Ministry to pay for additional court fees as a sanction for its unscrupulous behaviour during the proceedings, since the representative of the defendant had caused the postponement of the proceedings by undue presentation of facts and evidence.

At the next court session, on December 19, 2006, the SAC imposed a sanction on the Minister of Agriculture and Forestry according to Art. 65, Para.1 of the Civil Procedures Code for the amount of 100 BGN (50 Euro). The justices assumed that the minister had

not fulfilled his obligation to submit to the court the complete file of the case and had intentionally caused the postponement of the proceedings with his request to certify whether the complaint had been submitted in time. The case was heard and scheduled for judgment during the same court session.

Court Decision:

With decision No. 2845 of March 19, 2007, a panel of the SAC declared the Minister of Agriculture and Forestry's refusal null and void and resubmitted the request for reconsideration in compliance with the instructions given by the court. In their judgment, the justices emphasized that the requested information had been held by the Municipal Service of Agriculture and Forestry in the town of Samokov. The purpose of the submitted request had been to obtain access to primary documents related to the restitution of Mr. Saxe-Coburg-Gotha's property rights. The case file created by the Land Commission in Samokov in relation to the requests submitted by Mr. Saxe-Coburg-Gotha for the restitution of the right of property over forests and lands from the forestry fund, as well as supporting documents for the verification of the right being claimed, were not information that had been created or held by the Ministry of Agriculture and Forestry. According to the court panel, the Minister of Agriculture and Forestry was not the competent body to decide on the request for access to information pursuant to Art. 3, Para. 1 of the APIA. The Minister had to comply with the provision of Art. 32, Para. 1 of the APIA, which stipulated that in the cases when the body did not possess the requested information, but was aware of its location, it was obliged to transfer the request within 14 days of its receipt and notify the requestor of the transfer.

Through his actions, the Minister of Agriculture and Forestry, despite his superior position in the administrative structure, had unlawfully usurped the authority of the Municipal Service of Agriculture and Forestry at Samokov and had issued a refusal. Thus, the refusal was found to be null and void. Considering the above-stated findings, the court assumed that the refusal should be declared null and void and that the request should be returned to the Minister of Agriculture and Forestry for reconsideration in compliance with Art. 32, Para. 1 of the APIA.

The decision was not appealed and came into effect. The issuing of a new decision by the Municipal Service of Agriculture and Forestry at Samokov is pending.

5. Genka Shikerova (bTV) vs. the Municipality of Nessebar

First Instance- administrative case No. 967/2006, Regional Court of Burgas
Second Instance- administrative case No.1098/2007, Supreme Administrative Court, Fifth Division

Request:

In August 2006, Genka Shikerova, a reporter from bTV, submitted a request for access to information to the mayor of the Municipality of Nessebar. She demanded access to the following information:

- Review of available information that described the subject matter of the orders issued by the mayor of the Municipality of Nessebar for the period January 2000-June 2006;

- Copies of selected orders from the list/register of mayor's orders requested under point 1.

The request was submitted as part of the reporter's investigation of cases of illegal construction in the Municipality of Nessebar.

Refusal:

No answer was received within the legally prescribed period of 14 days.

Complaint:

A complaint against the silent refusal of the mayor of the Municipality of Nessebar was submitted to the Regional Court of Burgas.

Several days after the submission of the complaint, an answer regarding the request for access to information was received. The mayor had issued a decision of refusal to provide the requested information. The stated grounds were that the request was unclear about what type of information had been requested and that the documents requested contained personal data of third parties. Questions about the purpose of the request and the further usage of the information were also set forth.

Developments in the Court of First Instance:

The case was heard in an open session and scheduled for judgment. The complainant presented written arguments about the unlawfulness of the silent refusal, as well as of the explicit refusal that had followed. It was stated that the information contained in the orders of the mayor of the Municipality of Nessebar was above all public information. Secondly, a considerable part of that information concerned the transference of property rights and the granting of construction rights, which was also public information. Pursuant to Art. 34, Para. 2 of the Municipal Property Act, the relevant contracts were registered by the Registry Agencies. Consequently, the data related to third parties, who were parties to the contract, were accessible in the public register of the Registry Agencies. There was no reason to believe that the orders included personal data different from these specified in the contracts. Consequently, that type of information was public pursuant to a special legal provision-Section VII, Art. 42 and 43 of the Regulations for Registration.

Court Decision:

With a decision on November 22, 2006, a panel of the Regional Court of Burgas repealed the refusal of the mayor of the Municipality of Nessebar and obligated him to provide access to the requested information, excluding the personal data, as specified by § 1, Item 2 from the Additional Provisions of the APIA, that was contained in the documents.

Court Appeal:

The decision of the Regional Court of Burgas was appealed by the mayor of the Municipality of Nessebar in front of the Supreme Administrative Court.

Developments in the Court of Second Instance:

In March 2007, the case was heard in a single court session and scheduled for judgment.

A new court decision is pending.

6. The Bankia Civil Association vs. the Mayor of the Bankia District Administration - Municipality of Sofia

First Instance-administrative case No. 3348/2005, Sofia City Court, Administrative Division, Panel III-A

Request:

In August 2005, the Chairperson of the Bankia Civil Association submitted a request for access to information to the mayor of the Bankia District Administration - Municipality of Sofia. He demanded access to public information and copies of documents that were specified in five points:

- A copy of the contract between the Bankia District Administration and BKS-Ivan Ivanov Ltd about „Landscaping in the Territory of the Bankia District“ and the attachments defining the prices of different types of activities, the amount of additional costs, hourly payment rates and profits;
- An excerpt from accounting records about the amount of money allocated for the landscaping of the Bankia District for the period 2004-2005;
- Copies of reports on landscaping activities completed by BKS-Ivan Ivanov Ltd in 2004 and 2005;
- Invoices for completed landscaping activities for 2004 and 2005; and
- An excerpt from accounting records about costs incurred for the landscaping of the Bankia District in 2004 and 2005.

Refusal:

With a letter to the requestor, the administrative body expressed doubts about the status of the civil association as to who its founders and its representatives were, what the purpose of its establishment was, and whether all members were acquainted with the request. It was argued that the provision of the information requested would violate the rights of the subcontractors due to disclosure of commercial information and would create an opportunity for the unlawful processing of the information, which was protected against by Art. 27, Para. 2, Item 3 of the APIA. Consequently, Art. 27, Para. 2 of the APIA was applicable to the case: access should be granted in a form decided by the respective agency.

Complaint:

The refusal was challenged before the Sofia City Court (SCC). Arguments about the violation of the law by the mayor were set forth. He requested that the complainant prove the legal status of the association. The APIA does not require the requestor to present a status identification document when submitting a request for access to information. According to the constitutional norm on which the APIA was based, EVERYBODY has the right of access to information. It was also argued that the mayor had not respected the provision of Art. 31 of the APIA, since he had assumed that the information requested affected a third party's interest (the contractor's) yet he had not sought their consent for the disclosure. At the same time, the possibility introduced by Art. 31, Para. 4 of the APIA, which concerns provision of information in a manner that would not affect the rights of a third party, had not been taken into account.

Developments in the Court of First Instance:

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

Court Decision:

With a decision on May 2, 2006, the SCC repealed the refusal of the mayor of the Bankia District Administration to provide access to public information and returned the request back to the mayor for reconsideration of his decision in compliance with the instructions given by the court. In their judgment, the justices stated that it was not made clear why the administrative body had assumed that the disclosure of the documents would create an opportunity for the unlawful processing of the information. If the body deemed that the disclosure would have affected the rights of the subcontractors by disseminating commercial secrets, then the provision in Art. 31, Para. 1 of the APIA had to be enforced. In this case, the mayor of the Bankia District Administration was obliged, pursuant to Art. 31, Para. 2 of the APIA, to seek the consent of the third party to whom the information was related. No data evidenced that such actions had been undertaken, which proved the unlawfulness of the refusal.

The decision was not appealed and came into effect.

8. Dimitar Dimitrov and Plamen Simeonov vs. The Chief Prosecutor's Office of the Republic of Bulgaria

First Instance-administrative case No. 4119/2003, Sofia City Court, Administrative Division, Panel III-E

Second Instance- administrative case No. 12016/2005, Supreme Administrative Court, Fifth Division

Request:

The beginning of this case was marked by the publication of an open letter by Mr. Edwin Sugarev in the media as of November 5, 2002. In the letter, Sugarev accused the Chief Prosecutor of misuse of power, fighting with his subordinates, pressure on the media, etc. As a result of these public accusations, the Supreme Judicial Council (SJC) collected evidence and investigated the case in the end of 2002. As a result, the SJC adopted a decision that ascertained the violations committed by the Chief Prosecutor. As part of their decision, the SJC proposed that the Chief Prosecutor resign from his position. Subsequently, in the beginning of 2003, thirty-one citizens submitted a petition demanding that the Chief Prosecutor Nikola Filchev comply with the SJC's proposal and resign from his position. The petition was registered with the Record Management Department at the Supreme Cassation Prosecutor's Office. When the petition was submitted, a prosecutor informed the citizens that a case file would be established and a decision would be made „within the legally prescribed period of 20 days.“ Three months passed, yet the citizens did not receive any information about the fate of the case file. All the citizens' attempts to obtain such information were unsuccessful. In May 2003, two of these 31 citizens, Mr. Dimitar Dimitrov and Mr. Plamen Simeonov, submitted a request for access to public information under the procedures of the APIA to the Chief Prosecutor. They demanded access to information, which was specified in five points. Four of these points requested access to information related to the proposals for Filchev's resignation set forth by the citizens' petition and the decision of the SJC, while the fifth requested a copy of the *Rules for Organization and Activities, as well as Record Management, at the Chief Prosecutor's Office Administration*.

Refusal:

The Chief Prosecutor's silent refusal followed the submission of the request.

Complaint:

A complaint against the silent refusal of the Chief Prosecutor was submitted. The complaint was submitted through the Chief Prosecutor's Office (pursuant to the Administrative Procedures Act) to the Sofia City Court. Instead of sending the complaint to the court, the Prosecutor's Office returned it to the complainants notifying them that the information requested did not fall in the scope of the Access to Public Information Act. That necessitated the sending of a letter with the attached request, the complaint, and the refusal of the Prosecutor's Office to send the case file to the court. Only then did the SCC start proceedings.

Developments in the Court of First Instance:

At the first hearing of the case by a panel of SCC, judges stayed the proceedings and sent the case to the Supreme Administrative Court (SAC), arguing that it fell under the SAC's jurisdiction. Several months passed before the SAC heard the case and returned it to the jurisdiction of the SCC, as was correct, since the decisions of the Chief Prosecutor are subject to the SCC (*Ruling No. 4492 of May 18, 2004, administrative case No. 160/2004, SAC, Fifth Division*).

The SCC stayed the proceedings again with the argument that the silent refusal was not subject to appeal under the APIA, since such appeals against silent refusals were not explicitly provided for by a special law, namely, the APIA. The ruling to stay the proceedings was appealed before the SAC. Several court decisions by SAC panels had concluded that silent refusals were subject to appeal, the Administrative Procedures Act (APA) being analogically applied in such cases. The APA provided for the possibility of such an appeal. The fact that a special provision concerning silent refusal was missing could not result in citizens' deprivation of access to justice, since such a hypothesis would have made the existence of the APIA pointless. The SAC again repealed the SCC's ruling to stay the proceedings and returned the case for a hearing on its merit (*Ruling No. 9942 of November 29, 2004, administrative case No. 9884/2004, SAC, Fifth Division*).

On May 17, 2005, the SCC heard the case during a closed session (arguing that „this was necessary due to the nature of the case“) and scheduled it for judgment.

Court Decision:

With a decision on June 12, 2005, a panel of the SCC dismissed the complaint. The court panel assumed that the information requested in four of the points specified in the request (which asked when the Chief Prosecutor received the proposal for his resignation from the Supreme Judicial Council and the citizens' petition and what his response was to these proposals) did not constitute public information under the APIA and instead affected personal data, which fell within the scope of the Personal Data Protection Act (PDPA). With regard to the request for the rules for the organization and activities of the Prosecutor's Office, the decision stated that the provision of Art. 12 of the APIA had to be applied and complainants could obtain access through the promulgation of the requested documents. The fact that such rules had not been promulgated at the moment of the submission of the request, nor at the moment of the delivery of the court decision was not even mentioned.

Court Appeal:

The decision of the SCC was appealed before the SAC. The appeal argued that the information requested and specified in the four points had been related to the Chief Prosecutor in his capacity as a judicial body (pursuant to Art. 126 of the Constitution of the Republic of Bulgaria and Section VII of the Judicial Power Act) and not as a physical person, i.e. Mr. Nikola Filchev. Pursuant to Art.1, Para. 1 of the PDPA, the law provided for the protection of the rights of individuals with regard to the processing of their personal data, as well as the access to these data. It was emphasized that the purpose of the PDPA was completely different - namely, to guarantee the right of privacy.

Developments in the Court of Second Instance:

The case was heard in an open session in April 2006 and scheduled for judgment.

In written notes to the court, the complainant pointed out that the *Rules for Organization and Activities at the Chief Prosecutor's Office Administration* had been published in issue 7 of the State Gazette as of 2006. These circumstances did not support the prosecutor's claim that the rules for organization and activities of the prosecutor's office had not yet been issued at the moment of the request's submission. Furthermore, such a claim did not have the characteristics of an official statement from the Prosecutor's Office. It was made as part of an argument in the context of the defense of a particular case. In this regard, the promulgation of the prosecutor's office rules in the State Gazette only proved that the rules were public and that no grounds for refusal of access to information existed. Consequently, the complainant had the right to receive a copy of the rules for the activities of the Prosecutor's Office at the time of the request's submission. In the case that those rules did not exist at the time of the request's submission, the complainant had the right to receive a relevant response.

Court Decision:

With decision No. 8412 of July 31, 2006, a SAC panel upheld the decision of the Sofia City Court, endorsing its judgment entirely. The conclusion of the justices was: „The information demanded with the request for access does not constitute information related to public life. Its provision would allow citizens to form their own opinion about the way the Chief Prosecutor acts by his personal assessment, although indirectly related to the fulfillment of his official duties.“

8. The Environmental Association For the Earth vs. The Ministry of Environment and Waters

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

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

Request:

In July 2004, the Environmental Association *For the Earth* submitted a written request for access to information to the Ministry of Environment and Waters (MOEW). The organization demanded access to three categories of information regarding a project

financed through the ISPA programme of the EU, through the European Investment Bank, and through the European Bank for Reconstruction and Development. The requested categories of information were as follows:

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

Refusal:

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

Complaint:

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

Developments in the Court of First Instance:

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

Court Decision:

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

Court Appeal:

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

Developments in the Court of Second Instance:

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

Court Decision:

With decision No. 4239 of April 20, 2006, a panel of the Supreme Administrative Court upheld the decision of the SCC. In their judgment, the justices pointed out that the SCC had correctly assumed that the refusal had been unlawful since the requested information was not related to preparatory work on the documents (i.e. the EIA decisions), pursuant to Art. 13, Para. 2, Item 1 of the APIA. In order to have no significance of its own, the requested information should contain opinions, recommendations, and statements prepared by or for the body, which are meant to be used for the preparation of a final decision. Public discussions, held under the provision of the Environmental Protection Act (EPA), were an independent phase in the procedure for the adoption of EIA decisions by the competent body. That was why the records from these discussions did not possess the characteristics of preparatory documents prepared by a subordinate body and as part of the procedure for the adoption of the final act. It was also emphasized that the records from the public discussions included statements and positions that had been publicly expressed by the participants. Considering that the requested information was public with regard to the purpose of its creation and the manner of its dissemination, the grounds stated by the obliged body that its disclosure would harm the interests of third parties who had not given their consent were unjustified and had no basis in the legal regulations.

The court panel also remarked that the provisions in Art. 102 of the EPA defined the principle of publicity of information about EIA procedures, including public discussions. The right of access to the information related to decisions on environmental issues should not be restricted beyond the cases provided by Art. 20 of the EPA.

9. The Environmental Association *For the Earth* vs. The Mayor of the Municipality of Sapareva Bania

First Instance-administrative case No. 201/2006, Regional Court of Kyustendil
Second Instance-administrative case No. 2591/2007, Supreme Administrative Court,
Third Division

Request:

On May 23, 2006, the Environmental Association *For the Earth* submitted a request for access to information to the mayor of the Municipality of Sapareva Bania. They demanded access to information contained in the Urban Development Draft Plan and the Environmental Assessment Report on the Panichishte-the Lakes-Kabul Peak Tourism and

Ski Center. The indicated form of access preferred by the requestor was paper copies or on a technical carrier.

Refusal:

With a written decision as of May 30, 2006, the mayor of the Municipality of Sapareva Bania refused to provide copies of the Urban Development Draft Plan and the Environmental Assessment Report on the Panichishte-the Lakes-Kabul Peak Tourism and Ski Center. The grounds stated in the refusal were that under the *Instructions for the Procedure for Conducting Environmental Assessment of Plans and Programs*, the municipality, in its capacity as a contractor, had already provided public access to the requested information during the public discussion that had been organized. The decision went on to state that at the present moment there was not any legal requirement for the provision of copies of the two documents to other persons different from the competent body that had issued a statement on the environmental assessment.

Complaint:

The mayor's refusal was challenged before the Regional Court of Kyustendil. The main argument in the complaint was that the requested information - the Urban Development Draft Plan and the Environmental Assessment Report on this Plan - were environmental information pursuant to Art. 19 of the Environmental Protection Act (EPA). Access to that type of information was granted under the procedure stipulated by Section II „Environmental Information“ of the EPA and the Access to Public Information Act (pursuant to Art. 26, Para. 1 of the EPA).

It was also argued that the fact that the information had already been made public could not be in any way grounds for the restriction of the right of access to information, since the exemptions to that right were exhaustively listed in Art. 20, Para. 1 of the EPA. On the contrary, such circumstances indicated that the requested information was public and access to it should not be restricted.

Developments in the Court of First Instance:

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

Court Decision:

With a decision as of December 21, 2006, a panel of the Regional Court of Kyustendil repealed the refusal of the mayor and returned the request back to him for reconsideration. In their judgment, the justices assumed that the mayor's refusal was unfounded since it had not stated any grounds for refusal stipulated by the APIA. Furthermore, the mayor had not differentiated between the procedure for public discussion under the *Instructions for the Procedure for Conducting Environmental Assessment of Plans and Programs* and the procedure for the provision of public access to information under the APIA.

Court Appeal:

The decision of the Regional Court of Kyustendil was appealed by the mayor of the Municipality of Sapareva Bania before the Supreme Administrative Court.

Developments in the Court of Second Instance:

A hearing of the case was scheduled for September 2007.

10. Non-Governmental Organizations Center Razgrad vs. the Municipality of Razgrad (Advertisement in *Duma* newspaper)

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

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

Request:

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

Refusal:

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

Complaint:

The refusal was challenged before the Regional Court of Razgrad.

Developments in the Court of First Instance:

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

Court Decision:

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

Court Appeal:

The decision was appealed before the SAC with the argument that the Regional Court of Razgrad had wrongly judged that the requested information was not public. The definition of public information was given by Art. 10 and 11 of the APIA; furthermore, the SAC itself had ruled in a number of decisions that information contained in contracts between the state or a municipality and a private company was public. The complaint argued that the requested information did not constitute a commercial secret pursuant to the provisions of the Fair Competition Act. Thus, the dissent expressed by the third party was irrelevant. It also stated that the spending of public money by public bodies should be transparent in a democratic society, it being of no importance whether it was spent for reconstruction, construction, official trips, or advertisement in the press.

Developments in the Court of Second Instance:

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

Court Decision:

With decision No. 1299 of February 2006, a panel of the Supreme Administrative Court upheld the decision of the Regional Court of Razgrad. In their judgment, the justices assumed that the requested information was public - more precisely, it was official public information pursuant to Art. 11 of the APIA. However, the refusal had been lawful since it was obvious from the applied evidence that the third party - the subcontractor - had expressed its explicit dissent for the provision of the requested information about the amount of money paid for the advertisement.

It remains unclear what the third party's interest (i.e. that of *Duma* newspaper) is which is being protected by the refusal. Even the court panel of the SAC emphasized that the complainant, who had the advertisement price offer (which is publicly accessible) for the respective print media and was acquainted with the advertisement published in *Duma* newspaper, could have calculated the amount of money paid by the advertiser by a simple arithmetic operation, which would have satisfied the interest of the complainant.

11. The Non-Governmental Organizations Center Razgrad vs. the Municipality of Razgrad (Waste Management Concession)

First Instance-administrative case No. 104/2005 Regional Court of Razgrad
Second instance-administrative case No. 3112/2006, Supreme Administrative Court, Fifth Division

Request:

With a written request as of June 7, 2005, the chairman of the Non-Governmental Organizations Center in the town of Razgrad demanded that the mayor of the Municipality of Razgrad provide access to the following information:

- Copies of all annexes to the waste management concession contract in the town of Razgrad and all settlements within the territory of the Municipality of Razgrad, which had been signed between the Municipality of Razgrad and Shele Bulgaria Ltd; and
- information about the money paid monthly in the process of contract fulfillment until the present moment.

Refusal:

In a written decision, the mayor of the municipality refused to provide access to the requested information. The mayor assumed that the requested information affected the interests of a third party (the subcontractor) who had not given an explicit written consent for the disclosure of the requested information as provided by Art. 31, Para. 1 of the APIA.

Complaint:

The refusal was challenged before the Regional Court of Razgrad (RCR).

Developments in the Court of First Instance:

The case was heard in an open court session and scheduled for judgment.

Court Decision:

With decision No. 191 of January 10, 2006, a panel of the Regional Court of Razgrad dismissed the complaint concluding that the contractor was not an obliged body under Art. 3, Para. 2 of the APIA, thus the public body had lawfully applied the procedure provided by Art. 31, Para. 1 of the APIA. After the explicit statement of the third party that the requested information was a company secret and that it affected its economic interests, the obliged body had to comply with that dissent to information disclosure.

Court Appeal:

The decision of RCR was appealed before the SAC. The appeal stated that the RCR had to take into consideration the fact that in the particular case there were circumstances that did not require the third party's consent and in which certain information was public according to a special legal provision. In such cases, the special law derogated the common one (Art. 31 of the APIA). In the current case, the municipal budget was public and its allocation was controlled by the local community according to the Municipal Budget Act (MBA). Pursuant to Art. 30, Para. 4 of the MBA, the annual report on the implementation and conclusion of the municipal budget was not only accessible to everyone, but was also subject to public discussion. Since the submitted request demanded information about money paid from the budget of the Municipality of Razgrad, the information requested was public and thus should be provided without the consent of the third party.

Developments in the Court of Second Instance:

The case was heard in an open court session and scheduled for judgment.

Court Decision:

With decision No. 8190 of July 20, 2006, a panel of the SAC repealed the decision of the RCR and returned the case back for reconsideration in compliance with the instructions given by the court decision. In their judgment, the court panel emphasized that in judging the nature of the information requested, the first instance court had wrongly assumed that it constituted a commercial secret, when in fact it had not applied the relevant legal provisions, which categorized the information as public. Thus, under the Municipal Property Act (MPA) and the Concessions Act, the data about concession contracts and their main characteristics were public, which was why exemptions for commercial secrets and third party's interests could not be applied to that type of information. It was also emphasized that in the current case priority must be given to the principle of transparency and publicity of activities financed with money from the municipality budget, the former being collected as a garbage tax from citizens. The court panel concluded that the mayor of the municipality had unlawfully taken the requirement for the protection of the company's interests as the leading principle. He had thus disrespected a legal rule about public accessibility of data related to the waste management in cases in which expenses were covered with municipal budget money collected from taxes on citizens within the territory of the municipality. In considering the request for access to public information

about a waste management concession, the mayor should have provided access to the requested data, since they were legally defined as publicly accessible.

12. The Non-Governmental Organizations Center Razgrad vs. the Municipality of Razgrad (Mayor's Per Diems)

First Instance-administrative case No. 1/2006, Regional Court of Razgrad

Second Instance-administrative case No. 5319/2006, Supreme Administrative court, Fifth Division

Request:

With a written request for access to information, the chairman of the Non-Governmental Organizations Center in the town of Razgrad demanded from the mayor of the Municipality of Razgrad access to the following information:

- number, purpose, and duration of the official trips, as well as the expenses incurred in the country and abroad by Mr. Venelin Uzunov, Mayor of the Municipality of Razgrad since 1991 until the moment of the request submission.

Refusal:

No response was received within the legally prescribed period of 14 days.

Complaint:

The silent refusal of the mayor of the Municipality of Razgrad was challenged before the Regional Court of Razgrad (RCR).

Developments in the Court of First Instance:

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

Court Decision:

With decision No. 19 of March 10, 2006, a panel of the RCR dismissed the association's complaint, arguing that the complainant had requested access to information that was not public under the definition of Art. 2, Para. 1 of the APIA and constituted personal data. The court panel concluded that most of the data were not available due to the expiration of the legally prescribed period for storing such kind of data under the Accounting Act.

Court Appeal:

The decision of the RCR was appealed before the SAC. The appeal stated that information about the number, purpose, and the duration of the official trips, as well as the expenses incurred, by the mayor of the municipality of Razgrad was requested. Such data could not be defined as personal data under Art. 2 of the Personal Data Protection Act (PDPA), since they did not pertain to a physical person but rather to the fulfillment of official functions by the mayor of a municipality. The content of the information requested, which regarded mainly the activities of an executive body within the municipality, is classified as official public information under Art. 11 of the APIA. The complainant also argued that the legislation (State Archive Fund Act) introduced clear rules for document

management within state institutions and that the process of storage, archiving, and destruction of documents is not left to the free will and subjective judgment of public officials. For these reasons, the unfounded statement that the documents that contained the information requested were not kept in the municipality was not sufficient to motivate a refusal for access to public information.

Developments in the Court of Second Instance:

The case was heard in an open session and scheduled for judgment.

Court Decision:

With decision No. 9097 of September 21, 2006, a panel of the SAC repealed the decision of the RCR and returned the case to the mayor with instructions to grant access to the requested information in accordance with the documents available in the municipality. In their judgment, the justices stated that the regional court had wrongly and in violation to the law assumed that the complainant sought access to information that was not public under Art. 2, Para. 1 of the APIA. The data requested were not personal pursuant to Art. 2, Para. 1 of the PDPA since they did not pertain to the physical person Venelin Uzunov and their disclosure would not identify him as such. The particular case pertained to the fulfillment of official duties by Uzunov as mayor of the Municipality of Razgrad. Information about that the fulfillment of such duties would give citizens the opportunity to form their own opinion about the activities of the executive body within the municipality, which is an obliged body under the law. For these reasons, the court panel declared that the requested information should be classified as official public information under Art. 11 of the APIA. It was also stated that no proof was presented as which part of the requested accounting documentation for the last 15 years was available and what part had been destroyed pursuant to the terms prescribed by Art. 42 of the Accounting Act. Therefore, such grounds for the formulation of the appealed refusal could not substantiate its lawfulness.

13. The Non-Governmental Organizations Center Razgrad vs. the Municipality of Razgrad (Information about Members of the Municipal Council)

First Instance-administrative case No. 2/2005, Regional Court of Razgrad

Second Instance-administrative case No. 4365/2006, Supreme Administrative Court, Fifth Division

Request:

On October 12, 2004, Georgi Milkov, chairman of the Non-Governmental Organizations Center in the town of Razgrad, submitted a request to the mayor of the Municipality of Razgrad demanding the following information:

- an updated list, as of April 1, 2004, of the members of the municipal council serving terms from 2003-2007, including their names, addresses, educational backgrounds, work places and work telephone numbers.

Refusal:

No response was received within the legally prescribed period of 14 days.

Complaint:

The silent refusal of the mayor of the Municipality of Razgrad was challenged before the Regional Court of Razgrad (RCR).

Developments in the Court of First Instance:

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

Court Decision:

With decision No. 21 of March 9, 2006, a panel of the RCR dismissed the complaint, stating that the requested information did not constitute public information under the APIA since the list would not help the requestor to form his own opinion about the activities of the members of the municipal council of the town of Razgrad. Thus, the court panel reached the conclusion that the requested information constituted personal data and that for their disclosure the consent of the particular persons had to be sought under the procedure provided by the Personal Data Protection Act (PDPA).

Court Appeal:

The decision of the RCR was appealed before the Supreme Administrative Court (SAC). The appeal stated that the information requested (an updated list, as of April 1, 2004, of the members of the municipal council serving terms from 2003-2007, including their names, addresses, educational backgrounds, work places and work telephone numbers) could not be defined as personal data under the provision of Art. 2 of the PDPA, since these data did not pertain to any physical person but rather to the fulfillment of official duties by the members of the municipal council. Therefore, the information requested concerned the activities of a local governmental body only and was public in nature, hence access to it should not be restricted.

Developments in the Court of Second Instance:

The case was heard in an open court session and scheduled for judgment.

Court Decision:

With decision No. 9098 of September 21, 2006, a panel of the SAC upheld the decision of the RCR. In their judgment, the justices stated that the regional court had rightly and lawfully assumed that the complainant did not request information that was public under the provision of Art. 2, Para. 1 of the APIA. Undoubtedly, there was no obstacle to the requestor's receiving a list of the names of the members of the local parliament, which was public and which was provided by the chairman of the Municipal Council. There was also no legal restriction on the disclosure of statistical data about the educational backgrounds and professions exercised by the members of the municipal council, as long as such data did not associate data with particular names. Thus, the purpose of the law, i.e. namely to allow citizens to forming their own opinions about the activities of the obliged body of local government, could be fulfilled under such circumstances. The data requested by the Center about each member of municipal council (including educational background, address, work place, and work telephone) would not help in the forming of such an opinion. In practice, it would lead to the identification of the physical persons - members of the municipal council - by the disclosure of personal data about them. The PDPA provided for a special procedure for the seeking, storage, and dissemination of personal data. Free access to such data was explicitly excluded from the provision of Art. 2, Para. 3 of the APIA. As far as the interests of these persons were affected, if they had

not given written consent for the disclosure of the information (under the condition that it was public), that constituted a ground for a refusal in compliance with Art. 37, Para. 1, Item 3 of the APIA.

14. Silvy Yotova (*Novinar Newspaper*) vs. the Ministry of Regional Development and Public Works (MRDPW)

First Instance- administrative court case No. 6363/2005, Supreme Administrative Court, Fifth Division

Second Instance-administrative case No. 7669/2006, Supreme Administrative Court, Five-member panel of SAC

Request:

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

Refusal:

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

Complaint:

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

Developments in the Court of First Instance:

Meanwhile, the concession contract was provided to the Access to Information Programme (AIP) by the new Minister of Regional Development and Public Works. The journalist's right of access to information, however, has yet to be respected, since the analyses done under the Concessions Act were not made available publicly.

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

Court Decision:

With decision No. 5451 of May 22, 2006, a panel of the Supreme Administrative Court repealed the refusal of the minister and sent the case file back to him for a decision based on the case's merit. In their judgment, the court panel stated that access to information that could be defined as public under the provision of Art. 2, Para. 1 of the APIA had

been demanded with the request. The requested concession contract contained information about the conditions under which the state had established the right of exploitation of an object that was exclusive state property. That information was related to public life, thus its provision would allow citizens (in this case through the mass media) to form their own opinions about the way the state body authorized to sign contracts had fulfilled its assigned tasks. In deciding that the public information requested had to be protected since it constituted an administrative secret, the minister had not founded that decision on a law that would define the information as such, nor on a personally approved list of categories of information subject to classification as administrative secrets within the structure of the Ministry of Regional Development and Public Works. The grounds stated by the Minister of Regional Development and Public Works were too broad and could not be defined as justifiable grounds for the issuing of the administrative act.

Court Appeal:

The decision of the SAC was appealed by the Minister of Regional Development and Public Works before a five-member panel of the same court.

Developments in the Court of Second Instance:

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

Court Decision:

With decision No 10731 of November 1, 2006, a five-member panel dismissed the Minister's appeal and upheld the decision of the lower instance court. Given the absence of data in support of the minister's statement that the information was classified under the provision of Art. 26 of the Protection of Classified Information Act (PCIA), the court did not have the opportunity to check its validity. The mere statement that the information contained in the concession contract signed between the Minister of Regional Development and Public Works and Highway Trakia JSC and the analyses under the provision of Art. 6, Para. 2 of the Concessions Act (repealed) fell under a category that constituted administrative secret was not sufficient to identify the information as such. The refusal by the body obliged under Art. 3, Para. 1 of the APIA stated only that the information belonged to a particular category pursuant to Art. 26 of the PCIA, but did not state the criteria and the grounds on the basis of which the requested public information had been identified as an administrative secret. That fact did not allow the court to exercise efficient control on the lawfulness of the refusal for the provision of that information.

15. Hristo Hristov vs. The National Intelligence Services

First Instance - administrative court case No. 687/2005, Sofia City Court, Panel III-g
First Instance - administrative court case No. S 31/2005, Sofia City Court, Panel III-g
Second Instance-administrative case No. 3C-321/2006, Supreme Administrative Court, Fifth Division

Request:

At the end of 2004, a journalist from Dnevnik newspaper, Hristo Hristov, submitted a request to the Director of the National Intelligence Services (NIS). Mr. Hristov demanded access to documents from the Archive of the First Bureau (the Intelligence Office) of the

former State Security Services from the period 1971-1979. He requested the information for the documentary book he was writing about the murder of the dissident writer Georgi Markov in London in 1978.

Refusal:

No response to the request was received within the legally prescribed period of 14 days.

Complaint:

The silent refusal was challenged before the Sofia City Court (SCC). Besides offering arguments about the unlawfulness of the refusal, the complaint stated that the journalist had already obtained access to and studied the archives of the Ministry of Interior, the Ministry of Foreign Affairs, the State Archive, and the Supreme Cassation Court. Furthermore, Mr. Hristov had published on the topic many times before, which justified his request for access.

Developments in the Court of First Instance:

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

At the second session, the representative of the defendant claimed that he did not know whether the requested information existed in the archive of the National Intelligence Services (NIS), since they could not find it in the files of documents they held. The lawyer of the complainant insisted that Supreme Administrative Court practices had shown that a mere statement unaccompanied by evidence that a certain document cannot be found is not sufficient grounds for a refusal of access to information. In such cases, the respective administrative body should provide evidence that the document has been destroyed after a decision by an expert commission; or that it had been archived and data had been given allowing it to be traced; or that it had been lost and a protocol verifying its loss had been issued.

The case was scheduled for judgment.

Court Decision:

With a decision on March 14, 2006, a panel of the Sofia City Court (SCC) repealed as unlawful the silent refusal of the Director of the NIS to provide the requested information and obligated the Director of the NIS to provide access to the requested information after applying the mandatory procedure for declassification of the information under the Protection of Classified Information Act (PCIA). The court found the objection of the defendant that he was not an obliged body under the provision of Art. 3 of the APIA unjustified, citing the provision of Sect.1, Item 1 of the Additional Provisions of the PCIA pursuant to which the NIS is identified as *security services*. However, in formulating that definition, the law does not exclude the competence of the body as a state body, stipulated by Art. 3 of the APIA, for which the obligation under the APIA was absent.

In relation to the arguments presented during the court proceedings by the representatives of the NIS regarding the reason why they claimed that access to the requested information should not be provided since it had been classified as a state secret, the court stated the following:

It was obvious from the evidence presented at the proceedings that on the first page of each of the requested documents there was a „Top Secret“ stamp with dates of classification falling within the period of 1971 - 1979. Given the provisions of Art. 41, Para 4 of the APIA, the court was entitled to exercise control on the security stamp markings. The implementation of that provision had been hampered, since the body which had done the respective classification did not legally exist. The documents were issued by subdivisions of the former State Security Services, which did not fall under the list of *security services* in Sect. 1, Item 1 of the PCIA. The documents were created and classified as protected information before the PCIA came into effect. Therefore, in the current case the provision of Sect. 9, Item 1 of the Final and Transitional Provisions of the PCIA should be applied, under which the documents created before the law came into effect and marked with a "top secret" stamp were deemed marked with a „secret“ classification level. The classification terms were calculated pursuant to Art. 34, Para. 1 of the PCIA and were counted from the creation of the documents. Consequently, all documents requested for the period 1971-1979 should be reviewed for expired terms under the PCIA: 30 years for documents stamped „top secret of particular importance,“ and 15 years for „top secret“ documents.

The court found that no evidence was presented that the administrative body had fulfilled the requirement of Sect. 9, Para. 2 of the Final and Transitional Provisions, which stipulated that all heads of administrative structures are obliged to bring all documents containing classified information into compliance with the law and the regulations for its implementation within one year after the PCIA came into effect.

The provisions of Art. 34, Para. 3 of the PCIA stipulate that after the expiration of the above-stated terms for protection, the level of classification should be removed and access to the information should be realized under the procedures of the APIA. Art. 33, Para 2 of the PCIA stipulates that within one year after the expiration of the classification term, the information should be sent to the State Archive Fund.

According to the justices, the silent refusal by the Director of the NIS to provide access to public information should be repealed as unlawful and the body should be obligated to provide the requested information on the grounds of Art. 41 of the APIA, following the legally prescribed procedure for declassification.

Court Appeal:

The decision of the SCC was appealed by the Director of the NIS before the SAC.

Developments in the Court of Second Instance:

In February 2007, the case was heard in a closed session and scheduled for judgment.

A court decision is pending.

Access to Information in Bulgaria 2006
Report

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ACCESS TO INFORMATION PROGRAMME



The AIP foundation was established on October 23, 1996 in Sofia, Bulgaria. The AIP founders are journalists, lawyers, sociologists and economists who work in the area of human rights. They joined efforts to promote the right to information and initiate a public debate on relevant issues.

AIP is a member of the international Freedom of Information Advocates Network (FOIA Net).

In 2005 Access to Information Programme received two of the most prestigious awards for establishing the principles of freedom and market economy from the Atlas Economic Research Foundation: the *Templeton Freedom Prize for Ethics and Values* and the *Institute Excellence Award*.

AIP Mission:

The AIP mission is to facilitate implementation of Article 41 of the Bulgarian Constitution which establishes the right to information:

- (1) Everyone shall be entitled to seek, receive and impart information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality.*
- (2) Citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or official secret and does not affect the rights of others.*

Goals:

AIP encourages individual and public demand for government held information through civic education in the right-to-know area.

AIP works for transparency of government at different levels, advocating for better supply of public information.

AIP facilitates the exercise of the right to access public information.

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