



ACCESS TO INFORMATION PROGRAMME

**ACCESS
TO INFORMATION
IN BULGARIA**

2007

SOFIA 2008

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ACCESS TO INFORMATION
PROGRAMME

Access to Information in Bulgaria 2007 Report

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CONTENT

FOREWORD	5
PROBLEMS IDENTIFIED IN THE FREEDOM OF INFORMATION AREA AND RECOMMENDATIONS FOR THEIR SOLUTION	7
LEGISLATIVE CHANGES RELATED TO ACCESS TO PUBLIC INFORMATION IN 2007	9
Introduction	9
Draft Amendments to the Access to Public Information Act in 2007	10
Public Register Legislation	12
Access to Public Information Under the Regulation of Specialized Legislation	13
Legislation Related to the Exemptions to the Right of Access to Information	15
ACTIVE PROVISION OF INFORMATION BY THE INSTITUTIONS OF THE EXECUTIVE POWER	17
Methodology	17
Survey outcomes	19
CASE STUDIES	34
Introduction and General Characteristics	34
Specific Cases Emblematic for Groups of Problems in Receiving Information	37
Existing Practices in APIA Implementation	39
APPENDIX	
Statistics from the electronic database	
Access to Information Programme	43
LITIGATION	45
APPENDIX	
Litigation - Case Notes	49

FOREWORD

„...good administrative practices do not guarantee their own sustainability. Changes in the political leadership frequently result in the alteration of good practices, and sometimes in their elimination.

This issue raises the question of beginning the work on the amendments to the Access to Public Information Act. It is necessary that we remember the principles on which the legislation was grounded. These are principles which should become part of the policies and which should not be constantly endangered. These principles are related to the foundations of a democratic society.“

*Access to Information in Bulgaria 2005
AIP, Sofia 2006*

Access to Information Programme (AIP) presents its annual report *Access to Information in Bulgaria 2007*.

It is well known that pursuant to the Bulgarian Access to Public Information Act, which was adopted in 2000, statistical data about the information requests submitted to the executive bodies during the past year are published in the annual report of the Minister of State Administration and Administrative Reform on the work of the public administration. Since 2001, in a specific section of the report, one can find more and more details about the requests submitted, the grounds for refusal, related features of particular administrative structures, etc.

Since the adoption of the Access to Public Information Act, Access to Information Programme has been making an evaluation of its implementation in its annual reports from a bit different perspective. The evaluation of the legislation, the implementation practices and the review of the litigation is from the point of view of the other part of the process - that of the seekers of access to public information.

These two reports usually present the complete picture of the developments in the access to information area in Bulgaria.

In 2007, legal help and the analysis of the legislation, which are permanent activities of the Access to Information Programme team, were strongly affected by advocacy work and freedom of information campaigns ran in the following directions:

- Discussions with state officials responsible for access to information provision within the respective institutions for the improvement of the active provision of public information online;
- Round tables in the country with representatives of nongovernmental organizations with regard to the problems they face in searching and accessing information and the possible ways of overcoming them;
- Campaign against the proposed negative amendments to the Access to Public Information Act and other legislative amendments;
- A memorandum, adopted at the National Round Table *Advocacy for Free Access to Information*.

The report on access to information reflects these discussions and campaigns to the highest extent. Like all previous reports, the current one starts with recommendations to the legislative and executive powers. Analysis follows the traditional structure set forth by the previous reports.

The first part of the report presents an analysis of the legislative amendments with regard to the access to public information. Some positive changes in the legislation regulating public registers of high public interest are pointed out. Amendments to the Public Disclosure of Property Owned by High Government Officials Act, for example, entitled everyone to access to the register of high government officials' asset declarations. Amendments to the Company Register Act also provide for maximum publicity of the data contained in it.

As a positive development, we point out the amendments to the Statutes Act with regard to the obligation for publication of draft regulations and the reasons behind the respective proposals online. We think that proper conditions shall be created for the implementation of the Access to the Documents of the Former State Security Services Act, and also indicate the positive developments in this regard.

At the same time, we evaluate as an extremely serious symptom the attempt to deteriorate the access to information legislation. The 2007 events indicate that the culture of secrecy may again prevail in our society. Obviously, the principles of open and accountable government should be brought to practical level in order not to remain mere claims. If a culture of transparency is to be established, apparently the protection of secrets cannot be the priority

The second issues which 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 2008, the AIP team conducted a special monitoring study for the third 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, 2007 and 2008 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. Silent refusals and ungrounded refusals continue to be the most frequent types of refusals. While the protection of the third party's interests is the mostly used exemption among the grounded ones refusals.

The fourth part presents court cases and a short description of the characteristics of court practices during 2007.

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, 2008*

PROBLEMS IDENTIFIED IN THE FREEDOM OF INFORMATION AREA AND RECOMMENDATIONS FOR THEIR SOLUTION

PROBLEMS:

- ❑ Non-fulfillment of institutions' obligation to actively publish public information.
- ❑ Lack of or poor regulation of the procedure of electronic seeking and provision of information.
- ❑ Broad interpretation of the exemptions to the right of information.
- ❑ Wide application of the trade secret exemption, or the general protection of a third party's interest, to the right of access to information.
- ❑ Lack of a system of permanent training sessions for state servants on the Access to Public Information Act (APIA) and implementation practices.
- ❑ Inconsistent and unpredictable changes in administrative and court practices with regard to the APIA.
- ❑ Lack of efficient control over APIA implementation.

The problems listed above contribute to the maintenance of an atmosphere of non-transparency and unaccountability on the part of the public administration before the citizenry.

I. Recommendations regarding legislation:

Amendments to the Civil Servants Act:

- ❑ Introduction of a requirement for civil servants to fulfill their obligations concerning public interest and the principles of openness, responsibility, accountability and predictability in administrative activities.

Amendments to the Access to Public Information Act with regard to the provision of information:

- ❑ Categories of information subject to publication under Art. 14, 15, and 16 of the APIA must be specified.
- ❑ An obligation requiring the publication of the specified categories of information on the Internet site of the respective institution must be introduced.
- ❑ The procedure of electronic submission of a request for access and the electronic provision of information must be regulated.

Amendments to the Access to Public Information Act with regard to exemptions to the right of information:

- ❑ The overriding public interest test for disclosure of information despite the applicability of an exemption (by amendments to Art. 7, Art. 17, Art. 31, and Art. 37 of the APIA) must be introduced.

Amendments to the Access to Public Information Act with regard to the improvement of control over its implementation:

- ❑ Introduction of administrative control over APIA-related decisions.
- ❑ Expanding the responsibility of the Minister of State Administration and Administrative Reform with regard to the implementation of the law; or

- ❑ Establishment of an independent institution (commission), responsible for reviewing complaints and consulting public administration with the goal of better implementation and training on the APIA.

II. Recommendations with regard to legislative implementation

Amendments regarding active publication of information:

- ❑ Every institution must publish online all normative documents (laws, regulations, ordinances, instructions and decisions), related to its activities.
- ❑ Every institution must publish online secondary legislation, regulations, instructions and internal rules related to APIA implementation within the respective institution.
- ❑ Every institution must publish online important individual acts with regard to its activities, i.e. orders, plans and projects being developed, implemented, or overseen by the respective institution.
- ❑ Every institution must publish online updated information about public registers and databases that it maintains.
- ❑ Every institution must publish online its current budget and a report on its implementation.
- ❑ Every institution must publish on its web site documents and information which have been provided by it after access to public information requests.
- ❑ Every institution must publish on its web site all contracts that are completely or partly financed with funds from the state budget or from EU funds.
- ❑ Every institution must publish on its web site all documents related to the evaluation of projects financed under EU programs.
- ❑ Information about committee members who make decisions regarding projects financed under EU programs must be provided after the evaluation procedure has ended.
- ❑ Sanctions for civil servants who do not fulfill their obligations under the APIA must be published on the web site of respective institutions.

Amendments with regard to the provision of access to public information:

- ❑ Possibility for e-submission of requests and e-tracking of requests within the institutions must be introduced.
- ❑ Mandatory training on the right of access to information for officials from the administration must be resumed.
- ❑ Sanctions for civil servants who do not fulfil their obligations under the APIA must be imposed.
- ❑ The obligation for ensuring appropriate form of access to information for disabled people must be fulfilled (Art. 26, Para.4 of the APIA).

LEGISLATIVE CHANGES RELATED TO ACCESS TO PUBLIC INFORMATION IN 2007

Introduction

In 2007, a number of regulations important for the right of access to information were adopted or came into effect. Some of these had the purpose of providing transparency with respect to the greater integrity of high government officials (Public Disclosure of Property Owned by High Government Officials Act) or of guaranteeing easy access to public registers (Company Register Act). The concept of free access to public information for open government, good administration and informed choices for citizens, however, is still not well understood, as certain evidence from the legislative process indicates. Initiatives for legislative changes are still not based on an evaluation of legislative implementation and problems that have emerged in practice. This is the reason why the obligations following from European Community legislation have not been realized or are fulfilled in a formalistic way, with no consideration of the existing situation.

A basic problem that has persisted throughout the years is the lack of overall comprehension of the meaning of transparency and access to public information on the part of public institutions. In a democratic society, public administration has as its main obligations transparency and accountability for its actions. Thus, the principle of administrative openness was stated in the Administrations Act from its very beginning (1998). With the 2006 amendments, the principles were extended to „openness and accessibility,“ „responsibility and accountability,“ „predictability“ - all of these inextricably bound up with issues of public information provision.

At the same time, no necessary legal measures were taken to establish the respective culture of openness. To achieve that purpose, the principles set forth must be implemented via specific obligations for the state official. In Chapter III of the State Official Act, in which the basic obligations are described, the requirements for openness, accountability and predictability are not noted. Simultaneously, the official is entitled „to protect classified information which constitutes a state or administrative secret“ (Art. 25, Para. 1).

It can be concluded that something that exists in principle on the more general level of public administration is not reflected on the more concrete but particularly important level - that of the state official. Conversely, the protection of secrets, which is not promulgated as a principle in public administration (since it is not), in Bulgaria is stipulated as a common obligation for all state officials. In fact, openness and accountability should be respected by all, while the protection of secrets should be limited to appointed officials who have the necessary authorization.

The government and legislative thinking reflected in the above-described paradox is evidence of either the unwillingness or inability to move from a culture of secrecy to a culture of openness. During the period from the end of the 1990s until today, the problem has not yet been appropriately resolved.

This symptomatic lack of understanding leads to the absence of the necessary will to oppose irrelevant proposals for legislative amendments. This situation results in

unpredictability in the legislative process in the access to information area and runs the risk of weakening the system - something that happened in 2007

Draft Amendments to the Access to Public Information Act in 2007

Proposed Amendments

The frequent claim that Bulgarian access to public information legislation has not been the subject of specific, purposeful changes is not valid for 2007. However, the legislative initiative cannot be considered particularly positive. Serious amendments to the Access to Public Information Act (APIA) were initiated by the State Agency for Information Technology and Communications, although they were officially introduced in parliament by three MPs. The initiative was under the aegis of the introduction of a European Directive into Bulgarian legislation - Directive 2003/98/EC of the European Parliament and of the Council on the Re-use of Public Sector Information.

The process of drafting and introducing texts for this fundamental law stemming from Art. 41 of the Bulgarian Constitution was itself nontransparent. Documents that Capital weekly received with the help of the APIA itself revealed that the text of the amendments had been drafted within the 15 days immediately before it was submitted to parliament. No consultations were held with interested members of the public in violation of the provision of Art. 2a of the Statutes Act, which was in effect at that time (it is now repealed). However, the draft law advanced suspiciously quickly through the parliamentary committees. The amendments included:

- Introduction of a new chapter to regulate the access to public sector information;
- Definition of the term „public sector information“ as identical to the existing definition of *public information*¹;
- Right of access to that type of information only to *interested parties*;
- Right of replying to a request within 20 working days (compared to the 14 calendar days for replying to requests for public information);
- Fees for granting access (as opposed to payment covering only actual costs incurred), which considerably exceed the provision costs.

In comparison, according to the APIA adopted in 2000, access to public information is everyone's right. Seekers are under no obligation to prove legal interest and shall be granted information within 14 calendar days from the registration of the submitted request, free of charge. Only actual costs incurred during the provision of the information shall be covered as stipulated by Order No. 10 as of 2001 by the Minister of Finance.

¹ Compare Art. 2, Para. 3 of the already amended Access to Public Information Act: „Public sector information shall be any kind of information materialized on paper, electronic or other carrier, including if it was held as audio or video record, and collected or generated by a public sector organization.“

Public Campaign Against the Draft Amendments to the Access to Public Information Act and Results Achieved

The problematic draft texts were changed in a positive way as a result of an intensive public campaign initiated by the *Access to Information Programme*. It included the submission and presentation of opinion statements in parliamentary committees and at a round table, as well as participation in the relevant debates, a petition that was supported by 1,100 individuals, active support from nongovernmental and international organizations, and a wide media campaign.

As a result of the public campaign, AIP representatives were invited to take part in the discussion of the draft law at the leading parliamentary commission before its second reading. The results of their consideration of AIP's critical comments include:

- Preservation of the title „Access to Public Information Act;“
- Omitting the term „legal interest“ from the draft texts;
- Unification of the time frames and the costs for the provision of „public sector information“ with those for the provision of „public information;“
- Moderation, though not complete elimination, of the freedom of administrative discretion to decide whether to provide parts of a document that contains „public sector information“ (Art. 41 a, Para. 2).

The process of amending the APIA provided an opportunity to introduce (between the first and second readings of the draft law) and adopt amendments that had been discussed and proven necessary for a long time. They established:

- a more effective mechanism for the imposition of administrative sanctions against violation of the law; and
- an obligation for state bodies, as well as for local self-government bodies, to appoint public servants who are directly responsible for the provision of public information and to establish proper reading rooms within six months.

Problems Stemming from the APIA Amendments

Despite the explicit intention to introduce the Directive 2003/98/EC, some amendments to the APIA did not provide measures for its implementation, but rather worked to the contrary - they brought about its violation. For example, „public law organization“ is defined as a legal person, established to satisfy public interest and which does not perform commercial or production-related activities. One requirement stipulated by the Directive whose transposition was the reason for the amendment of the APIA is that „the definitions of 'public sector body' and 'body governed by public law' be taken from the public procurement Directives.“ According to this particular directive, „a body governed by public law“ means any body, **regardless** of whether it has an industrial or commercial character. Thus imperceptibly, trade companies with state capital, which have long been the focus of public interest, remain outside the scope of the law.

At the same time, the National Assembly did not adopt the proposal from opposition MPs Martin Dimitrov and Ivan Sotirov for the introduction of an obligation for the administration to actively publish certain categories of public information on the Internet.

Necessary Amendments to the APIA

The implementation of the Access to Public Information Act, as well as administrative and litigation practices, exacerbates problems which have already been identified in previous reports by the *Access to Information Programme*. More detailed regulation is necessary with regard to:

- The obligations for active publication of information by public institutions;
- The electronic access to public information;
- Precision of exemptions to the right of access to information, particularly of those related to the protection of trade secrets and the personal data of individuals holding public offices or performing public activities

Public Register Legislation

Online Access to Public Registers

During the past year, progress has been made in the establishment of Internet-accessible registers. This development resulted from the implementation of two laws - the Public Disclosure of Property Owned by High Government Officials Act and the Company Register Act. Thus, on the one hand, prerequisites for the development of public registers are established through the guarantee of easy online access. On the other hand, easy access to two bodies of information important for society is ensured. Such publicity has a potential to prevent corruption and fraud. At the same time, it provides a practical means for instituting the visibility and accountability of persons holding high government positions, as well as that of companies. In this way, the principle of overriding public interest in the disclosure of certain categories of information, regardless of the will of the parties concerned, is applied in practice.

Public Disclosure of Property Owned by High Government Officials Act

The law was amended in 2006 and set forth that access to data contained in the public register would be provided through the National Audit Office web site. Amendments became effective on January 1, 2007 and were implemented in practice in July 2007 when asset declarations from high public officials became accessible on the Internet. Progress in this regard is considerable. At the same time, we can hardly approve of the practice of publishing only notifications, but not previously submitted declarations, that an individual's asset situation has remained unchanged (pursuant to the prohibition set forth by §4 of the Transitional and Final Provisions of the law for disclosure of „personal or other data, which may identify certain properties and assets“ of the persons, without their permission). Furthermore, these data had been annually announced by the mass media for a number of years. The practical criteria for a lack of change in the asset situation remain unclear. It is obvious that in practice such a situation (i.e. absolutely no change in assets) is difficult to achieve.

Company Register Act

The law was adopted in 2006 and has been amended several times during 2007. Its current texts provide for the utmost publicity of submitted data from the very moment of registration. The law is in compliance with the relevant Directives with regard to this issue. This result was achieved after the initially weak parts of the draft law from January 2006 were amended in the positive ways recommended in the critical statement submitted by AIP. The legislation was properly implemented and the register has been accessible online since the beginning of 2008. Pursuant to Art. 11 of the law, everybody has free access to the register, as well as to the documents that registrations, deletions and announcements are based on. These documents are already accessible on the Internet. Some practical questions have arisen in this regard, including whether the scanned identification cards of company managers should be accessible through the register. The reason is that the ID cards contain more data than is necessary for registration (for example, the individual's registered address). Thus this raises a question about the legislation's conformity with the provisions of the Personal Data Protection Act. At the same time, it is necessary to emphasize that the public register is a serious step forward and will contribute to better access to public information, more secure business turnover, and more efficient prevention of fraud and other similar criminal offences. Improvement of the state of public registers and making them available on the Internet by the executive branch bodies responsible for such actions has been among AIP's top priorities for years.

Access to Public Information Under the Regulation of Specialized Legislation

Publication of Information of High Public Interest

The Statutes Act was amended during the year and a requirement for the publication of draft regulations online was introduced. A positive implementation practice has been established with regard to 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 (Access to the Documents of the Former State Security Services Act), which was adopted at the end of 2006. The legally established commission has played a key role in the implementation and the publication of information. Despite the difficulties and obstacles, the Commission has demonstrated the energy and will for provision of public information.

The two above-mentioned laws are an example of the establishment through specialized legislation of an explicit obligation for publication and disclosure, respectively, of categories of information of high public interest. In the case of the Statutes Act, publication of information is significant for broad public discussion on draft legal regulations with the purpose of improving their quality. In the case of the Access to the Documents of the Former State Security Services Act, disclosure of information is important for informed decisions about persons in elected positions. It also provides an opportunity to form a better idea about the reasons and motivating factors in our societal processes in recent decades and the role of certain public figures in them, as well as offering people the right to access the data the former security services collected about them.

In both cases, the processes shall be continued. The obligation established with the Statutes Act shall be fulfilled by the authorities, while necessary conditions shall be created for the implementation of the Access to the Documents of the Former State Security Services Act.

Statutes Act

The amendment introducing the obligation for the publication of draft regulations and statutes in the Statutes Act receives a positive evaluation. The Third Chapter of the law has been thoroughly changed and the duty has been imposed on every institution responsible for drafting a regulation or statute to publish such drafts on its Internet site before their submission to be issued or adopted by the competent institution. Interested parties are provided with a period of at least 14 days for the submission of statements and recommendations on the particular draft.

The obligation for publication extends beyond the draft text of legal regulations and also includes the reasons and the respective reports on them. According to the amendments, the reasons/reports shall contain:

- reasons which necessitate the adoption of the regulation;
- the purposes set out;
- financial and other resources necessary for the implementation of the new regulation;
- expected results from the implementation, including financial results, if applicable;
- analysis of compatibility with European Union law.

In terms of the overall picture of progress in this area, the regulation of timeframes for public discussion of draft texts deserves a negative evaluation. The period for submission of statements and recommendations was reduced from one month (pursuant to the repealed Art. 2a of the Statutes Act) to 14 days in the new texts of the law. In a democratic society, it is crucial that enough time be provided for considering the statements of interested parties, which should be done in a genuine way.

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 implementation of the law, which was adopted in December 2006, began in 2007. Members of the commission stipulated by its provisions were selected. Investigations as to whether certain categories of public figures belonged to the former security services were conducted. Such investigations were also conducted in connection with local elections. At the end of the year, a building was provided to the Commission. The main task still remains - the actual handing over of these archives from the security services, where they are currently being kept. The deadline for submission expired in August 2007 but at that time the Commission was working in a room in the building of the National Assembly, which had been provided by the Chairman of the Internal Security and Public Order Committee. Several hundred requests for access to the documents were submitted during the year by affected people, researchers and journalists. In some of the cases, requests were submitted with the help of AIP's team, whose persistence in

2006 contributed to the recognition of everyone's lawful right of access to the documents for the purposes of research and writing. If obliged institutions provide necessary cooperation in the future (especially those that hold any documents from the former security services), we might expect that the need for this type of information, so important for society and for individual persons, will be satisfied.

Legislation Related to the Exemptions to the Right of Access to Information

Narrowing of the Scope of State and Administrative Secrets

During the year, the Protection of Classified Information Act was amended. It brought about the considerable shortening of the period of protection of information classified as an administrative secret. The change is positive from the point of view of greater transparency of public institutions, some of which still continue to misuse the exemption. In 2007, a new „National Security“ State Agency Act (NSSAA) was passed. Although it does not directly influence the legal framework with regard to the access to public information, the law might prove to be of importance to it. During recent years, security services have behaved like unaccountable institutions which refuse to provide information of high public interest. Together with the recently passed Access to the Documents of the Former State Security Services Act, the NSSAA creates the potential for change in the negative practices that sustain the „culture of secrecy.“

Protection of Classified Information Act

Some rather insignificant changes have been made to the Protection of Classified Information Act during the year. The most important change is the introduction of a new, shorter period for protection of information which has been classified as an administrative secret. The period was shortened from two years to six months. The changed system corresponds to the highest degree to the „principle of harm“ test used in determining whether certain information should be classified. This will also make it possible to avoid some misuses of that exemption from the right of information in the future that have been observed during the past years.

„National Security“ State Agency Act

The law was adopted in haste and with no significant discussion, including within the framework of the executive branch, as an initiative of a group of MPs. In this respect certain similarities can be noted in the case of adoption of APIA amendments. These circumstances, as well as some particular provisions, imply certain imperfections that will possibly be corrected along the way during 2008. The State Agency is a successor to the National Security Service within the Ministry of Interior with regard to control over and some functions related to the protection of classified information. The law provides for oversight over the institution by a special parliamentary commission, as well as for the submission of a regular activities report. In order to exercise the necessary civil control, more transparency than that of the former security services is necessary. During the past years of transition such transparency was society's main requirement towards these kinds of services; however, this demand has not been addressed until now. Citizens are not informed about the activities of these services. Although some of their work indeed falls

within the scope of national security and public order exemptions, their activities are not excluded from the scope of the APIA. Consequently, citizens have the right to form an opinion about their work, pursuant to Art. 2, Para. 1 of the APIA.

In past years, there have been specific cases in which the National Intelligence Service (NIS) and the Ministry of the Interior (the National Security Service -NSS - belonging to its system) refused access to documents of the former State Security Services. These documents regarded the most significant cases from the period before 1989 - the murder of dissident writer Georgi Markov in London and the assassination attempt against Pope John Paul II. The NIS and NSS report to the president about the involvement of Bulgarian companies in the oil for food trade with Iraq in violation of the UN imposed oil embargo was also classified as a state secret.

The „National Security“ State Agency Act provides for mechanisms for accountability and control (Chapter IX), but these do not include obligations to provide public information. Practice shows that parliamentary control is not sufficient in this regard. The ad hoc commission investigating the case of Bulgarian involvement in the oil trade with Iraq, which was formed during the previous National Assembly, did not announce the results of its investigations. Efficient civil control over the activities of the security services presupposes publicity of at least the basic issues concerning it, as well as of the results from investigations in cases of high public interest.

ACTIVE PROVISION OF INFORMATION BY THE INSTITUTIONS OF THE EXECUTIVE POWER

For a third successive year, AIP conducted a study on the Internet sites of the institutions from the executive power.

The purpose of the study, conducted by a group of reviewers from the AIP team, was to assess the level of development in the active provision of information on institutional Internet sites which is subject to publication by the institutions of the executive power in Bulgaria. The first study was conducted in 2006. Results and analyses from these two studies were published in two successive reports *Access to Information in Bulgaria - 2006* and *2007*². As the legal regulations with regard to the active publication of information online have not been amended in 2007, the results from the study show not the fulfillment of any obligations, but rather a rational attitude towards the existing obligations.

Methodology

The study was conducted between February 18 and March 02 of 2008. Like last year, 411 public institutions were selected for review from the official Register of Administrative Structures³ and can be broken down by type as follows:

Table 1. Institutions reviewed

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 representative enough, since it covers all ministries, all regional governors, all municipalities and most of the other administrative structures in Bulgaria. A full list of all institutions whose web sites were reviewed can be found on AIP's web site where you can also find a complete set of the outcomes.⁴

The first task of the seven reviewers from the AIP team was to find out whether each institution maintained its own Internet site. Official web sites were maintained by 352 institutions, which is with 8% more than the past year's number.

² http://www.aip-bg.org/l_reports.htm

³ <http://www1.government.bg/ras/>

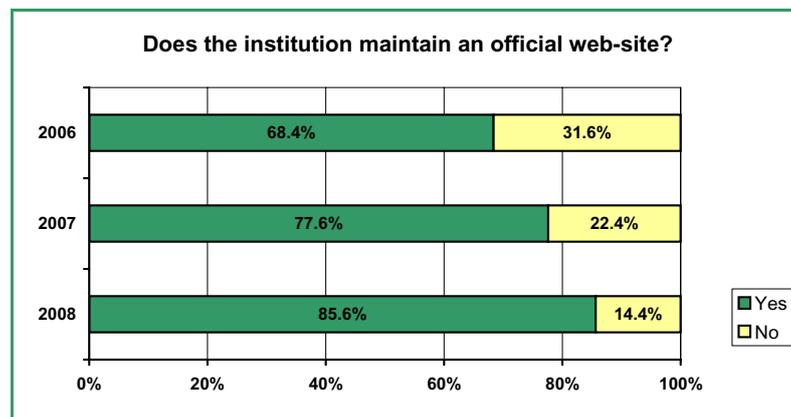
⁴ http://www.aip-bg.org/documents/monitoring_web_eng.htm

In some cases, information about the reviewed institutions could be found on the websites of other institutions, even on tourist sites. For the purposes of this study, the above information was not considered to be an „institutional website,“ which was the approach used in the previous two studies as well, for a number of reasons. The first one is that the institutions themselves do not consider such sites official, and therefore do not assume responsibility for their content. Additionally, non-institutional websites publish information for their own purposes, and usually they do not present the work of the institution in a systematic way. Such databases are useful sources of information, but cannot replace the need for regular publishing of systematic information about the structure, functions, activities, and decisions - data which every institution is obliged to publish.

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

Does the institution maintain its own official website?		2006	2007	2008	Total
Type of institution	Municipalities	157	186	218	264
	Ministries	16	17	17	17
	State agencies	9	10	9	10
	State commissions	4	4	4	4
	Executive agencies	31	33	34	38
	Institutions established by an act of Parliament	38	42	42	50
	Regional governors	26	27	28	28
TOTAL		281	319	352	411

Chart 1 shows comparative results from 2006 and 2007



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).

A methodological note that will probably be important for the interpretation of the results.

In 2007, part of the Access to Information Programme team toured in the country and met municipal and regional governors administration officials responsible for the implementation of the APIA and/or the maintenance of the web sites of the respective institutions from 24 regional towns - http://www.aip-bg.org/projects/undp/activities_eng.htm.

At those workshops, in which 103 officials from municipal and regional governors administrations took part, problems with the active publication of information online, as well as the measures necessary for their overcoming, were discussed. Those meetings might have contributed to the better results from this year's study. It is apparent, however, that a genuine improvement in the active publication of information online requires a legal regulation of the obligations and the control over the implementation. Those were the main proposals of the participants in the workshops.

Survey outcomes

Information Subject to Mandatory Publication

Just like in the previous studies, we tested to what extent the information subject to publication under the Art. 15 of the APIA can be found on the Internet.

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.

Results from the first studies conducted by AIP with regard to active publication, and from the follow-up interviews (2001 and 2002), clearly showed that in order for the level of implementation to be assessed, detailed lists containing categories of *official* and *administrative information* subject to mandatory publication were necessary. Part of the problems are related to the quite broad concepts stipulated by the law which require interpretation, while no official version exists.

Clarifying terms like the above mentioned *information massifs* and *information resources* has not been undertaken yet which continues to generate problems with the law implementation and with the fulfillment of the obligations.

Up-to-date Information

Another part of the problems related to the non-binding texts of the law such as the „regular publication of up-to-date information,“ with no reference in the Additional Provisions about the scope of the period envisioned: a period may encompass a year, half-year, quarter, month, and even a day. An example of clear provisions stipulating the periods within which the publication of information is regarded as regular is the Hungarian the Act on the Freedom of Information by Electronic Means⁵. Besides that clarification, it is apparent that it should be stipulated that active publication means, including on the Internet sites.⁶

The vagueness of the Art. 15 of the APIA with regard to the obligations of the entities, brings to diverse practices and sometimes causes complete confusion within the users browsing the institutional web sites.

Conclusions stated in the last year's report regarding the necessity of precise definition of the up-to-date of some categories of information are relevant today, since no changes have been made to the legal regulations. No considerable changes have been made in the practices either.⁷

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 **under the stipulated procedure** is to upload them onto the official institutional websites. By publishing the lists, the heads of the administrative structures would demonstrate an understanding

⁵ *Access to Information in Bulgaria 2006*, Annual Report AIP, 2007, p. 31.

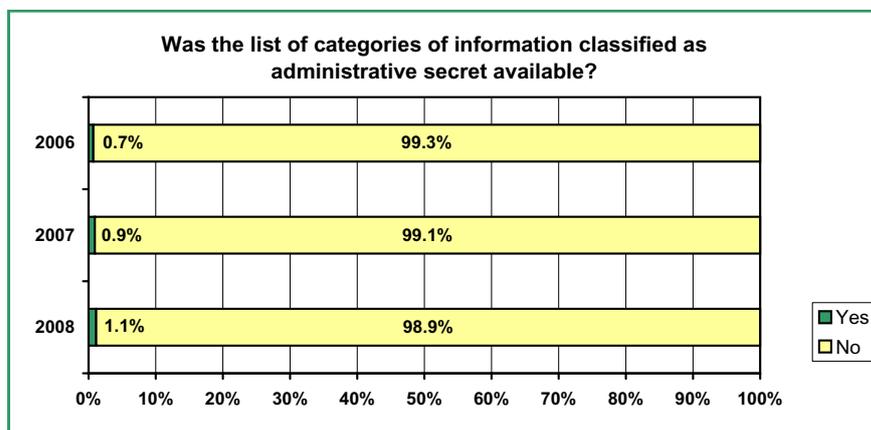
⁶ The note makes reference to the last discussion on amendments to the Access to Public Information Act at a plenary session when the apprehension was expressed that if such an obligation for active publication had been introduced in the law, it would have monopolized Internet as a media.

⁷ *Ibid.* pp. 31-32.

of the strong link between the two laws, as well as recognizing that the right to access to information requires that institutions implement their obligations established by the PCIA and the Rules for its implementation.

The following chart offers a comparison between the three surveys:

Chart 2. Is the list of categories of information classified as administrative secret published?



Results signify a strange persistence in non-complying with the law which makes us suspect if some other special and unpublished recommendations exist for not preparing and not publishing these 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.

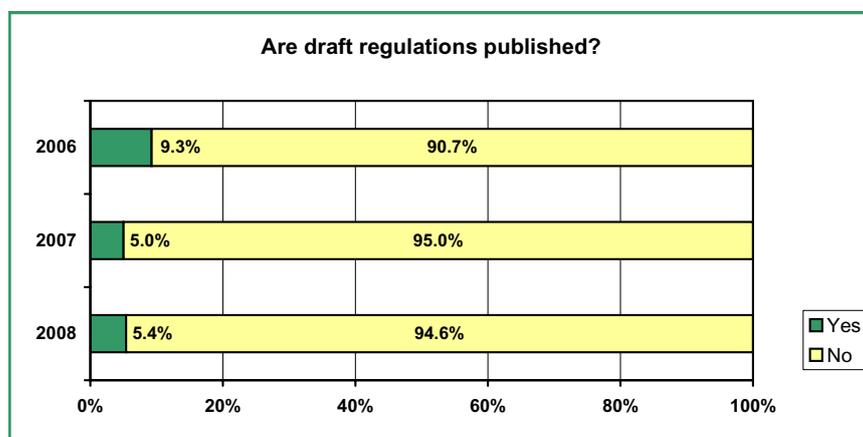
We would like to note again, that the easiest and cheapest way to provide such an opportunity is to publish the text of the draft laws online. Yet again, the survey results on this issue are disturbing, proving that with no political will for openness and for providing opportunities for public participation in the decision-making process, the situation is only getting worse. As a token of the existing situation, we refer to the scandal with the secretly introduced draft law for amending the Access to Public Information Act.⁸ Only after AIP started a public campaign against the amendments did the lawmakers begin „ceremonial dances“⁹ 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 (neither on the website of the State Agency for Information Technology and Communications, nor on the website of the National Assembly).

⁸ See also pp. 10-12 of the report. Details about the campaign led by AIP against the draft amendments is available at www.aip-bg.org.

⁹ 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.

Here are the comparative results:

Chart 3. Are there draft regulations published?



Other vaguely stipulated obligations for active publication and announcement of public information are provided by Art. 14:

Duties for disclosing public information

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

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

1. is of a nature to prevent some threat to the citizens' life, health or security, or to their property;
2. disproves a previously disseminated incorrect information that affects important social interests;
3. is, or could be, of interest to the public;
4. must be prepared and released by virtue of law.

In our study, we tried to assess, first, whether information subject to provision under Art. 14, Para. 2, Item 4, i.e. information which should be published by virtue of other laws, is being made available online; and second, to assess the attitude towards information which is, or could be, of interest to the public (Art. 14, Para.2, Item 3). Without theoretizing too much about what information of public interest is, we have chosen a simple indicator for that: What type of information have been most frequently sought from the institutions? The data we have used were taken from the 2006 official report of the Minister of State Administration and Administrative Reform on the work of the Bulgarian public administration.¹⁰

¹⁰ Unfortunately, tAs of the date of the translation (June 9, 2008), the 2005 and 2006 reports of the Minister of State Administration and Administrative Reform on the work of the public administration are available cannot be accessed through on the Internet site of the ministry in Bulgarian. despite the obligation for publication of the report stipulated both by the Administration Act and the APIA. The quotation if from the same report but from AIP's archive.

Most frequently sought information by the citizens:

First, „during the reported period, 10,751 requests for access to **official information** were submitted, and 8,480 - for administrative information. The highest number of requests was submitted to the central administration- 7,535.“¹¹

Second, according to the same report, requestors most often search for information related to „**exercise of rights and legal interests,**“ „**information about the oversight functions of the administration,**“ „**requests with regard to the accountability of the institution,**“ „**spending of public money,**“ „**decision-making process,**“ „**draft laws.**“¹²

Let us here reiterate the definition of „official public information,“ as provided by the Access to Public Information Act:

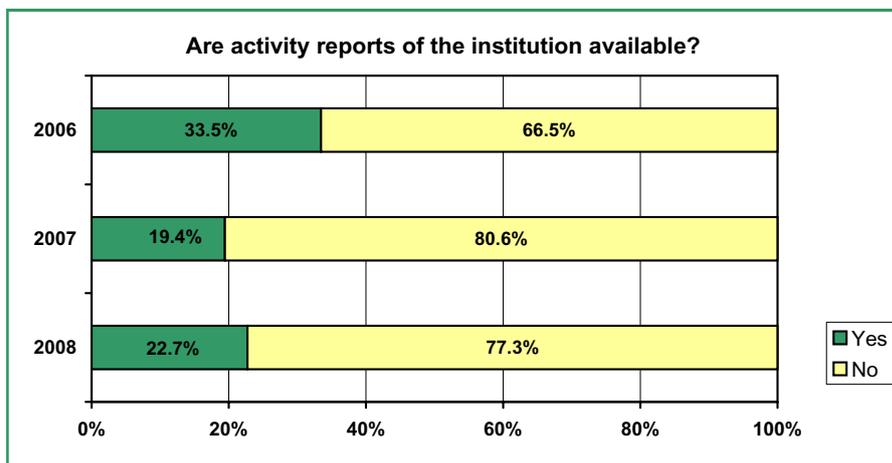
Art. 10. Official information shall be deemed information contained in the acts of the state or local self-government bodies in the course of exercise of their powers.

And let us here say again that the access to official information shall be provided by means of promulgation (Art. 12 of the APIA).

With regard to the most frequently sought information by requestors, apparently it is information of high public interest, i.e. it may be regarded by institutions as information that they shall provide actively.

What are the results with regard to that information, namely: reports on the work of the respective institutions, contracts of the institutions which require spending of public money, the budget and report on its implementation, description of services, etc.?

Chart 4. Are activity reports of the institution available?



¹¹ Report The State of Public Administration in 2006, p. 148.

¹² Ibid., p. 154.

Chart 5. Are contracts of the institution available?

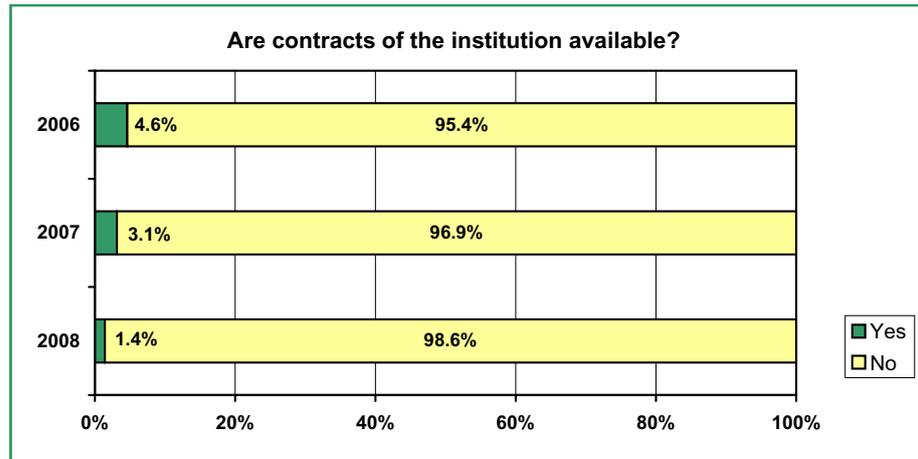


Chart 6. Is the budget of the institution available?

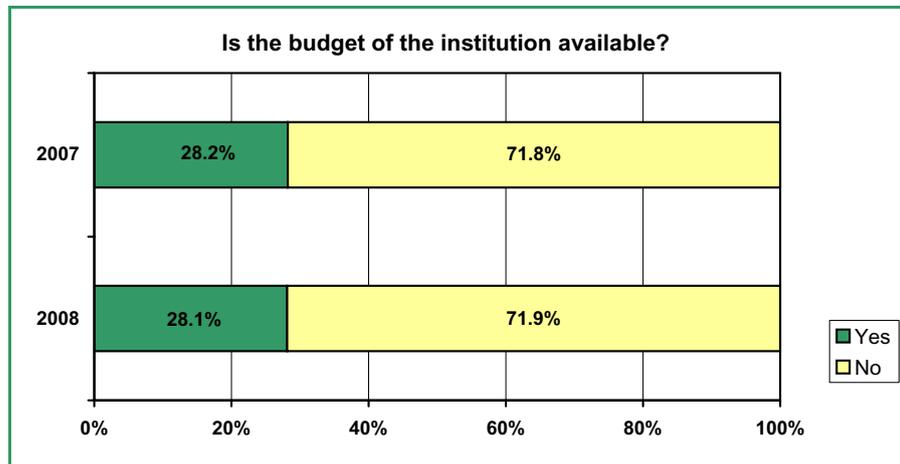
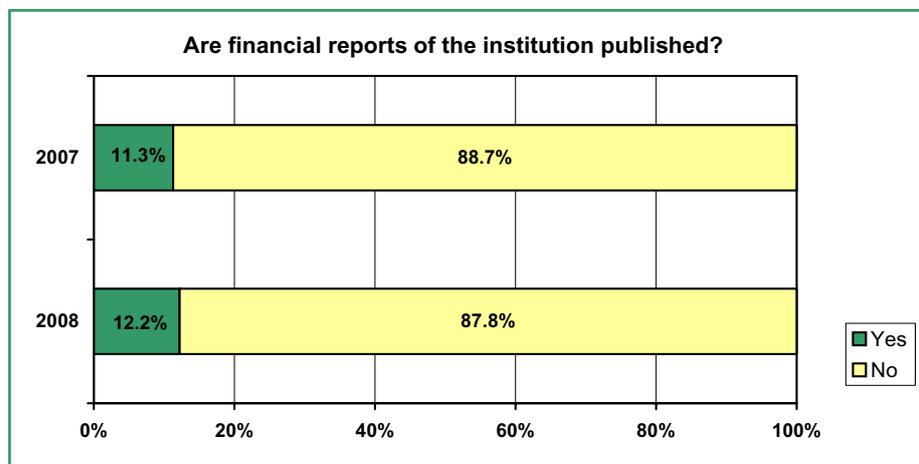
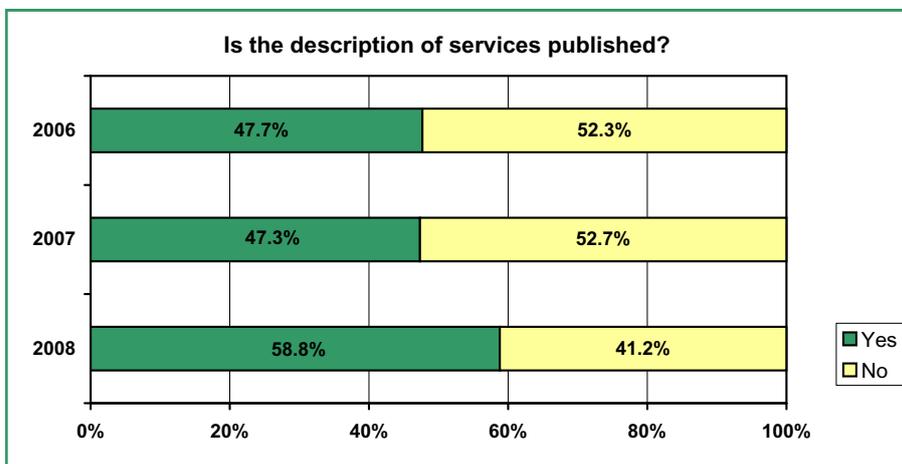


Chart 7. Are financial reports of the institution published?



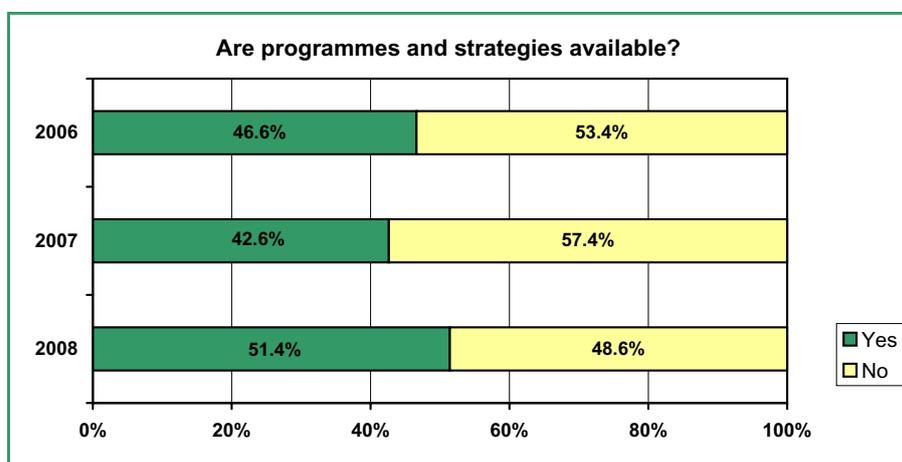
A considerably higher is the percentage of institutions which publish online two categories of information. The first one is a list of services provided by the institution. The development of these lists was well funded during the years under different project. The administration was also legally obligated to make them available.¹³

Chart 8. Is the description of services published?



The secondary category encompasses development strategies (projects, programs, etc.). It is comparatively widely published which is probably due to the fact that the publication of strategies and operational plans on the web site of the institution is not bound to an obligation for publication of reports on their implementation (See Chart 4).

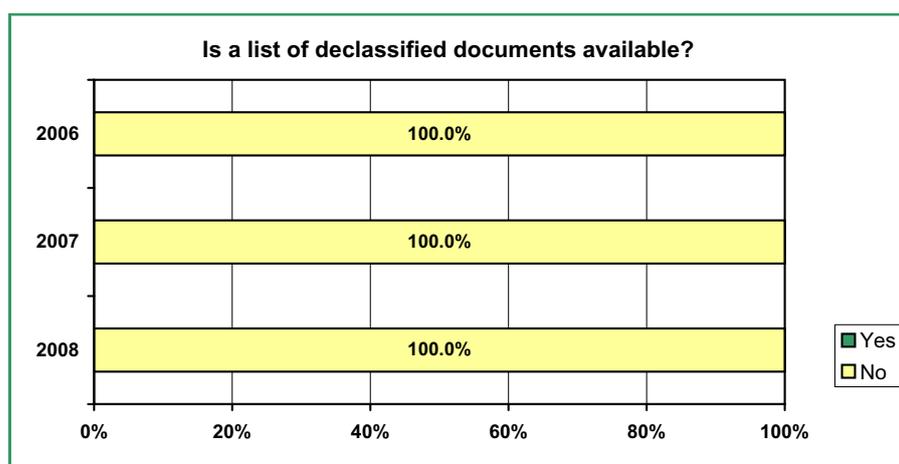
Chart 9. Are programmes and strategies available?



¹³ Regulation on the Common Rules for the Organization of the Administrative Services, adopted with a decision of the Council of Ministers No. 246, as of Sept. 13, 2006, promulgated in the State Gazette, issue 78, as of Sept. 26, 2006.

One of the indicators for the changing habits of the Bulgarian administration towards transparency and overcoming of the culture of secrecy, as we have pointed out in the previous report, is their attitude towards the past and the clearly stated breaking off with the culture of secrecy. Since 2002, a regulation for a review of all previously classified documents was introduced. Heads of administrative structures were able to publish on their Internet sites lists of declassified documents,¹⁴ as such a classification is obviously executed within the Bulgarian institutions. As it is apparent from the following chart, the political management of Bulgarian institutions are determinate not to publish lists of that kind.

Chart 10. Is a list of declassified documents available?



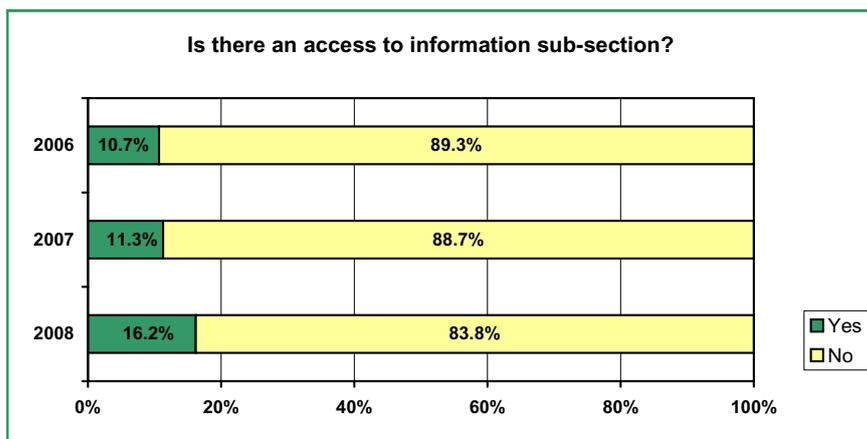
Access to Information Subsection

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. Compared to last year the number of institutions that maintain an access to information subsection on their web-sites has increased by twenty-two. If last year thirty-six institutions had established such sections, in 2008 their number is fifty-eight.

¹⁴ The obligation of such a review was introduced with §9 of the Transitional and Final Provisions of the PCIA.

Chart 11. Is there an Access to Information sub-section?

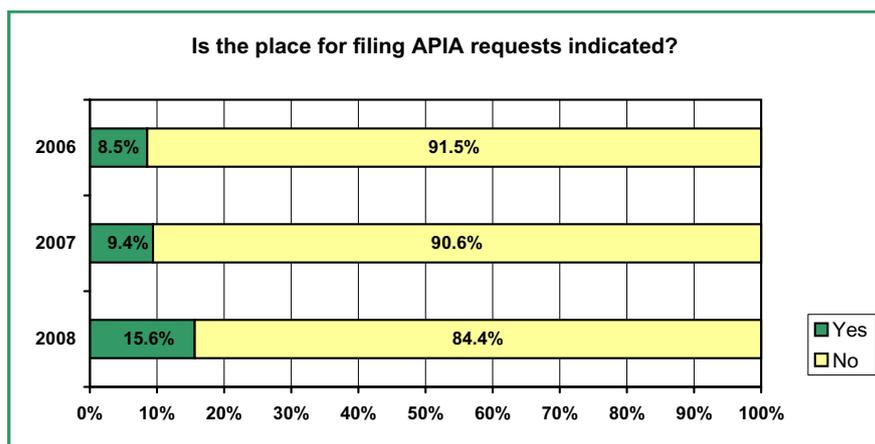


We will now discuss the outcomes of this study related to information subject to mandatory disclosure that could fit within an ATI website subsection.

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.¹⁵

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, the names and position titles of the information officials, address, and reception hours. The following tables display the comparative outcomes from these questions:

Chart 12. Is the place for filing APIA requests indicated?



¹⁵ See for example Art. 21 and Art. 25 para. 3 of APIA.

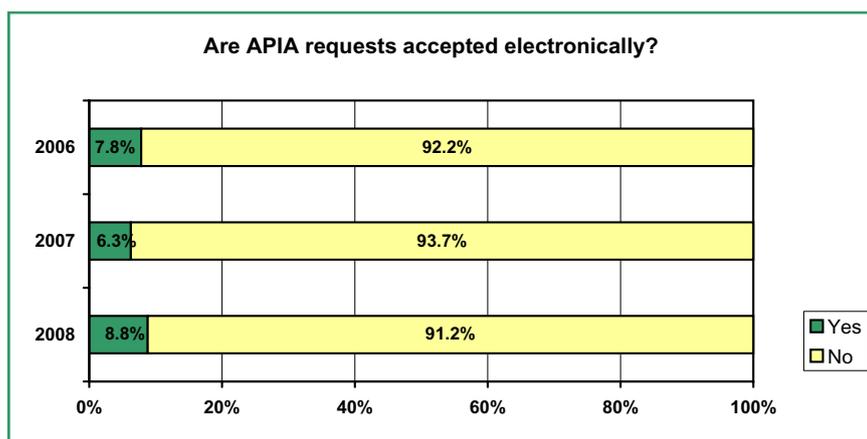
We are especially worried by the existing possibilities of submission of electronic requests.

Entitled to determine conditions under which such a submission can be done are the heads of the administrative structures.¹⁶ What is perplexing is the persistent incompliance with the obligations for accepting electronic requests, while the reports signify the contrary.

According to the report of the Minister of State Administration and Administrative Reform *The State of Public Administration in 2006*, „a total of 165 administrative structures of the state administration accept electronic requests for access to information.“¹⁷ According to AIP's conducted study, in the course of which those possibilities had been tested, the number of institutions where submission of electronic requests was possible is twenty. Our recent study shows that the number of these institutions has increased by eleven, i.e. a total of 31 institutions accept requests submitted electronically.

The fact that some public institutions require electronic requests to be digitally signed is even more disturbing¹⁸ - this is a serious violation of the right to information and is regulated by the Access to Public Information Act. Public officials' confusion that the signature is an obligatory attribute of the request for access to information still remains.

Chart 13. Are APIA requests accepted electronically?



¹⁶ 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.“

¹⁷ *The State of Public Administration in 2006*, p. 145.

¹⁸ See specific examples in Chapter 3 of this report on p. 34.

Chart 14. Is the phone number of the information official/unit published?

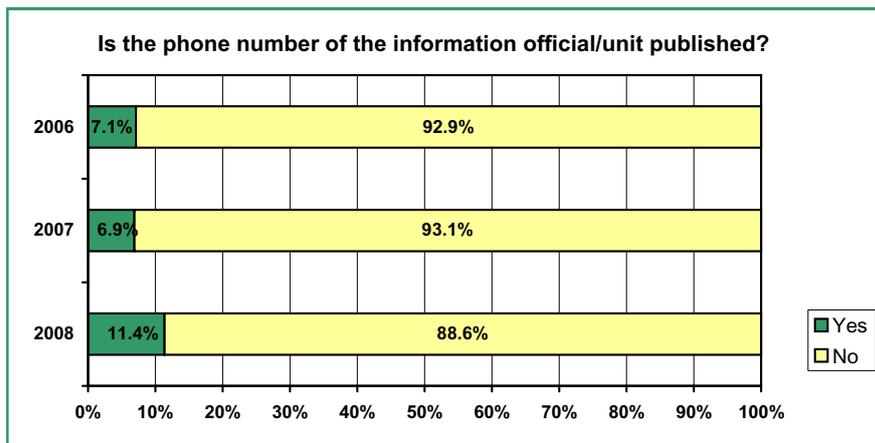


Chart 15. Is the name of the information official/unit published?

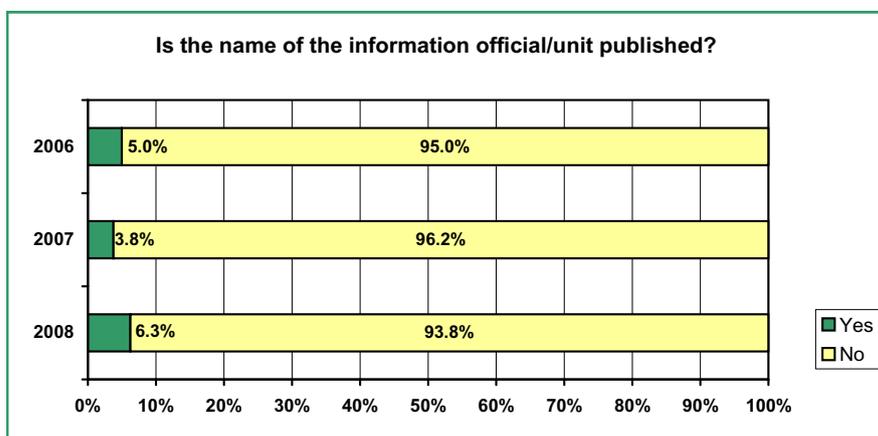


Chart 16. Is the address of the information official/unit published?

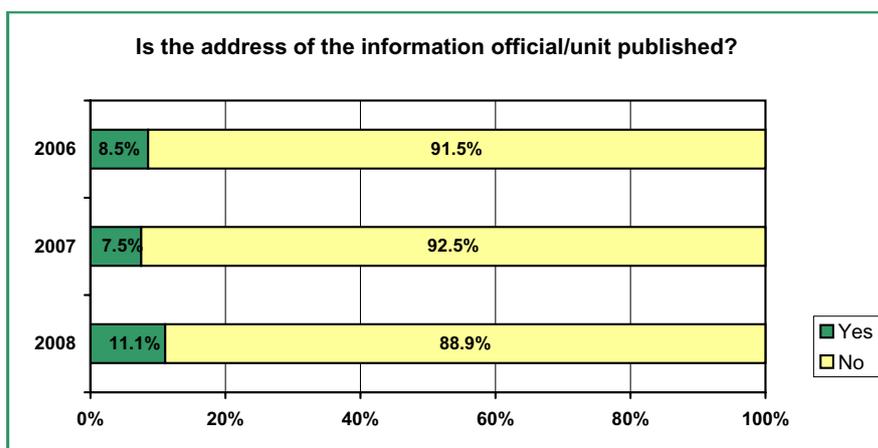


Chart 17. Is the e-mail of the information official/unit published?

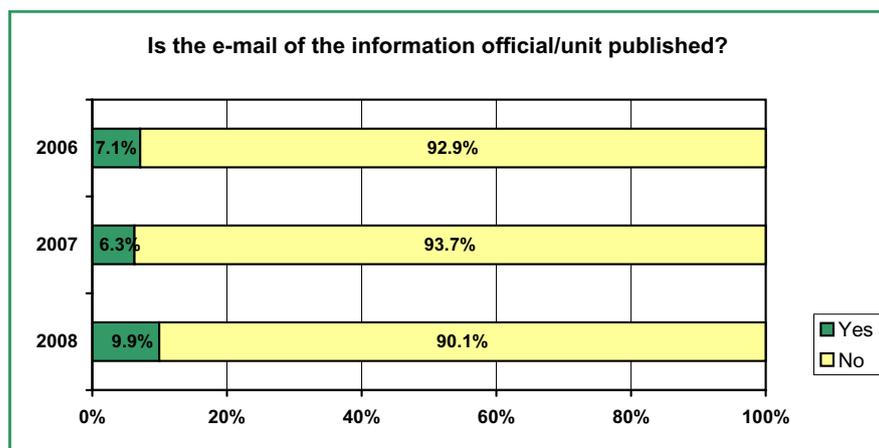
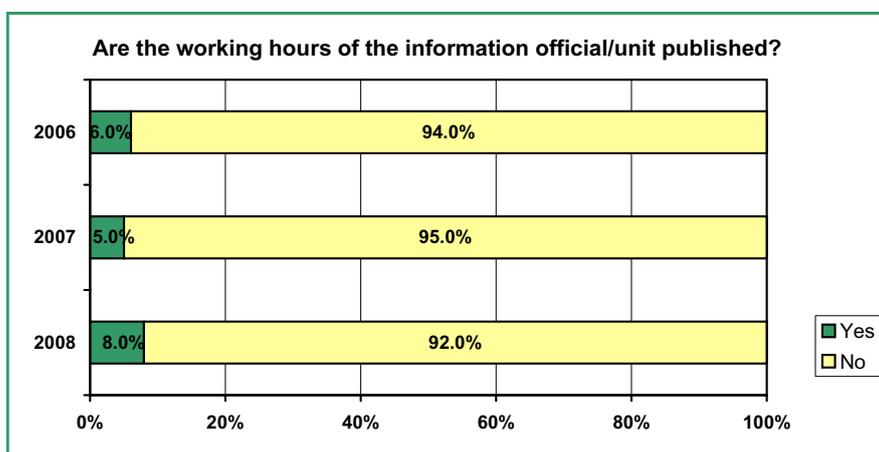


Chart 18. Are the working hours of the information official/unit published?

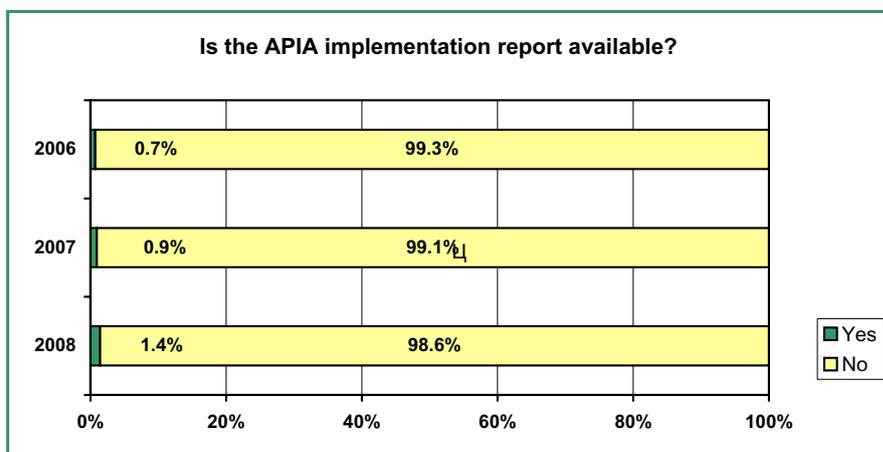


The Access to Public Information Act requires public authorities to prepare and submit to the Minister of State Administration annual reports on the implementation of the law. The annual ATI reports should also be made available to the public, as required by Art. 16 in relation to Art. 15 of the APIA.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

Pursuant to Art. 15, Para. 2 of the law, annual ATI reports should also include information about the number of information requests submitted, the number of information refusals made and the grounds for refusal. Obviously, most public institutions prepare such reports and submit them to the Minister of State Administration, who publishes an annual report on the work of the Bulgarian public administration. For the last three years at least, these ATI reports have been sent to the Minister electronically, making it even easier for institutions to also publish them online.

Here are the results under this indicator:

Chart 19. Is the APIA implementation report available?

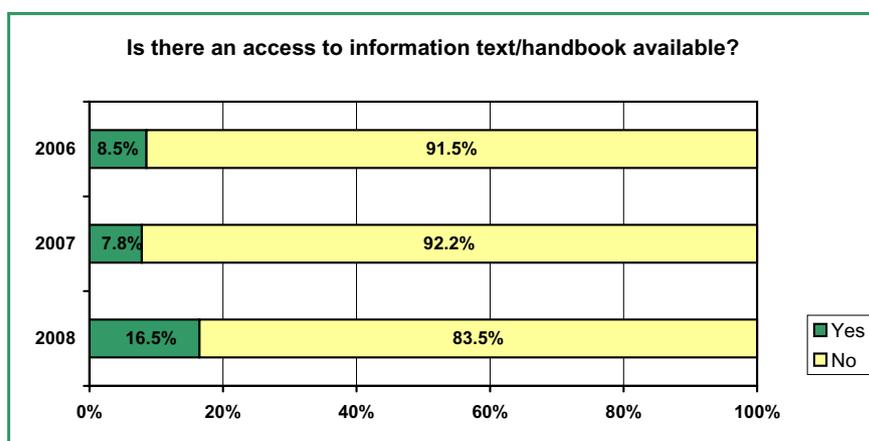


Since only five institutions have published a report on the implementation of APIA online, and only one of these reports contain updated information, it is obviously pointless to show and discuss the results from the other related indicators: whether institutions publish online the number of information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

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 from 25 to 58.

Chart 20. Is there an access to information text/handbook available?



Institutions that have made access to information handbooks available online:

Ministries - 5

Ministry of Defense, Ministry of Environment and Waters, Ministry of Culture, Ministry of Transportation, Ministry of Justice

State Commissions - 1

State Energy and Water Regulatory Commission

Agencies - 10

State Agency for Child Protection, State Agency for Information Technology and Communications, State Agency for Youth and Sports, Energy Efficiency Agency, Executive Agency „Military Clubs and Information,“ Agency for Economic Analysis and Forecasting, Bulgarian Small and Medium Enterprises Promotion Agency, Environmental Executive Agency, State Financial Control Agency, Financial Investigation Agency

Basin Directorates - 4

Basin Directorate - Blagoevgrad, Basin Directorate - Plovdiv, Basin Directorate - Varna, Basin Directorate - Pleven

Regional Governors - 14

Veliko Tarnovo, Yambol, Burgas, Gabrovo, Dobrich, Kiustendil, Lovech, Montana, Pazardjik, Pernik, Razgrad, Ruse, Stara Zagora, Shumen

Municipalities - 21

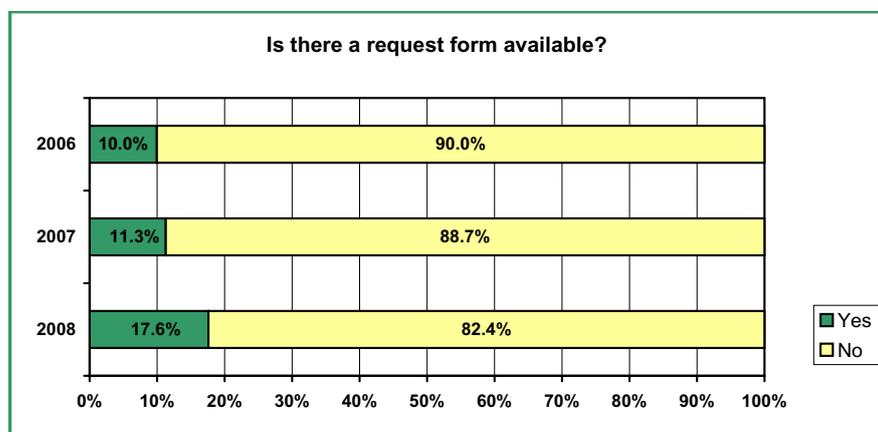
Burgas, Lukovit, Aritsa, Russe, Sliven, Straldja, Tundja, Velingrad, Kavarna, Kostinbrod, Letnitsa, Lovech, Pazardjik, Peshtera, Pirdop, Pleven, Radnevo, Simeonovgrad, Sofia - City, Strazhitsa, Tutrakan

Other - 3

Directorate General „Civil Aviation Administration,“ National Grain and Feed Service, Regional Inspectorate on Environment and Waters - Sofia

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 - the increase in number from last year is from 36 to 62.

Chart 21. Is there a request form available?



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

First, some of the forms require information seekers to indicate the reasons why they are seeking information. This requirement is illegal (in violation of Art. 25 of the APIA) 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 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.

Institutions could use the sample access to information request forms that AIP has published in both our handbooks for citizens and for the administration.

The results from the conducted study confirm the conclusions stated in the last year's report, namely, there is a need for public debate over future amendments to the Access to Public Information Act with regard to the active publication of information online by the bodies obliged under the law, and also to the unification of the practices of electronic provision of information.

CASE STUDIES

Introduction and General Characteristics

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

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

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

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

Number of Cases Referred to AIP for Assistance

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

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

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

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

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

From Which Public Institutions Do Information Seekers Mainly Request Information?

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

- A total of 98 registered cases concerned bodies of the executive power. These include not only the central bodies of the executive power, such as ministries, state agencies, state commissions, but also the regional directorates of these executive bodies;
- Local governmental authorities (mayors and local councils) - 44 registered cases;
- Public-law entities - 10 registered cases;
- Bodies of the judiciary - 8 registered cases;
- Natural persons or legal entities financed by the state budget - 7 registered cases; etc.¹⁹

¹⁹ The difference between the data in the table of the attachment and the data referred hereby in the text comes from the difference between the total number of referred cases and the number of these qualified as related to access to information.

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

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

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

The number of refusals based on the provision of Art. 13, Para. 2 of the APIA,²⁰ which regulates two specific exemptions to access to administrative public information, has decreased. During the past year, only two cases in which access was denied on that particular ground have been registered. The administrative secret exemption has also been used rarely - in three of the registered cases.

Who Requested the Assistance of AIP in 2007?

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

²⁰ The article provides that access to administrative public information may be restricted if it: 1. relates to the preparatory work of an act by the bodies, and has no significance in itself (opinions and recommendations prepared by or for the body, reports and consultations); 2. contains opinions and statements related to on-going or prospective negotiations to be led by the body or on its behalf, as well as any data relating thereto, and was prepared by the respective bodies' administrations.

Specific Cases Emblematic for Groups of Problems in Receiving Information

Refusals on the Grounds of Third Party Interests

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

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

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

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

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

Access to Judicial Information

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

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

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

Access to Information for Consumers

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

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

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

Access to Personal Data

The AIP team provided legal consultation in 24 cases related to violations of the right of personal data in 2007. As the main characteristics of these cases we can point out the persistent practice, which has been criticized in preceding reports, of data controllers collecting more data than is necessary to carry out their activities. In many cases, official IDs are requested and held without specific reasons.

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

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

Existing Practices in APIA Implementation

Inconsistency in Information Provision Practices

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

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

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

itself represented by its managing body, which is obliged to establish consistent transparency practices regardless of internal personnel changes.

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

Charging Varying Costs According to Different Criteria

Some of the cases registered during the last year show the persistence of problems related to the payment of costs for the provision of information under the APIA. For example, sometimes payment for information provision is required in advance, i.e. at the moment of the submission of the information request and before the decision of the respective body on that request.²¹ In another case, authorities overcharged a requestor for information which required a reference; the expenses should have been calculated after the stipulated procedure. According to the responsible officials, however, the request demanded so-called „expressly processed information“ under the definition set forth by the Environmental Protection Act (EPA),²² and the cost, which should be negotiated, would be in any case higher than that which was due for a reference.

Cases in which institutions require payment of costs according to their own internal rules or tariffs are not unusual. These costs often exceed those defined by Order No. 10 of the Minister of Finance as of 2001.²³ In one such case, for example, the requestors were asked to pay 65 BGN to review requested documents, namely orders by the regional governor which repealed orders by the mayor of the municipality. As a justification for the requested amount, the responsible officials claimed that some of the repealed mayor's orders contained the names of third parties. Thus the administration had to blank out the data related to third parties and to copy the orders again before granting provision in any form. Apparently, blanking out data was calculated as an expense for the provision of the requested information.

In other cases, information requested under the procedure stipulated by the APIA was regarded as something related to the administrative services provided to citizens and was consequently charged as an administrative service. The following example demonstrates the most preposterous interpretation of the charging regulations: a mayor responded to

²¹ The case was referred to AIP by a journalist who had been promised in a phone conversation provision of information and was also informed about the amount he had to pay in advance. Regardless of advance payment, however, the information has not been provided.

²² According to § 1, Item 9 of the EPA, *expressly processed information* shall be the information collected or processed, summarized and analyzed at the request of a person concerned. The information that was requested in the particular case, however, was related to the regular work of the institution and was obviously demanded as a reference. It did not require summarizing, nor did it contain any analysis.

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

a citizen's request by stating that he would make an exception for him, but for the submission of successive requests or appeals, the citizen would have to pay a fee of 15 BGN, pursuant to the Regulation for Determining and Allocation of Local Fees and Prices of Services issued by the Municipal Council. Otherwise, those subsequent requests/appeals would be disregarded.

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

Forms for Information Requests

In 2007 the practices of some institutions again require citizens to provide additional and unnecessary data by requiring the use of pre-approved request forms. The APIA does not introduce an obligation for institutions to create their own information requests forms. The publication of request forms on institutional Internet sites or making them available at the submission venues is very positive since such practices facilitate the requestors in their search for information.

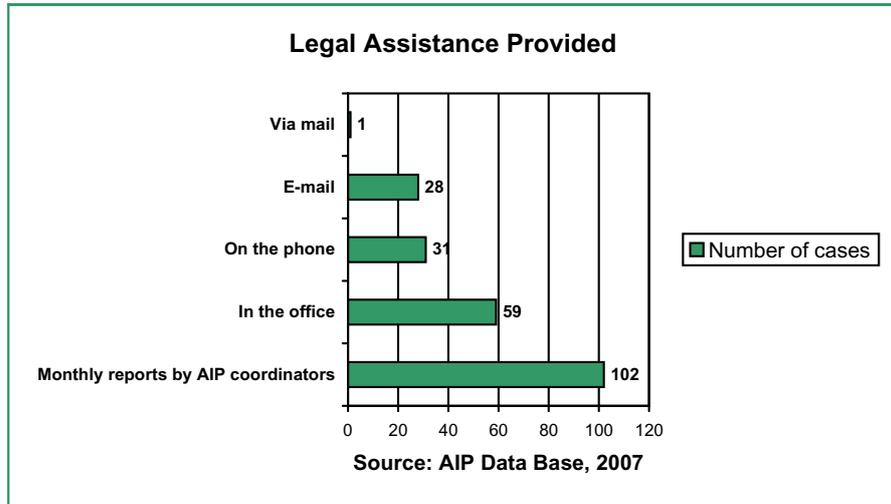
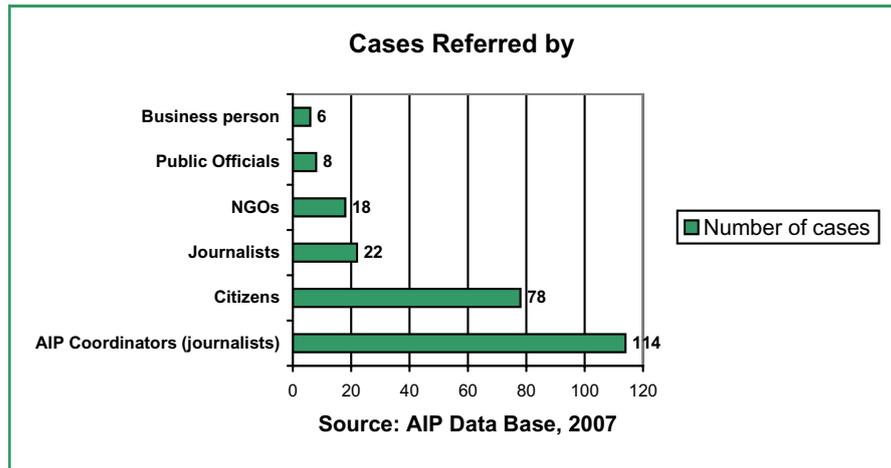
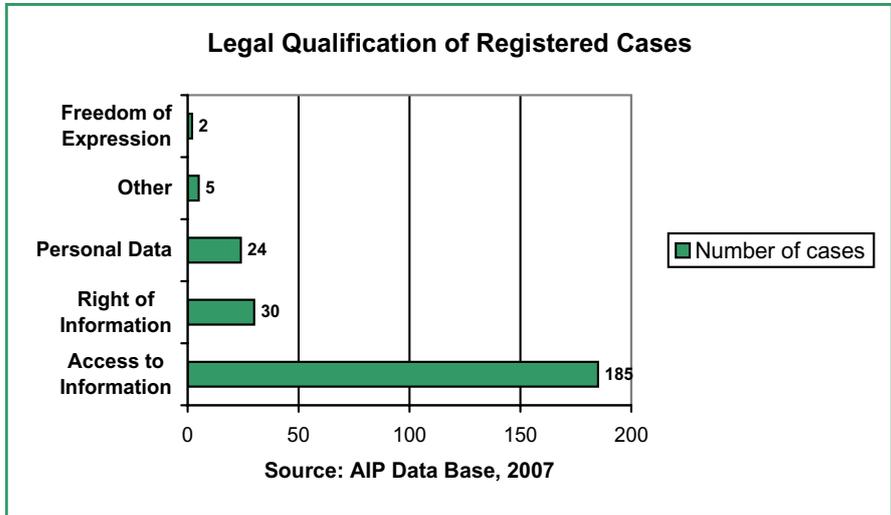
However, as we have emphasized in last year's report, filling in those forms requires that citizens provide information that is not required by law, such as a personal ID number, an explanation of why they need the requested information, although such requirements contradict the basic principles enshrined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

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

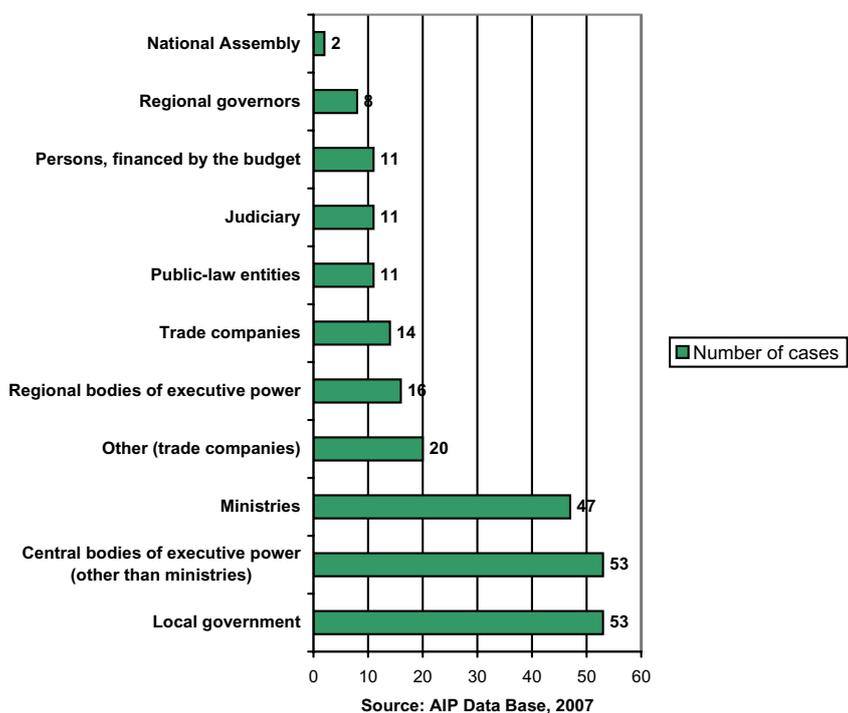
Unfortunately, one negative practice in this regard is the requirement by the respective administrations that requestors should use only their pre-approved request forms, instead of allowing these to serve only as voluntary forms to facilitate requests. For example, the chief editor of the local newspaper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

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

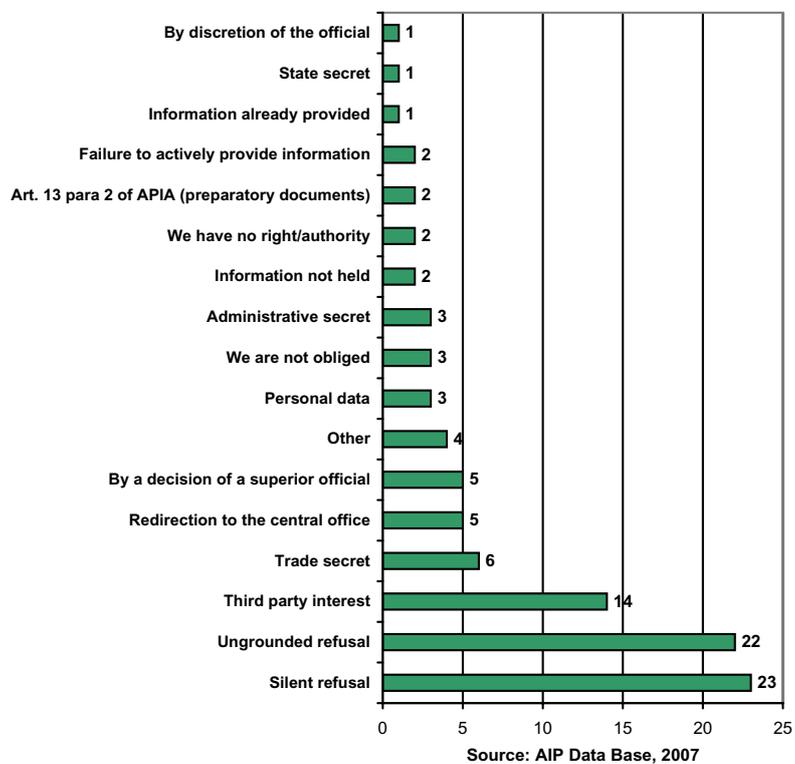
APPENDIX
Statistics from the electronic database
Access to Information Programme



Institutions, where information is sought



Grounds for refusal



LITIGATION

The Legal team of AIP continued to provide legal assistance to citizens, NGOs and journalists bringing cases of information refusal to the court. In 2007, AIP prepared **33 complaints** on behalf of citizens and organizations. Out of this number, the complaints submitted to a first instance court are 22 (Supreme Administrative Court - 3, Sofia City Court - 3, Administrative Court, Sofia City - 7, administrative courts in the country - 5); court appeals are 8 and the rest 3 are appeal against court rulings.

In 2007, AIP has provided representation in court in 47 cases when provision of information had been refused. During that period, the Legal Team of AIP prepared **22 written defenses** for litigation supported by the organization.

During 2007, courts issued a total of **24 decisions and rulings** on litigation conducted by AIP. A considerable part of those decisions was again related to the interpretation of various restrictions to the right of access to information, and more particularly, to their scope and relevance in certain cases.

Preparatory Documents

The exemption set forth by the provision of Art. 13, Para. 2 of the APIA, related to the so called *preparatory documents*, was interpreted in two decisions. A three member panel of the Supreme Administrative Court (SAC) repealed the refusal of the Minister of Interior to provide to a journalist from the *168 Chasa weekly* information regarding a lodging released for rent and then for sale by the housing department of the Ministry of Interior. The justices assumed that the requested documents prepared by the Housing Committee indeed had the characteristic of preparatory as they had been compiled within the implementation of the procedure on releasing for rent a lodging from the housing fund of the Ministry of Interior. It was wrongful, however, that the minister had applied the exemption under the provision of Art. 13, Para. 2 of the APIA to refuse access to those documents, since the hypothesis of the provision was applicable within the legally prescribed period of two years after the creation of the official preparatory information - Art. 13, Para. 3 of the APIA. In the particular case, that period had expired before the date on which the refusal was issued, and consequently the ground for the refusal had dropped out.²⁴

In the meantime, the decision was upheld by a five member panel of the SAC.²⁵

By its decision against the refusal of the Ministry of Economics and Energy, a panel of the Sofia City Court (SCC) assumed that information related to the procedure of drafting and adoption of a National Long-term Programme for Encouraging the Renewable Energy Resources, could not be refused on the ground of the provision of Art. 13, Para. 2, of the APIA, since the exemptions set forth by the APIA could not be applied in decisions on requests for environmental information.²⁶

²⁴ Decision No. 7483 / as of July 11, 2007, administrative case No. 818/ 2007, SAC, Fifth Division, Judge-rapporteur Yulia Kovacheva.

²⁵ Decision No. 11257/ as of November 15, 2007, administrative case No. 92808/ 2007, SAC, Five-member panel-I Division, Judge-rapporteur Marusia Dimitova.

²⁶ Decision as of April 13, 2007, administrative case No. 4871/ 2006, SCC, Administrative Division, Panel - III J, Judge-rapporteur Anelia Markova.

Protection of Third Party's Interests

A big part of the court decisions delivered in 2007 was against refusals of state institutions to provide information on the ground of the protection of third party's interests. Most often, behind that statement stood *commercial secret* or *personal data*. Not seldom, however, the refusals were justified with the mere statement of the fact that the requested information would harm the interests of a third party and that no consent was given for the disclosure (Art. 31 of the APIA).

In the case against the refusal of the Nuclear Regulatory Agency (NRA) to provide access to the annexes to the reports regarding the March 1, 2006 incident in the Nuclear Power Plant „Kozlodui“ on the ground that the annexes would harm the interests of the nuclear power plant, a three-member panel assumed that the provision of Art. 31, Para. 1 of the APIA was applicable when the requested information related to a third party, but such a conclusion may not be drawn from the simple fact that the third party had created the information. According to the justices, it was not clear why the chairman of the NRA had assumed that the request may have harmed rights or legal interests of the nuclear power plant. It was not clear either which data particularly were claimed to be sensitive for the third party and why. In their judgment, the justices stated that it was a logical assumption that the reports, as well as the annexes, contained data from the investigation and the analysis of the incident in the nuclear power plant. It shall not be presumed, however, that the information would reveal specific data about the nuclear power plant or that the requested annexes to the reports would contain information that may be classified as commercial secret, administrative and/or other secret. If it had been classified information, its protection should have been grounded in other provisions of the APIA, not in Art. 31, Para. 1, which did not give ground for refusal by itself.²⁷

In its decision against the refusal of the Government Information Services (GIS) to provide information to the journalist from *Capital* weekly, Rosen Bosev related to the conditions under which the contracts between the former Minister of State Administration and Administrative Reform, Dimitar Kalchev, and Microsoft Co for the procurement of software licenses necessary for the state administration had been concluded, as well as copies of those contracts, a panel of the SCC assumed that the protection of the commercial secret and the prevention of unfair competition could justify a refusal to grant access to administrative public information under the provision of Art. 37, Para. 1, item 2 of the APIA. That might serve as a legal ground only if the procedure set forth by Art. 31 of the APIA was applied and an explicit dissent or a no consent from the third party was obtained. Not asking for the explicit consent of the third party, which in the current case was Microsoft Co, made the refusal unlawful due to violation of administrative-procedural rules for issuing the refusal. Even the explicit dissent or the lack of consent from the third party did not oblige the administrative body to automatically deny access to public information. The body may, on its discretion, provide the requested information in a manner and volume that would not harm the interests of the third body. The court panel came to the conclusion that the functional independence provided to the administrative body to apply the law and which embodied the purpose of the law itself - to ensure

²⁷ Decision No. 1178 / as of Feb. 2, 2007, administrative case No. 6942/ 2006, SAC, Fifth Division, Judge-rapporteur Diana Dobreva.

access to information connected with public life in the country which provides citizens with the opportunity to form their own opinion regarding the activity of responsible bodies - was violated in this case.²⁸

In another case, the SAC assumed similar interpretation, as the court panel found that Art. 31 of the APIA did not provide for grounds to issue a refusal of access to information based on the assumption that the affected party would not give its consent, but bound the body to request for such a consent. Without complying with that procedure, it was not possible for the body to decide whether to provide the requested information, respectively in what volume.

The judgment of the Administrative Court - Sofia City (ACSC) regarding the case against the refusal of the Social Support Agency (SSA) to provide to the Center for Independent Living information about the persons who were authorized to find violations and impose sanctions under the Integration of Disabled People Act. According to the agency, the names and positions of those people were personal data. A panel of the ACSC repealed the refusal and turned the request for reconsideration after the fulfillment of the procedure of seeking for the third party's consent. In their judgment, the justices held that the requested information did not constitute personal data of the respective officials but at the same time found that their consent for the disclosure should be obtained.²⁹

In another decision, a panel of the SCC assumed that information about official duties of a person holding a managerial position at the Council of Ministers (CM) related to the management of resort centers of the CM were their personal data. Thus the court panel upheld the grounds stated by the Director of the GIS that such information was not public under the regulations of the APIA, but constituted personal data which were protected under the Personal Data Protection Act.³⁰

Classified Information

With a decision as of July 2007, a panel of the Supreme Administrative Court, Fifth Division, upheld the decision of the SCC which had repealed as unlawful the refusal of the Director of the National Intelligence Services (NIS), Gen. Kircho Kirov, to provide journalist Hristo Hristov from *Dnevnik* daily newspaper with access to documents related to the assassination of the Bulgarian writer Georgi Markov in United Kingdom. In their judgment, the justices found that the right of information indeed was subject to restriction in cases when the requested information was classified. Even in such cases, however, citizens had the right to receive the requested information. Such is the case under Art. 34, Para. 3 of the Protection of Classified Information Act (PCIA) when the period of classification had expired and the thus the level of classification should be removed. According to the justices, the SCC had correctly raised the question why under the above stated reasons, the information had not been submitted to the State Archives, as provided by Art. 33, Para. 2 of the PCIA.

²⁸ Decision as of November 2, 2007, administrative case No. 03528/2006, SCC, Administrative Division, Panel III B, Judge-rapporteur Petya Zaharieva.

²⁹ Decision No. 1 as of May 16, 2007, administrative case No. 62/2007, ACSC, Second Division, 23rd Panel, Judge-rapporteur Antoaneta Argirova.

³⁰ Decision as of July 23, 2007, administrative case No. 2900/2006, SCC, Administrative Division, Panel III-D, Judge-rapporteur Olga Kadankova.

The Administrative Courts

It is necessary to note that at the beginning of March 2007, the Administrative Court - Sofia City started operating. Together with the other newly established administrative courts, it will review complaints against refusals of access to information as the first instance. The organization *Center for Independent Living* submitted a complaint and the hearing of the case was scheduled for April, while judgment was delivered on May 16. Fast administering of justice, especially in access to information cases, is extremely necessary for the effective exercise of that constitutional right. Timely control over lawfulness should cool down the enthusiasm of some officials from the administration to refuse information with the hope the time will help the unscrupulousness and the culture of secrecy.

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

Second Instance- administrative court case No. 12368/2007, Supreme Administrative Court, Third Division

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 contained 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. Further on, the case was viewed during one session in October 2007 and scheduled for judgment.

Court Decision:

In a decision as of August 8, 2007, the SCC rejected the complaint as groundless. In their judgment, justices stated that the subject of the contract was provision and implementation of lobbying services by third party. In the case the sides were equal, as the requested information regarded the rights and obligations which had emerged as a result of the signed contracts, including the terms of the contracts, amount of money paid to third parties, as well as the grounds for such payment. Thus, according to the court, the decision

of the administrative body that the interests of the third party might have been affected and as stipulated by Art. 31 Para. 2 of the APIA had requested the consent of the third party, and following the dissent of the latter - refused to provide the requested information.

Court Appeal:

The decision of the SCC was appealed before the SAC. The appeal set forth that the decision of the SCC regarding the fact that undoubtedly public data such as the title of a trade association and of state bodies and their representatives were not to be provided to the society, contradicted the law. There were hardly any doubts that data contained on the front page and the last page of the contract requested by the journalist were of the above type. Those were reasonable expectations for the content of an ordinary contract. It was also emphasized that SCC had not considered that the implementation of the contract was paid out of the state budget. Thus third parties were obliged bodies in terms of the information regarding their activities which were funded out of the state budget.

Developments in the Court of Second Instance:

The case is to be heard at an open court session in June 2008.

2. Alekseniya Dimitrova (24 Hours newspaper) versus the Ministry of Finance

First instance - administrative case □ 02936/2006 in Sofia City Court (SCC), Third Division

Request:

On 10 of May 2006, Alekseniya Dimitrova a journalist in *24 chasa (24 hours)* newspaper submitted a request to the Ministry of Finance (MoF) in order to obtain information regarding agreements and contracts concluded between MoF and firm *Robin, Sheves, Lipkin-Shahak and Birger*, amount of money paid, and the grounds on which it was paid (for what activities), to the firm or its representatives as well as other related documents connected with the afore mentioned firm or its representatives.

Refusal:

By a decision as of 25 May 2006 the Director of „Administrative Services“ department in MoF stated partial refusal. The decision informed that within the period 2003-2005 MoF had concluded four agreements with the mentioned firm for the amount of 167 780 USD to obtain services connected with the management of external debts taken by the Republic of Bulgaria from other countries. Art. 37, Para. 1, Item 2 of the APIA was used in order to justify the refusal - the information affected the interests of the third party and no consent for the disclosure of the data had been given by that third party.

Complaint:

The partial refusal was challenged before the SCC. The complaint referred to the provision of APIA (Article 3, Para. 2, item 2) which sets that if the third party is receiving the funds from the state budget his consent is not necessary according to the provisions of article 31, Para. 5. of APIA.

Developments in the Court of First Instance:

During the first court session in March 2007, the case was suspended as MoF had to provide the proof that the director of the correspondent department was authorized by

the minister to decide on requests for access to information. Further on, during the open court session which was held on 13 of November 2007, the case was heard and scheduled for judgment.

Court Decision:

By decision as of 22 December 2007, the SCC repealed the partial access decision in its part connected with the amount of money paid by MoF according to the agreement on services provision regarding external debts taken by the Republic of Bulgaria concluded with the firm *Robin, Sheves, Lipkin-Shahak and Birger*, and the grounds for the above mentioned payment. The justices, found the other part of the refusal lawful. The court stated that the third party was a trade association and that the provision of documents in paper, namely the agreement between MoF and the firm, would affect the lawful rights and interests of the trade association (the third party).

3. Bulgarian Media Coalition vs. the Council for Electronic Media

First Instance- administrative case No. 132/2007, Sofia City Court, Panel III-D

Request:

In summer 2006, the Council for Electronic Media (CEM) took a series of decisions for initiating competitions for licensing radio and TV operators in Bulgaria. In this regard CEM adopted a series of subsidiary regularions, necessary for the appropriate process - Rules for Conducting Competitions, Methodological Guidelines for Preparation of Competition Documents, Methodology for Assessment of Candidates, etc. In this regard on November 11, the association Bulgarian Media Coalition filed six requests to get access to different categories of information.

Refusal:

With a decision as of 23 November 2006, the CEM provided part of the requested information. The requestor received the following information: a list of candidates who had applied for licensing as radio and TV operators; Rules for Conducting Competitions; Methodological Guidelines for Preparation of Competition Documents and Methodology for Assessment of Candidates. The refusal included two categories of information, namely:

- Information about the discussions of the members of the CEM, preceding the adoption of the four acts;
- Information contained in the competition papers.

Information about the discussions was refused to be provided on the grounds stipulated by Art. 13, Para. 2, Item 1 of the APIA, as information regarding the preparation of the act and not possessing significance of its own. As to the competition papers, information was refused to be provided on the ground that the competition papers were to be bought by the candidates for licensing, that pursuant to Art. 17, Para. 2 of the APIA, information that might lead to unfair competition among business persons was not to be disclosed, and that the candidates to obtain license were attaching a declaration for confidentiality with regard to the information contained in the competition papers.

Complaint:

The refusal was challenged before the Sofia City Court (SCC). The complaint stated that Art. 17, Para. 2 of the APIA could not be applied as the request was not for the competition

papers of the individual candidate (the business person), and thus it was impossible that provision of the information would cause unfair competition between the persons. Indeed, unfair competition would have been caused if the papers submitted by a particular candidate had been requested during the competition process. It was also explained that the requestor had requested the information contained in the competition papers not for the application forms.

Developments in the Court of First Instance:

The case was heard at an open court session on October 11, 2007 and scheduled for judgment.

Court Decision:

With a decision as of October 19, 2007, the SCC repealed the refusal to grant the information contained in the competition papers approved by the CEM and obliged the institution to provide access to the afore mentioned information. In their judgment, the magistrates noted that they would not accept the argument of the CEM that „the information contained in the competition papers“ was the property of the person who bought the competition papers. Justices also stated that the requested information dealt with application documents approved by the regulating body (CEM), not with the information provided in the filled papers by the candidates. As to the discussion papers, preceding the adoption of the disclosed rules, guidelines, and methodology by the CEM, the court panel assumed that Art. 13, Para. 2, Item 1 of the APIA was applicable. Finding that the two-years term for protection of those data had not expired according to Art. 13, Para. 3 of the APIA, the court rejected the complaint in that part.

Court Appeal:

The decision of the SCC in its part which had rejected the complaint was appealed in the Supreme Administrative Court (SAC). The appeal stated that the CEM was a public-law body which classified it as an obliged body under Art. 3, Para. 2, Item 1 of the APIA. Article 13, Para. 2 item 1 of the AIPA was not applicable to this category of subjects, and this was also reflected in the litigation practices of the SAC. Besides, pursuant to the special law- Law on Radio and Television (LRT), the principle of transparency and publicity shall be applied to the discussions of the CEM (Article 36, item 2 of LRT). That provision was special with regard to Art. 13, Para. 2, Item 1 of the APIA and consequently derogated it.

4. Bulgarian Society for the Protection of Birds vs. Ministry of Economy and Energy

IFirst Instance - administrative case No. 6044/2006 in SAC, Fifth Division

First Instance - administrative case No. 4871/2006 in SCC, Panel III-J

Request:

On February 1, 2006, Ivailo Ivanov, regional coordinator of the *Bulgarian Society for the Protection of Birds* in the town of Varna, submitted a request to the Minister of Economy and Energy in which he asked for all information available in the ministry regarding the procedure of preparation and approval of the National Long-term Program for Encouraging Usage of Renewable Energy Sources 2004 - 2015, including the draft of the Program itself.

Refusal:

With an order as of March , 2006, the head of the ministry's administration refused to provide the information on the ground that the information regarding the procedure of drafting and approval of the Program related to the preparatory work on the act and had no significance of its own (Art. 13, Para. 2, Item 1 of the APIA). It was also pointed out that at the present moment the draft of the Program was not finalized and was not adopted by the Council of Ministers (CoM).

Complaint:

The refusal was challenged before the SAC. The complaint stated that the administrative body used solely the provision of Art. 13, Para 2, Item 1 of the APIA without, however, specifying exactly which documents were considered to be related to the operational preparation of the act, nor explaining the circumstances according to which the whole requested information fell under the exemption of Art. 13, Para. 2, Item 1 of the APIA.

Developments in the Court of First Instance (SAC):

At an open session held on October 24, 2006, a panel of the SAC, Fifth Division, found out that the court body was not competent to hear the case, since the challenged order had been issued by the head of ministry's administration, and not by the minister. Subsequently, the case was sent to the Sofia City Court (SCC).

Developments in the Court of First Instance (SCC):

The case was heard at an open court session in March 2007 and scheduled for judgment. The complainant provided written notes which stated that for the application of Art. 13, Para. 2, Item 1 of the APIA, it should be ascertained that the issue was about opinions, recommendations, statements or consultations with regard to the preparation of the given act which did not have significance of its own. It was also set forth that the provision of Art. 13, Para. 2, Item 1 of the APIA was not applicable to the case according to another reason. The requested information, and especially the draft Program, was „information relating to the environment“ as stipulated by Art. 19, Item 2 of the Environmental Protection Act (EPA) - as it undoubtedly fell under the category of „programmes impacting or capable of impacting the environmental media.“ It had not been specified in the request for access to information, but identification of the applicable legal norms was not the responsibility of the requestor, rather the obligation of the administrative body. Since the requested information corresponded to the description under Art. 19 of the EPA, the appropriate norm for the exemption to the right of information was that of Art. 20 of the EPA. It appeared as a special norm. Article 20 of the EPA did not set forth a provision analogous to the one stipulated by Art. 13, Para. 2, Item 1 of the APIA. Such an absence conformed to the essence of the environmental information which should be subject to a broad public discussion.

Court Decision:

With a decision as of April 13, 2007, the SCC repealed the order of the head of the ministry's administration as unlawful. In their judgment, the magistrates signified that the head of the ministry's administration had unlawfully used the provision set by Art. 13, Para. 2, Item 1 of the APIA as a ground for refusal, as the exemptions set forth by the APIA were not applicable to information regarding environment. Grounds for restrictions to the access to environmental information were stipulated by the Environmental Protection Act (EPA). The court panel also held that the requested information did not fall under any

of the hypotheses set forth by Art. 20, Para. 1 of the EPA and the right of access to information should not be limited. On the other hand, public discussion was an independent stage in the process of adoption of common administrative acts (the National Program being such an act). It was a form of participation for interested persons. However, putting the national programme to a discussion, meant provision of information about the drafting process, as well as information regarding its content, to interested persons and organizations.

5. *Naroden Glas* newspaper vs. the Municipality of Lovech

First Instance - administrative case No. 138/2007 in Administrative Court of Lovech (ACL)

Request:

On May 18, 2007, Tsvetan Todorov, editor in chief of *Naroden Glas* newspaper submitted a request to the mayor of the Municipality of Lovech to obtain access to the following information:

1. Information on the amount of funds spent for publication of advertisements in local and central mass media for the period 2004 - 2006 out of the municipal budget;
2. Information on how the funds were allocated among the the respective publishers -numerically;
3. Information on who and how identified which publisher shall print the advertisement. What were the selection criteria?

Refusal:

On June 2, 2007, the mayor of the municipality notified the requestor that the requested information would affect the interests of third parties, and that was necessary to obtain their consent for the disclosure, thus the term for providing an answer was extended to 14 days. Subsequently, with a decision as of June 15, 2007, the mayor of the municipality provided to the requestor the information on the lump sum spent by the municipality for publications in mass media. He, however, refused to provide numerical information about the allocation of that money since the third parties concerned had sent written dissent for the disclosure of the information. The requestor was informed that the municipal administration was publishing advertisements in different media using the best price offers as the criteria for selection.

Complaint:

The refusal was challenged before the Administrative Court of Lovech (ACL). The complaint stated that it was not in the interest of the administration to keep the information on how public funds were spent from the society. The budget and the way it was allocated, including the municipal budget, was a public matter. The law itself provided for a balance in favour of the citizens' right to know how public funds were spent.

Developments in the Court of First Instance:

By the end of 2007, three court hearings took place since it turned out that the municipal administration itself did not really know who had been contacted in regard to the advertisements and who exactly received the public money. In order to clarify this matter,

it was necessary to hold three court hearings and the Administrative Court of Lovech even took the measures of imposing a sanction to the municipality legal advisor for non fulfillment of court instructions in time. During the last hearing, it was found out that there no contracts had been signed between the municipality and the four media, which had expressed dissent for disclosure of the amount of money they had received from the budget. During the forth court hearing in January 2008, one of the third persons - *Novinar* newspaper, provided a protocol for the amount of money received from the Municipality of Lovech for publishing advertisements and announcements during the specified period. In February 2008, the last court hearing was held and the case was scheduled for judgement.

A court decision is pending.

6. William Popov vs. the Minister of Interior

First Instance - administrative case No. 9349/2006, SAC, Fifth Division

Second Instance (appeal against ruling) - administrative case number No. 12432/2006, SAC, Five-member panel, Pannel II

First Instance (renewed) - administrative case No. 9349/2006 in SAC, fifth division

Request:

On August 14, 2006, William Popov, chairman of the Steering Committee (SC) of Civil Club *Competency and Moral* submitted a request to the Minister of Interior asking for information about the procurement of two steel plated cars for the Ministry of Interior (MoI) in a mode of concretely defined questions.

Refusal:

Within the legally prescribed period of 14 days he did not receive an answer to the submitted request.

Complaint:

A complained was submitted to the SAC. The complaint stated that the silent refusal of the minister of interior not only breached the individual right of access to public information of the requestor, but also the right of the citizens connected with the work of the organization which Mr. Popov represented. Procurement issues, including procurement of special cars, by the bodies of interior on the expense of public resourses (state budget) was of particular significance to the society. Clarifying those issues would help to form one's own opinion with regard to the activity of the respective institution, the Ministry of Interior in the particular case, and would give the opportunity of finding the answer to the question: „Is that activity performed with the purpose of satisfying the public interest?“

Developments at the Court of First Instance:

During the court hearing that took place on November 27, 2006, the representatives of the MoI claimed that the complaint against the silent refusal had been filed two days after the legally prescribed period, thus the case should be terminated. With a ruling, the court panel decided to leave the complaint without consideration and terminated the case despite of the fact that the postal notification stating that the complaint was sent during the last day of the term was provided as evidence.

Appeal Against the Ruling:

The ruling by which the case was terminated was appealed before a Five-member panel.

Ruling:

With a ruling No. 178 as of January 8, 2007, a five-member panel of the SAC repealed the ruling for termination of the case delivered by the lower instance court and turned the case back for continuation of proceedings. The magistrates assumed that the conclusions of the three-member panel were contradicting the evidences of the case and thus the judgement was incorrect.

Developments in the Court of First Instance (renewed):

The case was heard at an open court session on February 12, 2007. The representatives of the MoI pleaded for the termination of court proceedings due to inadmissibility of the complaint. They stated that the APIA did not provide for challenging silent refusals of obliged bodies, but only for the decisions by which the provision of access to public information was refused. The court panel left the request of the Minister of Interior for the termination of court proceedings due to inadmissibility of the complaint without consideration. The judges assumed that pursuant to Art. 40, Para. 1 of the APIA, the decisions on both granting and refusing access to information were to be challenged before the court. Silent refusal shall be regarded as a negative decision of the obliged body on a request, which made its complaint admissible. The case was scheduled for judgment.

Court Decision:

With a decision No. 1753 as of February 20, 2007, a panel of the SAC, Third Division, repealed the silent refusal of the minister and returned the request back to him for reconsideration. In their judgment, the magistrates stated that the silent refusal represented inaction of the administration in cases when the administrative body had the obligation to issue a decision with regard to a submitted request. In the given case, the Minister of Interior had not issued a decision with regard to a request submitted by the complainant to get access to information on the procurement of two steel plated cars despite of the fact that the decision should have been issued within 14 days after the request was submitted (Art. 28, Para 1 of the APIA) notifying the requestor in writing whether the requested information was granted or denied (Art. 28, Para 2 of the APIA). Silent refusal indicated such inaction of the administrative body which was infringement to the law.

7. 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 (SAC).

Developments in the Court of Second Instance:

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

Court Decision:

In a final decision, as of June 28 2007, a three-member panel of the SAC upheld the right of the journalist from bTV, Genka Shikerova, to obtain access to the requested documents. The judges upheld the decision of the first instance, rejecting the argument of the appellant - the Municipality of Nesebar - that the journalist had requested the same information

twice. The judges stated that if the institution had not provided information at a request the first time it was submitted, the institution did not have the right to claim that it had responded to the same request within the last six months.

8. 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 (RCK) 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:

The case was heard at an open court session in September 2007 and scheduled for judgement.

Court Decision:

With a decision No. 10010 as of October 22, 2007, a panel of the SAC, Third Division repealed the decision of the RCK and delivered another decision by which the appeal of the environmental association was rejected as groundless. The court panel held that the refusal of the mayor to provide information on a material carrier was lawful and the complaint to appeal the decision was groundless. On the first place, access to the requested information had not been refused as information had been provided under the special procedure set forth by the Instructions for the *Procedure for Conducting Environmental Assessment of Plans and Programs*, as stipulated by Art. 4, Para. 1 of the APIA. The justices grounded their conclusion in the circumstance that the Municipality of Sapareva Bania had published an announcement as of May 12, 2006, informing that all interested natural and legal persons would have access to the Draft of the Urban Development Plan and to the Environmental Assessment Report on the *Panichishte-the Lakes - Kabul Peak Tourism and Ski Center*. The announcement also had signified the deadline and the e-mail for submission of opinion statements. Secondly, according to the justices, the APIA provided for the procedure to request access to information but not access to documents as a material carrier of the information, as it was in the given case. Documents are material carrier of information, but if information was requested just as a provision of a document and not as a description of a piece of information or information about someone or something, such information was not subject to provision.

9. Yordan Todorov (168 Hours newspaper) vs. the Minister of Interior

First instance - administrative case No. 818/2007, Supreme Administrative Court (SAC), Fifth Division

Second instance - administrative case No. 9280/2007, in SAC, Five member panel - First Panel

Request:

In October 2006, Yordan Todorov, a reporter from „168 chasa“ newspaper, filed a request to the Minister of Interior to get access to information regarding a lodging released for

rent and then for sale by the housing department of "Material-Technical Insurance and Social Services" Directorate (MTISS) of the Ministry of Interior. The information requested was thoroughly described as follows:

1. Decision of the housing committee of MTISS to define the priority in distributing the housing between six registered officers, whose applications were viewed by the commission;
2. Draft decision of the housing commission of MTISS to allocate two lodgings;
3. The order issued by the Minister of Interior as approval to draft decision for the allocation of the two lodgings;
4. The order issued by the Minister to accommodate an officers on a rent basis in one of the lodgings;
5. The order issued by the Minister approving sale of that particular housing.

Refusal:

By a decision as of November 2006, the Minister of Interior had refused to provide access to the requested information. As a ground for the refusal Art. 13, Para. 2 of the Access to Public Information Act (APIA) was referred. According to the provision, access to administrative public information that was of preparatory character and had no significance of its own may be refused. It was also referring to the provision of Art. 37, Para 1, item 2 of the APIA, according to which information which concerned the interests of a third party, and whose consent for disclosure had not been obtained, was not subject to provision. Additionally, the Minister in his decision stated that the requested information was not connected with the public life, but is of a private character, thus access to it shall not be granted.

Complaint:

The refusal was challenged before the Supreme Administrative Court (SAC). The complaint pointed that application of the exemption provided by Art. 13, Para. 2 of the APIA was possible only with regard to the information requested under items 1 and 2. At the moment when the refusal was issued, however, the two year's term of protection had been expired since under the provision of Art. 13, Para. 3 of the APIA the exemption set by the Para.2 of the same provision shall not be applied after two years from the creation of the information. It was also pointed out that it was improper to apply Art. 37, Para.1, item 2 of the APIA, as in his request the journalist stated that he would like to get partial access to information, specifically the data regarding the personal information on the officers in need of the housing, as well as the data on the officer who got the housing released for rent initially and further on for sale, shall be extracted. It was emphasized that the requested information was certainly related to the public life in the Republic of Bulgaria, under the stipulation of Art. 2 of the APIA, since it was related to the disposition of real estate which was a state property.

Development in the Court of First Instance:

The case was heard at one open session and scheduled for judgment.

Decision of the Court of First Instance:

By a decision No. 7483 as of 11 July 2007, a three member panel of the SAC, Fifth Division repealed the refusal of the Minister and turned the information request back to the administrative body for reconsideration. In their judgment, the magistrates pointed

out that in terms of the subject of the request in items 1 and 2, the information fell within the hypothesis of the provision set forth by Art. 13, Para. 1 of the AIPA - the requested documents had a preparatory character, as the documents are compiled within the implementation of the procedure on releasing a lodging from the housing fund of the Ministry of Interior for rent. As for the data included in the orders requested under items 3, 4 and 5 of the request, they possessed the characteristics of official information generated as a result of the activities of the administrative body with regard to the exercise of legally prescribed functions to manage and dispose with the real estates of the same body. However, the obliged body had incorrectly referred to the exemption set by Art. 13, Para.2 of the AIPA to refuse access to the acts of the MTISS. The hypothesis of that provision was applicable within the legally prescribed period of two years from the moment of the creation of the preparatory official information - Art. 13, Para. 3 of the AIPA. In the particular case, that period had expired before the date of on which the challenged refusal was issued, and consequently the ground for the refusal had dopped out. As to the other requested information, the judges stated that the provision of Art. 31, Para. 2 of the AIPA clearly stated that in case when the requested public information concerned a third party, the appropriate body shall request its written consent within 7 days after the request was registered. The requested information undoubtedly contained personal data, those of the officers targeted by the orders. Consequently, without notifying them, the body would not be able to decide whether and in what volume to provide the requested information. However, the file of the case contained no evidence that the responsible body had notified the interested persons about the submitted request, nor had it sought for their written consent to provide the requested information. Thus the refusal grounded on the lack of consent of the third party was unlawful, it should be repealed and the request should be sent back to the administrative body to fulfill its obligation set forth by Art. 31, Para. 2 of the AIPA.

Court Appeal:

The decision of the SAC, Fifth Division was appealed by the Minister of Interior before a five member panel of the same court with the argument that the finding of the court that the procedure of issuing the refusal had been breached was incorrect.

Developments in the Court of Second Instance:

The case was heard within one session and scheduled for judgment.

Decision of the Court of Second Instance:

By a decision No. 11257, as of 15 November 2007, a five member panel of the SAC, First Division, upheld the decision of the preceding instance. In their judgment, the magistrates completely approved of the arguments of the three member panel of the SAC, and also added that Art. 31 of the AIPA did not set the ground for refusal of access to public information based on speculations that the third party would not consent of disclosure, but entrusted an obligation for the body to seek for such consent.

10. National Movement *Ecoglasnost* vs. the Nuclear Regulatory Agency

First Instance - administrative case No. 6942/2006, SAC, Fifth Division

Second Instance - administrative case No. 30538/2007, SAC, Five-member Panel- First Panel

Request:

In May 2006, the deputy chairman of the National Movement *Ecoglasnost*, Peter Penchev, submitted a request to the Nuclear Regulatory Agency (NRA) asking for information regarding the first and the second reports prepared by the Nuclear Power Plant „Kozlodui,“ as well as all the annexes, regarding the March 1, 2006 incident on the fifth block of nuclear plant, and the third report with the annexes if it had been compiled. Besides that, he also requested copies of the first and second notification (third only if applicable) sent to the International Atomic Energy Agency (IAEA), together with all the annexes.

Refusal:

Several days after the submission of the request, NM *Ecoglasnost* was informed that on the ground of Art. 31, Para. 1 of the APIA and due to the circumstances that the requested information dealt with a third party, namely, the Nuclear Power Plant „Kozlodui,“ whose written consent should be obtained for the disclosure, the term for responding to the request was extended with 14 days. Simultaneously, a request was sent to the NPP „Kozlodui“ to provide its consent for granting access to the requested reports. On May 17, 2006, the executive director of the nuclear plant responded that access should be granted to the reports compiled in regard to the accident, though he dissented disclosure of the annexes. On May 31, 2006, the chairman of the NRA sent the requestor a letter stating the refusal of the NPP "Kozlodui" and providing partial access to the requested reports (without the annexes), as well as to the notifications sent to IAEA.

Complaint:

The refusal was challenged before the Supreme Administrative Court (SAC). The complaint stated that for requesting the consent of the third party, a potential harm to its rights or legal interests stemming from the disclosure of certain data should be ascertained. No evidence for such assessment undertaken by the administrative body was found in the grounds stated in the challenged refusal. It did not become clear why the request for access had been considered as harmful for the rights or the legal interests of the third party, and which were the specific data that would have harmed those rights and legal interests. In the current case, the requested information did not relate to the third party, but it was created by the third party. The information did not relate to the third party but to the investigation and the analysis of the nuclear nuclear plant incident, as it was obvious. Consequently, the application of the provision of Art. 31 of the APIA to the case was wrong from the beginning. Furthermore, the provision of Art. 20, Para. 4 of the Environmental Protection Act (EPA), according to which the public interest served by the disclosure of the information should be taken into consideration. There was no evidence, however, that the provision had been applied in the current case. Public interest in the case was undoubtful, as it regarded an accident in a nuclear power plant, which was classified as level two after the International Nuclear Event Scale. That conditioned the need for informing the society.

Developments in the Court of First Instance:

The first hearing of the case in November 2006 was, however, postponed as the court panel considered that the NPP „Kozloduy“ should be constituted as an interested party. Subsequently, on January 23, 2007, the case was heard at an open court session and scheduled for judgement.

Court Decision:

With a decision No. 1178 as of February 2, 2007, a panel of the SAC, Fifth Division, repealed the partial refusal issued by the NRA and returned the request back for reconsideration. Magistrates found that it was not clear why the NRA decided that the rights and interests of the NPP „Kozloduy“ would have been affected and asked for its consent. It was logical to assume that the reports, as well as the annexes, contained information related to the investigation and thus it was impossible to presume that the documents contain a secret protected by law.

Court Appeal:

The decision was appealed by the chairman of the NRA before a five-member panel of the SAC. The appeal stated that the assessment whether the information would harm the interests of the third party was made by the third party itself and thus the NRA was not supposed to justify the refusal by qualifying the requested information.

Developments in the Court of Second Instance:

The case was heard during one open court session in June 2007 and scheduled for judgement. The nuclear power plant presented parts from the contract with a Russian companying for design, development and putting into exploitation of a control rods system, a considerable part of which stopped functioning on March 1, 2006. According to the contract, everything related to its implementation, was confidential.

Court Decision:

With a decision No. 6858 as of July 2, 2007, a five-member panel of the SAC upheld the decision of the preceding instance. The justices rejected the arguments set forth by the NRA and the NPP and confirmed that the dissent of the third party was not by itself a ground for refusal to provide information which was of public character.

11. Rosen Bosev from *Capital Weekly* vs. the Director of the Government Information Service

First Instance Court- administrative case. No 03528/2006 Sofia City Court, Panel III-B

Request:

On 5 of April 2006, Rosen Bosev, a journalist from *Capital weekly*, filed a request to get information from the Ministry of State Administration and Administrative Reform (MSAAR) on the contract concluded between the Ministry, by the former minister Dimitar Kalchev, and Microsoft Co for the procurement of software licenses necessary for the state administration. The journalist was seeking information on the conditions of the above-mentioned contract and he wanted to get a copy of the contract.

In ten days, the head of administration at the MSAAR sent a response to Mr. Bosev, informing the latter that the contract under request was concluded by the ex-minister of state administration Mr. Kalchev, who was acting on behalf of the Council of Ministers, thus MSAAR was not a party to the given contract and did not have it. For this reason MSAAR forwarded the request to the Council of Ministers.

On 28 of April 2006, the Director of the Government Information Service (GIS) , Ms. Tanya Geneva, sent a letter to the journalist, saying that he would receive the requested information, but its preparation needed some time, and for that reason and in accordance with Art. 30, Para. 1 of the Access to Public Information Act (APIA) the term for providing the information would be increased to ten days.

Refusal:

In ten days, on 8 May 2006, Mr. Rosen Bosev did not receive the requested information, but a letter with a refusal, that was signed by Ms. Tanya Geneva. The refusal letter indicated ... *the conditions under which the contract for the procurement of software packages to be used by the state administration was signed with Microsoft is a matter of commercial secret. Thus the disclosure of the provisions of the contract will lead to unfair competition between the traders, as the conditions of the contract envisage the requirements of the state administration, including the clauses on providing free of charge training to the employees of the state administration system as well as other specific conditions.*

Complaint:

The refusal was challenged before the Sofia City Court (SCC). The complaint pointed out that according to the Fair Competition Act (FCA), the definition of the commercial secret was as follows: the facts, connected with implementing business activities, disclosure of which contradicts to the best business practices and causes or may cause harm to the relations between the competing parties or between them and the customers. The unfair competition was used as a ground for the refusal to provide information. However, it was unclear how the disclosure of the requested information might have affected the private firm.

Development in the Court of First Instance:

On 19 of March 2007, the case was reviewed by the SCC, that however noted that the competence of the Director of the GIS to issue the refusal was unclear. (To clarify, the APIA prescribes that the refusal to grant information should be issued by the head of the corresponding institution. If issued by another person, they shall be specifically authorized to do that. In the particular case, the Director of the GIS was authorized with an order by a former Prime Minister, namely Ivan Kostov, to decide on requests for information. The court, however, is not obliged to know that, while the GIS shall present the order as evidence in every court case against its refusal to grant information.) For that reason, the case was to be reviewed in June and the GIS was instructed to provide the court with the relevant data. Among other reasons to delay the case was the absence of the GIS representative.

On 25 of June 2007, the case was again heard by the SCC. The court panel found that not only the GIS did not send their representative, but also the previous prescriptions of the court were not carried out. That was the reason to another adjournment of the case till October 2007. The panel of judges refused to impose a fine on the GIS for non

fulfillment of court prescriptions, but ruled that the GIS shall provide all necessary documents within an appointed term.

During the court session on 3 of October 2007, the representative of the GIS was present and provided the court with requested evidence, namely a copy of the order of the Prime Minister, that empowered the Director of the GIS to decide on requests for information. The case was heard and scheduled for judgment.

Court Decision:

With a decision as of 2 November 2007, the SCC repealed the refusal of the Director of the GIS declaring it unlawful, and returned the information request for reconsideration. The court ruled that the administrative act should be cancelled as it breaks the existing law and contradicts the letter of the law. The provision of article 17, para. 2 of the APIA, that was regarded to by the administrative body, which exempted access to public information that comprises commercial secret and might cause unfair competition, is part of Chapter 2, Section III of the APIA . Its content and location within the purview of the law implies that it was connected with access to the so-called „other“ type of public information - on the activity of obliged bodies under the article 3, para. 2 of the APIA. The information, requested by the applicant, cannot be viewed as falling within the scope of that provision. The requested information is connected with the conditions of the contract concluded between the obliged under article 3 para. 1 of the APIA public body , and third parties, public-law entities, thus constituting administrative public information as stipulated by article 11 of the APIA.

Besides, according to the judges, the protection of the commercial secret and prevention of the unfair competition would be a sufficient reason to ground the refusal on granting administrative public information under the provision of article 37, paras 1, 2 of the APIA. That might serve as a legal ground only if the procedure set forth by article 31 was applied and no consent for disclosure of the requested information was obtained from the third party. Thus, not requesting the consent of the third party concerned, the Microsoft Company in this case, grounded the illegality of the refusal due to violations of the administrative procedural rules for issuing the refusal. Nevertheless, explicit dissent or lack of consent of the third party cannot bind the administrative body to automatically withhold public information. On the contrary, the administrative body in charge shall provide the information in the scope and mode that would not cause harm to the third party concerned. As concluded by the panel of judges, the functional independence provided to the administrative body to apply the law and which embodied the purpose of the law itself - to ensure access to information connected with public life in the country which provides citizens with the opportunity to form their own opinion regarding the activity of responsible bodies - was violated in this case.

The decision was not appealed and became effective.

12. Hristo Hristov vs. The National Intelligence Service

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. 3S-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.

Court Decision:

In its decision, as of June 11, 2007, the Supreme Administrative Court (SAC) upheld the decision of the Sofia City Court (SCC) which had repealed the tacit refusal of the Director of the National Intelligence Services (NIS) to provide journalist Hristo Hristov access to documents related the murder of the Bulgarian dissident writer Georgi Markov. In its decision, the SAC rejected the arguments stated by the NIS in the court appeal. The justices assumed that the legislator did not exclude the NIS from the bodies obliged to provide information to the citizens under the Access to Public Information Act. The right of access may be subject to restriction if the requested information was classified. Even in those cases, the justices emphasized, citizens had the right to receive the requested information. In cases under Art. 34, Para. 3 of the Protection of Classified Information Act (PCIA), when the time period for the protection of classified information had expired, the status of classification should be removed. According to the justices, the Sofia City Court had rightly raised the question why, considering the existing circumstances, the information had not been submitted to the State Archive pursuant to Art. 33, Para. 2 of the PCIA. The argument of the NIS that the information was not public since foreign persons' interests were affected had been rejected. According to the court panel, the requested information was public since the requestor may have formed opinion about the activities of the security services during the socialist times. The court decision stated that it was not the obligation of the requestor to prove that the institution held the requested information. Thus, the argument of the NIS that it had not been proved that NIS was the institution holding the documents was ungrounded. Even the contrary, it was the institution which best knew the kind, volume and form of the information which it held and should state that in its response to the requestor under the APIA.

The court decision is final.

13. Centre of Independent Living vs. Social Support Agency

First Instance - administrative case No. 62/2007, Administrative Court - Sofia city, Panel-23

Second Instance - administrative case No 6700/2007, SAC, Third Division

Request:

In January 2007, Kapka Panyotova, executive director of the association *Centre for Independent Living - Sofia* submitted a request to the Social Support Agency (SSA) asking for information described in two points as follows:

1. Names and positions of the officials appointed by the director of the SSA responsible for issuing protocols of violations on the basis of Art. 55, Para. 1 of the Disabled People Integration Act (DPIA), and

2. The number of issued protocols finding administrative violations of the DPIA for the period 2005 and 2006, as well as the total amount of sanctions imposed during the same period.

Refusal:

With a decision as of February 14, 2007, the executive director of the SSA refused to provide the requested information. The stated ground for refusal of the information under point 1 was that the names and the positions of the officials appointed on the basis of Art. 55, Para. 1 of the DPIA, constituted personal data according to the definition stipulated by Art. 2, Para. 3 of the Personal Data Protection Act (PDPA). Pursuant to the same provision of the special act, the Access to Public Information Act was not applicable for access to personal data. In terms of the information requested under point 2, access was denied with the argument that the particular information was processed by the Disabled People Agency as stipulated by Art. 55 of the DPIA.

Complaint:

The refusal was challenged before the Administrative Court - Sofia city (ACSC). It was argued in the complaint that the information requested under point 1 could not be personal data, as the purpose of the PDPA was protection of personal life, while information about the activities of an official was just the opposite to personal life, as those activities were related to public life due to the exercise of public power by an institution which serves the society and the citizens. With regard to point 2 of the request, it was emphasized that no hypothesis for issuing a refusal followed from the statement of the fact that the requested information had been processed by the Disabled People. No redirection of the request as provided by Art. 32 of the APIA was made. Also no data existed that the SSA did not dispose of the requested information. Even the contrary, the provision of Art. 55, Para. 5 of the DPIA, quoted in the challenged refusal, established an obligation for the bodies under Art. 55, Para. 1 to provide annually (until December 31) the relevant data to the Disabled People Agency. Since the SSA was a body under the particular provision, it should have the requested information.

Developments in the Court of First Instance:

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

Court Decision:

With a decision No. 1 as of May 16, 2007, a panel of the ACSC repealed the refusal and returned the request back to the SSA for reconsideration of point 1 of the request after seeking the consent of the third party, and obligated the SSA to provide access to the information requested under point 2. In their judgment, the justices assumed that the information under point 1 did not constitute personal data with regard to the respective officials, but at the same time, the court presumed that consent for disclosure of those that should be obtained. As for the information requested under point 2, the justices pointed out that the circumstance that SSA was obliged to provide reports for investigations and imposed sanctions to the Disabled People Agency annually, did not remove the obligation for provision of the same information under the procedure stipulated by the APIA and may not be used as a ground for the refusal.

14. Yurii Valkovski vs. the Ministry of Culture

First Instance-administrative case No. 5161/2007, SAC, Third Division

Request:

On April 16, 2007, Yurii Valkovski, a member of the informal organization *Expert Group for Transparent and Efficient Cultural Policy*, submitted a request to the Ministry of Culture (MC) asking for access to the following information:

- A copy of the Order assigning the working group for the preparation of a Draft Regulation pursuant to Art. 5, Para. 4 of the Protection and Development of Culture Act (PDCA), by which the minister should define the selection procedure for directors of state cultural institutions (in the form of a paper copy);
- Information about the deadlines within which the working group should present results from its work on the draft of the respective Regulation (in paper form).

Refusal:

On April 23, 2007, the requestor received a letter with the decision of the minister who had refused to provide a copy of the order for the assignment of a working group to draft the Regulation. The refusal was grounded in the provision of Art. 13, Para. 2, Item 1 of the APIA since the information had been related to the operational preparation of the acts of the MC and had no significance of its own. With the same letter, the minister informed the requestor that pursuant to § 20, Para. 2 of the Final Provisions of the PDCA (promulgated in State Gazette, issue 106, as of December 27, 2007), the time frame prescribed for the adoption of the Regulation was six months after the enactment of the law.

Complaint:

The refusal was challenged before the Supreme Administrative Court (SAC). The complaint stated that quoting Art. 13, Para. 2, Item 1 of the APIA was completely groundless since the order of the minister constituted an act of a state body issued within the fulfillment of duties, i.e. the order constituted official public information pursuant to Art. 10 of the APIA. The exemption provided by Art. 13, Para. 2 of the APIA was applicable if and only if the information had been administrative public information, which pursuant to Art. 11 of the APIA was all other information which was not official. With regard to the information about the time frames, the complaint stated that the minister had not provided the requested information since the requestor had not asked for prescribed period within which the respective regulation should be adopted - there was no need doing it since the time frame was set forth by the law itself. Information about the deadlines assigned to the working group to present results from the drafting of the respective Regulation. As a matter of fact the response with regard to that part of the request constituted a silent refusal and should be repealed as unlawful.

Developments in the Court of First Instance:

The case was heard in an open court session in December 2007 and scheduled for judgment.

Court Decision:

With a decision No. 439 as of January 14, 2008, a panel of the SAC, Third Division repealed the refusal of the minister in its part stating that the time frame for the adoption of the Regulation was six months as prescribed by the law, and obligated the minister to provide information about the deadlines set for the work group to present the draft of the Regulation. In their judgment, justices stated that with the challenged part of the decision, the administrative body had informed the complainant about the legally prescribed period of six months within which the Regulation should be adopted. The request, however, which triggered the administrative procedure, was for access to public information regarding the period within which the working groups should present finalized draft of the Regulation. The court panel rejected the rest of the complaint as groundless. With regard to the requested copy of the order appointing the working group, the justices assumed that the way the request had been formulated did not stand for a request for access to public information. Every request for access to information under the APIA should contain description of the public information sought, as stipulated by Art. 25, Para. 1, Item 2 of the APIA. The APIA provided for the procedure to request access to information but not access to documents as a material carrier of the information, as it was in the given case regarding the first point in the request. Documents were a material carrier of information, but if information was requested just as a provision of a document and not as a description of a piece of information or information about someone or something, such information was not subject to provision.

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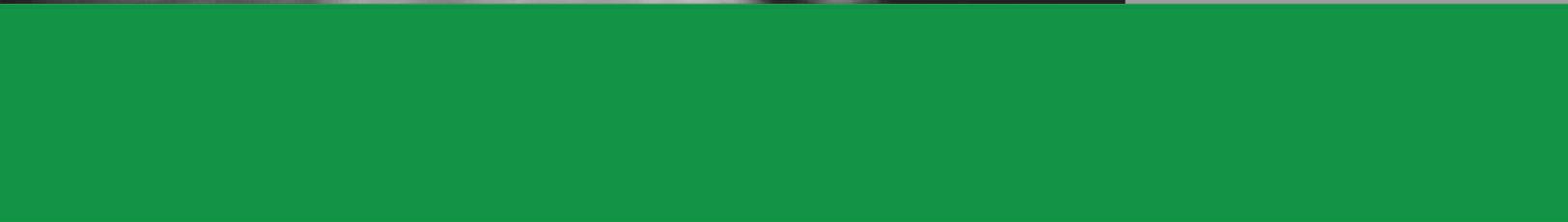
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