

DECISION

No. 11422
Sofia, 19 December 2005

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Division,
in a court sitting on the first of November in the year two-thousand and five, in a
panel composed of:

PRESIDING JUDGE: MILKA PANCHEVA
PANEL MEMBERS: DIANA DOBREVA, TANYA RADKOVA

in the presence of court stenographer Iliana Ivanova and with the participation of
prosecutor Meri Naydenova, heard the report by Presiding Judge MILKA
PANCHEVA on Administrative Case No. 3621 of 2005.

These proceedings were held pursuant to Art. 12 of the Supreme Administrative Court
Act (SACA), concerning Art. 2 of the Access to Public Information Act (APIA).

The case was initiated by a complaint from Nikolay Todorov Penchev, editor-in-chief
of the newspaper *168 Hours* against a silent refusal from the minister of education to
a request for access to public information Reg. No. 132-37/16 February 2005. He
claims that he did not receive an answer within the legally stipulated timeframe,
which constitutes a silent refusal on the part of the minister to present the requested
information. He believes that the MES is an obliged subject in the sense of Art.3,
Para.2, Item 2 of the APIA, while the requested information was created and
preserved by the ministry. He requests that the appealed refusal be reversed and that
the minister of education and sciences be required to provide access to the
information demanded in accordance with the request.

At the court proceedings, the appellant, regularly summoned, did not appear and did
not present himself.

The respondent - the minister of education and sciences - was represented by legal
council Georgieva, who contested the appeal and requested that it be rejected, since
she believes that the data requested by the appellant constitute personal data.

A representative of the Supreme Administrative Prosecutor's Office considers the
appeal unjustified, since the appellant did not prove the necessity of the requested
information.

The Supreme Administrative Court evaluated the written evidence collected in the
case and found the complaint to be procedurally permissible, but unfounded in its
merits for the following reasons:

The right of every individual to seek, receive and distribute information is
constitutionally guaranteed by the provisions in Art. 41, Para. 1 of the Constitution of
the Republic of Bulgaria.

The public relations related to the right of access to public information are set forth in the APIA; Art. 2 provides a legal definition of the concept "public information" in the sense of that law. It is "all information connected with the public life of the Republic of Bulgaria and which offers citizens the opportunity to form their own opinion about the activities of subjects obliged under the law." The concept "information" is defined in the *Dictionary the Bulgarian Language* (published by Science and Art 2001; fourth edited edition) as: 1. A given or received message or knowledge about someone or something; 2. A service that gives such knowledge; 3. Knowledge about the objects or processes in the world, perceived, accumulated and passed on by humans through special means, etc. It follows that the concept "public information" should be understood as knowledge about someone or something connected with the public life of the country, especially the activities of subjects obliged under the law, which create or preserve such knowledge.

In the concrete case, from the content of the request by the editor-in-chief of the newspaper *168 Hours* N. Penchev to the minister of education and sciences it is obvious that the information being sought does not possess the characteristics of "public information" in the sense of the APIA. In fact, the appellant demanded that the administrative body provide in written form the names, education and qualification levels of all members of a team led by the ministry, the heads of all departments, all state experts, as well as people hired with civil contracts.

The court finds that the information requested in this way does not concern data about the public life of the country, nor data about the activities of subjects obliged under law or the individuals described in the requests, but rather concerns personal information related to the personal data of the individuals characterized by the positions they hold. For this reason, the provisions in Art.31, Para.1 and Para.2 of the APIA cannot be applied, but rather, when the requested information concerns a third-party whose consent it is necessary to obtain for the information's disclosure, the relevant body is required to ask for explicit written consent from the third party within seven days of registering the request, according to Art. 24 of the law. If the consent of the third party is not obtained or if it is explicitly refused, the administrative body can present the requested information to such an extent and in such a manner, such that it does not reveal information concerning the third party - Art. 31, Para. 4 of the APIA.

All hypotheses contained in the provisions of Art.31 of the APIA refer to "public information" concerning a third-party. The personal data of individuals from a leading team in the ministry of education and sciences cannot constitute public information.

In this sense, the silent refusal by the administrative body was lawful and the appeal, which is unfounded, must be rejected.

Guided by the aforementioned considerations and based on Art. 28 of the SACA, in connection with Art. 42 of the APA, the Supreme Administrative Court, Fifth Division

HEREBY RULES:

TO REJECT the appeal by Nikolay Todorov Penchev, editor-in-chief of the newspaper *168 Hours* against a silent refusal from the minister of education and

sciences in response to a request for access to public information Reg. No. 132-37/16
February 2005.

The decision can be appealed before a five-member panel of the Supreme
Administrative Court within 14 days from the time the parties have been informed of
its pronouncement.

True to the original,

PRESIDING JUDGE: (signature) Milka Pancheva

PANEL MEMBERS: (signature) Diana Dobрева, (signature) Tanya Radkova