ACCESS TO INFORMATION IN BULGARIA 2004

REPORT

SOFIA 2005

Introduction

The team of Access to Information Programme is pleased to present its Report on Access to Information in Bulgaria for 2004.

The Access to Public Information Act, which is in force from the summer of 2000, has not been changed much, with the exception of some editorial amendments with the adoption of the Protection of Personal Data Act and the Protection of Classified Information Act (in 2002).

The process of adopting rules, regulating the internal APIA procedures, has continued in 2004. This is usually done by an order of the Institution directors who realize the need to assign responsibilities to officials, working with incoming information requests.

At the same time, last year saw some attempts to change the legislation, regulating the exemptions from the right to information access, with amendments not favoring transparency.

Indeed, the Bulgarian Access to Public Information Act has a number of weaknesses and unclear provisions compared with international standards.

Since 2000, these weakness have had a negative effect on the implementation of the law. Almost all hindrances, however, have been overcome in certain ways: through external pressure, actions of good-willed and thinking officials, court practices and public control.

Oversight on the implementation of the Access to Public Information Act

A major weakness of the Bulgarian law is the lack of an oversight institution on its implementation. Even the regulation of sanctions (Art. 42) is not clear in determining the functions of the various institutions in this respect. This legal flaw still hinders the implementation of the law.

The lack of administrative oversight stipulated in the Bulgarian freedom of information legislation is to some extent compensated by practical measures on our side, i.e. by public control. Since the summer of 2000, when the law was adopted, Access to Information Programme (AIP), has been conducting training workshops, publishing handbooks, presenting freedom of information developments, helping the administration with analyses of different cases, and publishing annual access to information reports. Basing our analyses on legislative developments and freedom of

information practices, we also present recommendations to governmental institutions for the improvement of access to information and adoption of better policies. However beneficial our work can be, it cannot fully replace oversight institutions, whose decisions are mandatory for the administration.[1]

In practice, this legal flaw can be at least partially overcome by a more active approach of the Minister of State Administration, who is obliged to publish an annual report on the implementation of APIA by the administrative bodies.

From our point of view, another important reason for the above problems is the weakness of the institution of the Minister of State Administration - his authorities, oversight functions and even the structure of his administration are unclear. In some countries, the Minister of State Administration is the Prime Minister himself.[2] This is an appropriate solution because it ensures consistency of the communication policy of the executive power and its administration and practically enables the policy implementation. The awkward position of the Minister of State Administration eliminates the opportunities for unified and consistent policies of the executive power, including on questions of communication.

The lack of an oversight institution leads to some contradicting practices, which are difficult for systematization; and even if they were systematized, this would only be done through an empirical approach. At the same time, the models of good practices models of good practices are created either by law, by court practices, or by the detailed policy of the political party/coalition in power.

The Bulgarian model is stipulated neither in law, nor in the active policy of the party in power; it is created by the active role of NGOs and citizens, isolated administrative initiatives, and pressure from the court.

This combination of the work of different agents is, in fact, leading to some results. This is why we are reluctant to give recommendations for legislative changes or for the establishment of new institutions. We hope that practice accumulated with the implementation of the law after the election of the National general ombudsman, will outline more clearly the need for legislative changes.

At the same time, the implementation of the Access to Public Information Act and

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1 Obviously, administrators realize the existence of a legal vacuum and are trying to fill it with the adoption of common internal rules for the implementation of the law. For example, in the scope of the Phare financed project *Strenghtening the capacity of the state administration* the Minister of State Administration has drafted Instructions for the implementation of APIA. Unfortunately, the Minister is yet to approve this useful document.

2 Like in Bulgaria during the last year of the Kostov Government (2000 – 2001).

especially the court practices show that transparency regulations are still incomplete.

Juducial Review and Public Opinion

In 2004 again, the developments in the court practices related to the implementation of the Access to Public Information Act (APIA) benefited transparency. Though the practices were not always consistent, they were particularly significant since they were publicly proclaimed.

The fourth year since the adoption of APIA is characterized with the active use of the law by the media, including the initiation of court proceedings. Such a development facilitated the implementation of the law, given that the year preceded the general elections and the role of the public opinion, which generally was shaped and conveyed by the media, was of particular importance.

The positive effect from the monitoring and other forms of civil control over the implementation of the law are also important factors in the establishment of internal mechanisms that lead to the consideration of the obligations pursuant to APIA.

Secrecy Regulated

Another significant factor in the development of the practices in 2004 was the implementation of the Protection of Classified Information Act (PCIA).

On the one hand, the communication and training policy of the State Commission on Information Security (SCIS) was stimulating the development of the practices. On the other hand, with the assistance of SCIS again, the institutions started to realize that overclassification was only raising the expenses and hindering the work of the administration.

Still, the process could not be defined as stable, since the attempts of overclassification[3] have not ended yet and some institutions have not started the process of declassification of existing secret documents. As a whole, however, we believe that the implementation of PCIA facilitates the implementation of APIA by giving more light to the subject. The regulation of secrecy contributes to the

[3] For instance, the List of the Categories of Information Classified as Administrative Secret of the Defense Minister, the List of Administrative Secrets of the Minister of Energy and Energy Resources adopted with Order No DR /14656/27 November 2002 and repealed with Order No DR/14049/17 February 2003.

establishment of some procedures for information management in the institutions. The unlimited closure has been replaced by closure under rules. In this regard, the secrecy has been limited.

Formalism vs. Transparency

Another characteristic of the past year is related to the lawmakers' approach to the exemptionsm which to a considerable extent hinders the successful implementation of the law. The establishment and adoption of internal rules for working with information is good on one hand, since it fills the gaps in the law and is adapted to the peculiarities of the institution. On the other hand, these procedures lead to the formalization of the process by putting the emphasis on the registering and processing of written requests. In many cases, such practices create difficulties for the requesters.

In other words, the separation of the functions between the left and the right ear in the process of hearing, hinders the institution to hear the requester and, consequently, to react properly to their request.

On the basis of the legislation, the practices on the information disclosure in 2004 and our monitoring surveys, we present our recommendations to the legislators and the policy-makers in that area.

Some of these recommendations are not new; they have been presented as recommendations in several successive AIP reports. This means that the issues we have considered as problematic due to our practices, remain. The recommendations we make for the solution of these problems are still appropriate.

This year's report presents more detailed analysis of the necessary reforms in the legislation. We believe that the experience, obtained during the years, and particularly the developments in the court practices, give clearer perspective of the problematic issues and the need for legislative reforms.

The development of court practices, an aspect we have tried to analyze and present in the current report, is probably the most interesting part of Bulgarian experience in the implementation of FOI laws.

The results from the 2004 Global Monitoring on the Implementation of Freedom of Information Laws in Bulgaria are included in the report.

An analysis of the cases that Access to Information Programme receive for consultation and legal assistance is also included.

The 2004 annual report and the recommendations we give in it are influenced by the current political context in Bulgaria—it was an year before general elections.

We address the political parties and coalitions to pay attention to the problems we report on and the recommendations we make. According to AIP, this is the right moment when pre-election political programs are developed. We consider that the state of access to information is inseverably connected with and indicative for the level of democracy in a country.

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Recommendations

I. Legislative Recommendations

The legislative framework regarding access to information and the exemptions to it would be complete if the following steps were carried out:

- Ensuring the transparency of the sessions of all collective bodies functioning within the system of the executive power ("sunshine government");

- Institution of an obligation that draft versions of secondary legislation be published prior to their release for public discussion. Provision of access to different opinions and viewpoints on a given legislative draft;

- Establishment of an obligation on the part of companies that function as monopolies to disclose certain categories of information;

- Establishment of a legal mechanism that seeks to strike a balance in cases of a conflict between the right of access to information and other legally protected rights and interests, by maintaining the principle that the public interest in access to information prevails;

- Bringing the legislative exemptions (provided for in the Protection of Classified Information Act, the Personal Data Protection Act, etc.) into conformity with standards of the right of access to information – first and foremost with the principle that this right outweighs those exemptions;

- Protection for whistleblowers who disclose information regarding unlawful practices by state officials;

- Establishment of effective penalties for violations of the Access to Public Information Act (APIA).

Each of the steps listed above would entail taking the following actions:

- Ensuring the transparency of the sessions of all collective bodies functioning within the system of the executive power ("sunshine government") would require:

    - Adoption of a regulation (in the APIA, for example), designating as public and accessible the minutes from sessions of the collective bodies of the executive power, except in the cases prescribed by the exemptions in the APIA (excluding the one provided in Article 13, Para.2, Section 1);
    - Narrowing the scope of the exemption regarding preparatory documents (Article 13, Para.2, Section 1 of the APIA), by making public information contained in the minutes of sessions of the collective bodies of the executive power.

- Institution of an obligation that draft versions of secondary legislation be published prior to their release for public discussion, and provision of access to different opinions and viewpoints on a given legislative draft, would require:

    - Amendment of Article 2a of the Law on Normative Acts, as well as the provision of a detailed description of the procedure in a sub-legislative regulation, to be adopted by the Council of Ministers;
    - Amendment of Article 13, Para. 2, Section 1 of the APIA, explicitly excluding from its scope the information contained in the advisories, consultations, opinions, and recommendations collected during the discussion of a draft law.

- Establishment of an obligation on the part of monopoly companies to disclose certain categories of information would require:

    - Amendment of Article 3, Para. 2 of the APIA.

- Establishment of a legal mechanism that seeks to strike a balance in cases of a conflict between the right of access to information and other legally protected rights and interests, by maintaining the principle that the public interest in access to information carries the most weight, would require:

    - Introduction of a requirement that the right to information and the other rights (interests) that contradict it be balanced, as a separate provision of the APIA. The provision should pertain to all of the exemptions to the right of access to information (e.g., by the addition of a new Para.3 in Article 37);
    - Ensuring that the right of access to information outweighs the protection of personal data in the relevant legislation, and in particular:

        - Repeal of, or amendment to, Article 6, Para. 6 of the Public Disclosure of Property Owned by High Government Officials Act (PDPOHGOA);
        - Institution of a new Para. 4 in Article 29a of the Public Officials Act, providing for public access to public officials' declarations of conflict of interests.

- Bringing the legislative exemptions (provided for in the Protection of Classified Information Act, the Personal Data Protection Act, etc.) into conformity with standards of the right of access to information – first and foremost with the principle that this right outweighs those exemptions – would require:

    - Increased precision of the provisions contained in

individual laws by the enumeration of the specific categories of information subject to classification as official secrets;

- Reduction of the time period of protection of the information specified in Article 13, Para.2 of the APIA, to be at the most up until the moment of the adoption of the final act or, respectively, the moment of conclusion of negotiations;
- A legislative guarantee of free access to the documents of the former State Security Services and the Chief Directorate of the General Headquaters (of the Bulgarian army);
- Amendment of § 9 of the Transitional and Closing Provisions of the Protection of Classified Information Act (PCIA), in order to extend the time period for the review of documents classified before the adoption of the PCIA;
- Repeal or amendment of Article 30, Para. 3 of the PCIA, in the spirit of: "documents or materials that are part of a set of classified documents or materials, but do not contain classified information themselves, should be accessible under the procedure provided in the APIA. Access to this information should be provided as a hard copy, in on an electronic storage medium, or in a written report";
- Repeal of the PCIA provision (Article 33) regarding the destruction of documents and designation of the institution that destroys documents as subject to legislation regarding the National Archives;
- Establishment, in each individual institutional unit, of a public register of documents declassified after the expiration of their classification period, based on the register in Article 35 of the PCIA.

- Protection for whistleblowers who disclose information regarding unlawful practices by state officials would require:

  - Adoption of a new Para. 4 in Article 357 and a new Para. 4 in Article 284 of the Penal Code, removing criminal liability in cases of information disclosure that benefits the public interest;
  - Adoption of analogous provisions guaranteeing that those who disclose classified information in the benefit of the public interest be exempted from administrative penalties or disciplinary action.

Personal data protection legislation should be improved in the following ways:

- Precision of the regulations providing for the collection and processing of personal data. This would require the following concrete actions:

- Existing sector legislation, within individual laws, should explicitly indicate the concrete purposes for which, and the volume of the information that is allowed to be collected and processed;

- Imposition of sizeable fines for the misuse of data in the registers containing *sensitive personal data*.

- Adoption of a regulation that would require a balance in cases when citizens' right to access their own personal data are in conflict with the protection of other legal interests. This adjustment would require the following actions:

    - Amendment of Article 34, Para. 3 of the Personal Data Protection Act, instituting the requirement that administrators apply the three-part test contained in Article 8, Para.2 of the European Convention on Human Rights, in cases of a conflict between the right of access to personal data and national security;
    - Institution of a requirement that administrators applying the three-part test under Article 8, Para.2 of the ECHR provide their motivations in writing, as well as the factual basis for their conclusions.

- Adoption of comprehensive and systemized legislation regarding the collection and processing of, and access to, personal data in the healthcare sector. This would require the following adjustments:

    - Patients' right of access to their personal medical records should be provided for, independently of the provisions on medical consultations;
    - Explicit enumeration of the bodies that are required to provide access to health information and medical records;
    - Designation of the circumstances in which third parties (relatives, guardians, custodians) have the right to access a patient's health information and medical records;
    - Adoption of a mechanism to regulate the processing of and access to information about deceased persons;
    - Imposition of sizeable fines for the misuse of data from patients' medical records.

II. Needs with regard to administrative capacity building and the establishment of an administrative infrastructure for implementation of the Access to Public Information Act (APIA)

- A special policy for the implementation of the Access to Public Information Act is necessary. This policy could consist of common guidelines issued by the Minister of State Administration to the institutions of the executive.
- The process of individual institutions establishing internal rules for the implementation of the APIA, based on common guidelines and procedures for the provision of information, should continue.
- Positive practices, emerging in a number of institutions, who publish their guidelines on how to exercise the right of access to information in easily accessible

places (including web sites), should be supported and promoted.

- More officials should be appointed and empowered to make decisions on access to information requests. This process has already begun in a number of institutions of the executive power.
- Officials need to be appointed in the district departments of the state authorities, and be empowered to decide on access to information requests.
- Effective management of the existing information is necessary, making it easily accessible to officials, so that they have the capacity to provide the existing information immediately, upon oral requests.
- Coordination is needed among the work of officials responsible for the implementation of the APIA, information security officials and PR officials. This coordination is particularly necessary in order to ensure the publication of information on the Internet, in special newsletters, etc.
- Special efforts need to be made to satisfy the requirement, stipulated in § 9 of the Transitional and Closing Provisions of the Protection of Classified Information Act, that all of the documents classified before the adoption of the Act be reviewed. Lists of all declassified documents should be accessible on the web sites of individual institutions.
- Training of state officials regarding freedom of information issues should continue.
- A payment mechanism should be established in order to allow the payment of access to information fees at the institutions, and not only at banks, as is currently the case.
- A straightforward policy is needed for unrestricted and unconditional access to *public* registers.

Changes in Access to Information Legislation in 2004

Overview

Last year saw some attempts to further establish the right to access public information and the exclusions to it, with changes in both laws and in sub-legislative regulations. In many respects the necessary legislative changes have not been undertaken, while at the same time – as was the case in 2003 – there have been efforts to introduce and adopt unquestionably regressive legislation regulating the right to information. Only one of the legislative changes recommended by Access to Information Programme last year was taken into account.[1]

The most serious problem, as we have noted earlier, is that both the legislative and executive branches of power lack a general concept for the development of a systematic, comprehensive regulatory framework regarding the right of access to information and the exceptions to it. The current structure for the right of access to information and the exceptions to this right is laid out in the Access to Public Information Act (APIA), the Personal Data Protection Act (PDPA) and the Protection of Classified Information Act (PCIA). At a next level come the specific laws regulating access to public information in each individual sector, such as that contained in the public registers. More detail is provided regarding the exceptions to the right of access to information in specialized laws, such as those listing the categories of information classified as administrative secret, or by the corresponding sub-legislative provisions, e.g., in Art. 26, Para. 3 of the PCIA. Finally, all of the regulations mentioned above cannot be effectively implemented without building the necessary administrative capacity.

No significant changes in Bulgarian access to information legislation were adopted in 2004. As a result, the process of ensuring greater transparency – especially with regard to the activities of the executive power – has, in practice, come to a halt.

In this respect, even the stated priority of the fight against corruption was not linked – as one might have anticipated – to achieving transparency with regard to government processes and certain information about officials in power. It is highly indicative that the Parliamentary Committee for Fighting Corruption, created in 2002, has not reviewed any of the bills to amend the APIA, PDPA, or PCIA. Excluding these draft amendments from the framework of the fight against corruption is unreasonable, since the relationship between access to government-held information and the fight against corruption is unequivocally embodied in international documents.[2]

Some changes in the legislation regulating the exemptions from the right of access to information were introduced in Parliament. The PCIA was amended to allow free access by litigants and their legal representatives to classified court files and cases. No changes

[1] See p. 27 (??)

[2] See: *Recommendation (2002)2 of the Committee of Ministers of the Council of Europe to the Member States on Access to Official Documents* (Preamble). Compare with: *Resolution (97)24 of the Committee of Ministers of the Council of Europe for the Twenty Leading Principles in the Fight Against Corruption* (Principle No. 1).

were made, however, towards decreasing the tendency of over-classification. Amendments to the Protection of Personal Data Act were adopted, which increased the scope and implementation of the national security exemption, at the expense of some individual rights.

Some other significant amendments to the PDPA and PCIA were discussed in 2004. Amendments to the PCIA were discussed by a working group within the Personal Data Protection Committee. Parallel to that, a different working group – without the involvement of AIP staff – discussed draft amendments to the PDPA, which were introduced in Parliament by the Cabinet in early 2005. The latter draft does not respect the right of access to information, nor does it take into account any of the recommendations that Access to Information Programme made in our previous annual reports. At the same time, the amendments contradict basic international standards and represent a step in the wrong direction with regard to the regulation of state and administrative secrets as the two most important exemptions to the right of access to information. In this respect, we are ever more worried by the trend, which started in 2002 and has been gaining momentum ever since, of favoring the protection of national security over the right of access to information.

Specific Changes and Lack of Changes in Freedom of Information Legislation

General Framework of Access to Information

The amendments to the Access to Public Information Act (APIA) proposed at the end of 2001 have neither been adopted, nor have they even entered Parliament for a second reading or discussion. Remarkably, though, there is no longer a need for some of these legislative changes, due to developments in the courts. For example, the question of whether tacit refusals are subject to judicial oversight under the APIA has been clearly decided. Several court decisions have firmly established that under the APIA tacit refusals are not equivalent to explicit refusals to provide access to the information requested, and are thus an "intolerable phenomenon under the law."[3]

The establishment of judicial precedent also gives a clear definition of the concept of *public information* in line with international standards. In the practice of administrative bodies, the process of appointing officials – or even of whole offices – to process access to information requests, has been moving forward. These are some of the ways in which the legislators' ineffectiveness has been compensated for by administrative and judicial practices; we find this trend quite satisfying.

Executive Branch Activity in Implementing the APIA

[3] Decision No. 3508/04 on administrative case No. 10889/03 by the Supreme Administrative Court (Fifth Division) is an overview of the existing court practices on that matter. According to the justices, "the legislators have not explicitly defined the legal notion of a 'tacit refusal' in the APIA, since they could not anticipate the public authorities' not answering with a reasoned decision; something, which – in the presence of an explicit obligation to respond to requests – seems contrary to all legal and moral norms."

The process of providing access to government-held information becomes effective in practice only after the necessary measures have been taken for assigning specific functions to one or several officials. Art. 28, Para. 2 of the APIA provides for the authorization of officials who can process and make decisions on access to information requests. In a growing number of institutions these appointments are made by an executive order.[4] The problem is, that – with a few exceptions[5] – these appointments have not been made public, so that citizens are not sure to whom they should submit their requests, nor which court they should approach with any eventual appeals.[6]

Additional measures have been taken in some bodies of the executive in order to assist citizens, which is a positive step forward.[7]

Effective implementation of the APIA would also require that officials in the *local/regional offices* of bodies of the central executive power be authorized under Art. 28, Para. 2 of the APIA. This has not been done so far. We are also not aware of any bodies of the executive that publish lists of their decisions and other legal acts issued – which they are required to do, under Art. 15, Para. 2 of the APIA.

In our previous annual report, we noted the amendments made to some of the internal rules, regulating the functions of certain bodies of the executive. These regulations defined some functions under the Act or regulated the provision of information in a broader sense. In some administrative structures, APIA implementation was transferred to the inspectorates (which serve supervisory functions),[8] legal services departments, or PR departments.[9] This was assessed as a positive step in AIP's last annual report.

Despite the recommendations made in our last annual report, though, not all of the administrative bodies of the central executive branch have authorized an office or an official to carry out functions related to the APIA.

Publication of Draft Laws and Opinion Statements About Them

[4] To our knowledge, officials or units have been appointed under Art. 28, Para. 2 of APIA in the following executive-branch institutions: the Council of Ministers, the Ministry of Environment and Waters, the Ministry of Finance, the Ministry of Economics, the Ministry of Defense and the Ministry of Labor and Social Policy. Outside the system of the executive power, such officials have been appointed in, for example, the President's Administration and the Municipality of Lom.

[5] Such as the Ministry of Environment and Waters, on its Web site: http://www2.moew.government.bg.

[6] In its Interpretive Decision No. 4 of 2004, the Supreme Administrative Court ruled that decisions by officials authorized under Art. 28 Para 2 of APIA should be appealed in the regional courts, while decisions by other bodies, listed in Art. 5 of the Supreme Administrative Court Act, should be appealed before the Supreme Court.

[7] The Ministry of Defense has published a citizens' handbook on how to use the APIA on its Web site: http://www.md.government.bg/No.bgNo./docs/handbook.html; similar guidelines are published by the Ministry of Environment and Waters **on its Web site:** http://www2.moew.government.bg.

[8] Such as the Ministry of Energy and Energy Resources (MEER), the Ministry of Youth and Sports (MYS), the Ministry of Education and Science (MES), et al.

[9] Offices with such functions have been established in the internal regulations of the following ministries: MEER, Ministry of Healthcare, Ministry of Agriculture and Forestry, MES, MOEW, MYS, Ministry of Finance, Ministry of Transportation and Communications, Ministry of Justice, Ministry of Regional Development and Public Works, Ministry of Foreign Affairs, Ministry of Labor and Social Policy (MLSP), Ministry of Culture, Ministry of Defense, and Ministry of Economics. The Ministry of Interior did so in the Ministry of Internal Affairs Act.

An important characteristic of a democratic country is the adoption of laws and regulations that reflect, to the maximum possible degree, the needs of the public. This necessitates the establishment of broad possibilities for soliciting the opinions of the affected parties – i.e., the people who would be affected by a draft law – before the bill is adopted as law. The regulatory framework of such public discussion of draft laws before their adoption should include a requirement that the text of the bill be published in advance, along with any comments on it. This is crucial, because otherwise the public cannot be familiar with the proposed legislation and is thus unable to participate effectively in discussions of it. There is yet another benefit to be gained from advance access to this information – the parties to be affected by a given bill could inform themselves early on what their rights and obligations would be under such a law, thus facilitating its future implementation.

Unfortunately, formulating detailed regulations on this matter has never been a priority of any Bulgarian government. Public discussion of and access to drafts and opinions on them are especially necessary during the formulation and discussion of sub-legislative regulations and draft laws by the organs of the executive branch, since they follow the most obscure procedures. The Bulgarian Parliament has already instituted a practice of transparency, publishing bills from the moment they are introduced for discussion, including on their Web site. Lawmaking is also a comparatively transparent process at the local level, in the municipalities. The members of different political parties are free to participate, municipal council sessions are public, and sometimes municipal committee meetings are even open to the public.

The *Law on Normative Acts* was amended in 2003, with the introduction of a requirement that all affected parties be informed before the adoption of a new law, and that their comments on it be considered. The newly-created Article 2a of the law concisely regulated this matter, which is unquestionably a step in the right direction. In order to ensure the implementation of this provision in practice, however, some specific procedures and terms need to be further defined. Also, the law uses the unclear and inappropriate term "representative organizations", which has no legal definition and may lead to inadequate notification of the affected parties. The only legal provision requiring the publication of *the text* of draft laws is contained in Article 15 of Decree No. 883, from 1974, on the implementation of the *Law on Normative Acts.* The Supreme Administrative Court has ruled that this provision "imposes an obligation upon the authority responsible for the preparation of a certain draft act, to send its text and the motivation for it to the affected ministries, authorities or public organizations, which should in turn organize a public discussion of it and return their opinions on it and the reasons for them."[10] Despite the existence of this provision and its legal interpretation, it cannot be implemented, due to the lack of a detailed procedure clearly describing the responsibilities of the relevant authorities. This is the main reason for the practical nonexistence of advance access to draft laws and the written arguments about them, as well as of the public discussion of them. On the contrary, the broad formulation in Art. 13, Para. 2, Section 1 of the APIA allows for the denial of access to the written arguments about draft laws, thus limiting the opportunities for an informed public debate. When, just before preparing this report, AIP requested the written arguments on the bill to amend the Protection of Classified Information Act, the Cabinet refused to provide them, citing the exemption of Art. 13.

[10] Ruling No. 5973/ 98 of the SAC (five-member panel) on administrative case No. 4652/98.

Meanwhile, in other Central and Eastern European countries, which are already members of the European Union, draft laws are discussed on the Internet.

Public Registers

The number of public registers has increased in recent years, which is a positive trend. This tendency is bound to continue, leading to the greater transparency and accountability of the government, especially with regard to elected public officials; to fair and unambiguous rules in the sphere of commerce, public services and the economy as a whole; to guarantees of consumer rights; to the increased protection of public health, the environment, and etc. Some of the laws regulating access to public registers refer directly to the Access to Public Information Act, while others do not. This is not a significant problem, considering that the purpose of public registers is to continuously provide fresh information. Refusals to disclose information contained in public registers are subject to appeal under the APIA.[11]

In practice, access to most of these *public* registers is not well regulated, and in some cases it is difficult, if not impossible. A number of appeals have been filed in response to refusals to disclose information from them. This suggests that efforts to establish adequate practices in this field will continue, although now in light of the established regulatory structure – which is a necessary prerequisite. The tendency of the increasing number of public registers should be sustained, in order to guarantee the stability of the economic sector, to safeguard consumers' rights and to increase protections of public health and the environment.

Public Disclosure of Property Owned by High Government Officials Act (PDPOHGOA)

At the end of 2003, four bills to amend the Public Disclosure of Property Owned by High Government Officials Act (PDPOHGOA) were introduced in Parliament. Because of the many similarities among them, they were merged into one and voted on collectively in Parliament.

The predominant part of the amendments to the law dealt with increasing the scope of public officials required to submit information about their income and properties to the *so-called public register*, which is maintained by the National Audit Office (NAO). Under the adopted amendments, declarations must also be submitted to the NAO by local administration officials – mayors, deputy mayors, and municipal council chairpersons. In their arguments for the amendments, the drafters stated that the inclusion of these officials in the scope of the law is in response to the increased influence and responsibilities of local administrations in the decision-making process at the community level. The directors of security services and the chiefs of local police departments[12] were added to the other officials obliged to submit declarations to the public register, as well as the heads of other institutions[13] that have a leading role in the formation of important policies. The amendments' sponsors believed that this would increase public trust in these

[11] See Decision No. 3508/04 of the SAC on administrative case No. 10889/03.

[12] Chiefs and deputy chiefs of the regional directorates of the Ministry of Interior, directors and deputy directors of the security services and the public order services, in the sense of the PCIA.

authorities and bring increased transparency to the decision-making process. For the first time the law approved a model form for submitting information to the NAO, giving an insight to the public about the data kept in the register.

The second batch of amendments to the PDPOHGOA introduced administrative and criminal liability[14] for those high-ranking officials who either fail to submit declarations to the National Audit Office within the period stipulated by law, or who submit incomplete or false information.

Parallel to the above positive changes in the law, the Parliament also adopted amendments to Art. 6, Para. 6 that raise serious concerns. According to that provision as amended, personal data and other information that specify the income and properties of high-ranking officials, cannot be disclosed without their consent.

The text of this amendment was reported on during the second hearing of the draft law, and was unanimously approved by the 117 MPs present.[15]

Since the adoption of the PDPOHGOA in 2000, the main criticism of the law has been that it severely limits public disclosure of the register of the properties owned by high-ranking public officials, since the data in it is only available to the editors-in-chief and of the mass media. The lawmakers went even further in 2004, bringing into question the very public nature of the register, with the addition to the law of Art. 6, Para. 6.

Below we will try to give some interesting details on the adoption of this provision:

1. The requirement of obtaining the consent of a high-ranking official in order to publish information about his/her income and properties was not present in any of the four original amendment bills.[16]
2. The leading committee on the unified draft amendments was the Committee on Public Order and Security,[17] although the connection between the public order and the public nature of information about property owned by high-ranking officials is highly unclear. What is perfectly clear, however, is that the sessions of the committee in question

[13] The ombudsman and the deputy ombudsman, the chairperson, vice-chairperson and members of the National Communications Regulatory Commission, the director of the National Insurance Institute, the general directors of the National Health Insurance Fund, Bulgarian National Television, Bulgarian National Radio, Bulgarian Telegraph Agency (News), the director and deputy directors of the Customs Agency, the director of the central tax administration, and the members of the political (advisory) cabinets of the prime minister, deputy prime ministers and the other ministers.

[14]PDPOHGOA Art. 8. (New, State Gazette Iss. 38/2004) (1) An official in the meaning of Art. 2, Para. 1, who does not submit a declaration within the period provided for by law, is subject to a fine of 500 to 1,000 levs.

(2) Subsequent violations of Para. 1 are subject to a fine of 2,000 to 5,000 levs.

(3) Fines paid under Paras. 1 and 2 are revenues in the state budget.

[15] See the minutes of the Forty-Ninth Extraordinary Session of Parliament – second hearing and discussion of the amendments to the PDPOHGOA, Tuesday, April 27, 2004.

[16] See the minutes from the 325th Regular Session of Parliament – first hearing of the amendments to the PDPOHGOA, Wednesday, February 11, 2004.

[17]The leading committee in 2000 was the Legal Affairs Committee

are always closed to the public.[18] Thus, the proposed amendments to the PDPOHGOA were only announced immediately before they were voted on in Parliament. This was a straightforward way of preventing public debates or any chance of a reaction.

3. This is how the second reading of the bill suddenly included a completely new text, which completely changes the character and purpose of the PDPOHGOA. This constitutes a serious violation of the internal rules of the Bulgarian Parliament, as stated in Art. 71, Para. 2: "Any proposed changes, which contradict the principles and the scope of a bill that has passed its first reading, are not to be discussed or voted on."

The purpose of the Public Disclosure of Property Owned by High Government Officials Act, as seen from its very title, is to guarantee transparency regarding the property owned by the public officials who take part in executive decision-making. The main idea behind passing this law in 2000 was to let citizens know about changes in the income and property ownership of those who govern them. The introduction of a requirement that officials' consent be obtained in order to publish information contained in the register is in absolute contradiction to the main purpose of the law. The vague provision of Art. 6, Para. 6 of the PDPOHGOA not only creates opportunities for unreasonable limitation of the right to access government-held information, but also jeopardizes the right to publish information in the media and the right to receive the disseminated information, guaranteed by Article 10 of the European Convention on Human Rights. The intended purpose of this paragraph was probably to limit the disclosure of specific information about the property owned by high-ranking officials, such as the location of real estate properties, vehicle registration numbers, etc, or some other declared data that falls outside the scope of Art. 3 of the law. The end result, however, was the creation of an obstacle, which might in practice extend to the entire public register.

In any case, this recently adopted amendment to the PDPOHGOA is a hindrance in achieving the main purpose of the law. It creates confusion with regard to the public nature of data regarding the income and property ownership of high-ranking officials, thus obscuring the interests of the individuals that hold high-level public posts.[19]

Public Nature of Information Regarding Civil Servants' Conflicts of Interests

The lack of public disclosure of the declared financial and other interests declared by civil servants is a serious shortcoming of Bulgaria's freedom of information legislation. Despite amendments to the *Civil Service Act* that introduced a requirement that civil servants submit declarations of interest, access to those declarations is still not regulated by law. In practice, all requests for disclosure of information contained in the submitted declarations were refused in 2004. This to a large degree obviates the purpose for which this anti-corruption measure was adopted, limiting the opportunities of increased public scrutiny, to which all public officials – as well as political figures – must be subjected, in

[18] Art. 25, Para. 4 of the Internal Rules of the Bulgarian Parliament

[19] In fact, this directly contradicts one of the most widely discussed critiques from the European Commission's Regular Report on Bulgaria's progress towards accession for 2004: "There is still little transparency regarding the personal interests of elected officials and the financing of political parties and election campaigns." p . 19 from the Report.

accordance with Art. 41 of the Bulgarian Constitution, as interpreted in decision No. 7/1996 by the Constitutional Court, and with Art. 10 of the ECHR, as interpreted in the practice of the European Court of Human Rights.

Access to Archival Documents and Documents of the Former State Security Service

As we have noted in several of our previous annual reports, Bulgarian legislation regulating access to archival information is obsolete. In practice, however, the documents in the National Archives are freely accessible, unlike those created by the former security services and the former investigation services, which are currently kept in a number of institutions: the Ministry of Interior, the Ministry of Defense and the National Investigation Service (NIS). These documents – not only the ***dossiers***, but also the so-called ***operational archives*** – should already have been transferred to the National Archives due to their importance and age. However, this has not been done for many years now. Neither of the legal provisions requiring that all of these documents be turned over to the National Archives – Art. 13 of the abolished *Access to the Documents of the Former Secret Services Act* and Art. 33, Para. 2 of the PCIA – has been complied with. Art. 33, Para. 2 of the PCIA even limited the documents that have to be transferred to the National Archive to those whose duration of classification has expired. On the other hand, that same provision applies not only to the documents of the former security services, but to all institutions' secret documents that have not yet been turned over to the National Archives. Enforcement of Art. 33, Para. 2 would require the review of all information held by the public authorities, in accordance with the procedure stipulated in § 9 of the Transitional and Closing Provisions of the PCIA. The review period specified by the law ended in May 2003. In June 2004 the Bulgarian Council of Ministers published a list of 1,484 documents reviewed under §9, including some that we believe were examined following a court appeal filed by AIP in 2002, which later turned into a lawsuit before the SAC. Despite this positive example, the review process within other bodies of the executive branch has been unacceptably slow. In practice, only a negligible number of documents have been transferred to the National Archives, while at the same time some institutions have not handed over a single document – such as, for example, the NIS.

The Ministry of Internal Affairs is the only institution among those holding documents of the former security services that has special rules on access to them, while the Ministry of Defense and the National Investigative Service have yet to regulate the matter. Even in the presence of these rules, however, the Interior Ministry refuses to provide access to such documents.[20] Some of these refusals have been appealed and turned into lawsuits, which result in contradictory judicial practices; indicating that the matter needs to be regulated by a law. Moreover, these refusals also violate the right to the protection of personal data, including the right of every individual to access the data collected about

[20] A decision by a five-member panel of the SAC, on administrative case No. 8355/03, reversed a refusal to provide documents related to the Bulgarian writer Georgi Markov, who was killed in London.

him/her.[21] This legislative deficiency is contrary to the principles and documents of the Council of Europe and the European Union.[22]

Access to Information Related to Privatization

In our annual access to information report for 2002, we analyzed the most important problem of the *Decree on the Mandatory Information to be Provided to Persons Who Have Expressed Interest in Participating in Privatization, and on Documents and Reports Classified as Administrative Secrets*, adopted that year. The fact that the decree did not explicitly refer to the APIA regarding access to information procedures. In July 2003 the Cabinet adopted a *Decree on the Data Subject to Entry in the Public Registers Regarding the Privatization Process and Post-Privatization Oversight*. This decree regulated access to all information about the privatization process and post-privatization oversight. The categories of information to be entered into the register are listed in detail. So are the methods of providing access: either electronically, via the Internet, or in a written report on entries in the register, available as a hard copy or on an electronic storage medium. The procedure is set forth in accordance with the APIA, and refers to the Minister of Finance's Order No. 10 of January 2001 with regard to access fees. Based upon the current regulations, we can conclude that the lawmakers followed AIP's recommendations to ensure legislatively established rules for access to information regarding privatization and post-privatization oversight.

Legislative Changes Regarding the Limitations on the Right of Access to Government-Held Information

Exceptions to the Right of Access to Information

The statutory limitations on the right to access government-held information are still not satisfactorily defined in the Access to Public Information Act. Despite their lack of precise, systematic regulation – a fact noted by AIP in last year's access to information report – they have been subject to a stricter approach by the courts. In practice, the administration most often cites Art. 37 of the APIA in its refusals to provide information, such that its text is drawn upon to systematize the exemptions to the right of information access. On the other hand, the court has adopted the precedent that a refusal to provide information must – in addition to citing Art. 37 of the APIA – contain the factual basis for applying that text, as well as a citation of the particular law that provides for the exemption. This reduces the possibility of the authorities to "easily" refuse access to information by citing Art. 37 of the APIA and "just in case" arbitrarily listing several limitations in a single refusal.

Requirements (Test) with Regard to the Limitations

[21] Guaranteed by Council of Europe Convention 108/ 1981 and by Article 8 of the ECHR. The right of every individual to access the data collected about him/her by the former totalitarian regimes of Central and Eastern Europe has been comprehensively derived from Article 8 of the ECHR by a decision of the European Court on Human Rights in the case of Rotaru v. Romania, dated May 4, 2000, Application No. 28341/95.

[22] Personal data protection within the European Union is guaranteed by Directive No. 95/46/EC.

The sponsors of the 2000 bill on access to public information introduced it in Parliament with the following argument: "The harmonization of Bulgarian legislation with the laws and practices of the European Union is directly related to implementation of the principles set forth in the recommendations of the Council of Europe, given that it is the only united European institution of which Bulgaria is a full-ranking member." At the time of the adoption of the APIA, the only existing document regulating access to government-held information was *Recommendation R (81)19 of the Committee of Ministers of the Council of Europe to the Member States.* From the arguments of the bill's sponsors we can conclude that the law should be interpreted in accordance with the newly-adopted *Recommendation R(2002) 2 of the Committee of Ministers of the Council of Europe to the Member States* on access to official documents.[23] According to Art. IV, Item 1 of the Recommendation, the following requirements apply to the exceptions to the right of access to information:

- should be set down precisely in law;
- to aim at protecting legitimate interests;
- be proportionate to the aim of protecting the legitimate interests;
- be necessary in a democratic society.

Art. IV, Item 2 lists two specific methods for testing the necessity in a democratic society of having the exceptions:

- access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the protected interests;
- information is provided if there is an overriding public interest in disclosure.

The requirements in Art. IV, Item 1 are fulfilled by the listing of the exemptions in the APIA and their detailed description in the provisions of the PCIA and the PDPA, by the enumeration of protected interests in Art. 41, Para. 1 of the Bulgarian Constitution, and by the possibility of partial access (provided for in Art. 7, Para, 2, Art. 31, Para. 4 and Art. 37, Para. 2 of the APIA), by the requirement that the factual and legal bases for an information refusal be provided (Art. 38 of the APIA), and by judicial oversight, including that over the lawfulness of certain information being marked with a security seal (Art. 40, Para. 4 of the APIA).

The requirement in Art. IV, Item 2, that the exceptions relate to a clear danger or potential danger to a protected interest, is fulfilled by Art. 25 of the PCIA with regard to state secrets, and in Art. 35 (in connection with Art. 30, Para. 1 of the Fair Competition Act) with regard to trade secrets. The rather vague formulation "adversely affecting the interest of" has been adopted in Art. 26, Para. 1 of the PCIA with regard to administrative secrets, and in Art. 20, Para. 1, Items 5 and 6, of the Environmental Protection Act (EPA).

[23] The Recommendation is cited in connection with the notion of "public information", in Supreme Administrative Court Decision No. 4694/ 02 on Administrative Case No. 1543/ 02 (five-member panel).

As of the present time, the second requirement in Art. IV, Item 2 of the Recommendations – also known as the "balance of interests" – has neither been fully established in legislation, nor has it emerged as a precedent in the courts.

Balance of Competing Interests

The "*balance of interests"* should be defined as the evaluation on a case-by-case basis, based upon the concrete, significant circumstances in a given case, of whether the public interest served by the disclosure of certain public information outweighs the interest of a person or a group of people in the protection of that information. In certain cases the lawmakers have made the decision *in abstracto* that regardless of the presence of a legitimate protected interest, it is overridden by the overall public interest in transparency. This is the case, for example, with the Public Disclosure of Property Owned by High Government Officials Act, which designates all of the information under Art. 3 as public, despite the fact that such data is generally inaccessible (compare with §1, Item 1 of the Tax Code). There are some other cases in which officials making a decision on whether to grant an information request are left with the discretion to evaluate whether there is an overriding public interest served by disclosure. This is the case with Art. 20, Para. 4 of the EPA and Art. 14 of the *Decree on the Mandatory Information to be Provided to Persons Who Have Expressed Interest in Participating in Privatization in Accordance with the XXX Act, and on Documents and Reports Classified as Administrative Secrets.*

The main problem with Bulgarian freedom of information legislation in this respect is the lack of a common legal standard for introducing the *balance of interests test* and empowering the public officials authorized by the PCIA to perform that evaluation based on certain criteria. This would allow for more flexible decisions on access to information requests. The requirement that such a common standard exist follows directly from Recommendation (2002), as well as the Constitutional Court's Decision No. 7/1996 on case No. 1/1996. The decision imposes the obligation on the institutions of the executive branch that it strikes a balance in applying exemptions from the right to access government-held information:

When imposing such limitations the institutions of the legislature, executive and judiciary branch shall keep account of the high public significance of the right to free expression of opinion, of the freedom of the mass media and the right to information, from which it follows that the limitations (exceptions), to which these rights can be subjected, shall be applied restrictively, only to protect a competing interest.

A change in this direction has been suggested by a bill for the amendment of Art. 14, Para. 2, Item 3 of the APIA. Some legal systems offer a mixed approach, whereby the *balance of interests test* is applicable to some exemptions from the right to information access, while others are absolute. However, the exemptions regarding trade secrets and personal data protection are always subject to the "*balance of interests" test*, due to the broad range of hypothetical situations in which the public interest served by disclosure takes precedence over the legally protected interest. For example, the balance between the public interest in disclosure and the right to personal data protection would require the

disclosure of information about an official who has signed a declaration under Art. 29a of the *Civil Service Act,* in the event that the information submitted is in any way questionable.[24] Another typical example is the need to disclose – at least partially – the chemical formula of a product, with the purpose of evaluating its impact on public health. Although that information might be trade secret, it must be disclosed when there is enough evidence of the harmful effect of the product.

The implementation of a *balance of interests* test would facilitate the flexible solution of several matters of public interest that have arisen in recent years, regarding requests for access to: data regarding the people who have bought apartments from the housing fund of the Cabinet and other such funds; data about the declared economic interests of public officials; data regarding clauses in contracts of high monetary value to which the state is a party (with companies such as *Crown Agents* and *Microsoft*); data about the contractors and the expenditures made in the fulfillment of the so-called "*demonstrational projects,"* etc.

Despite the recommendations made by AIP in last year's report on access to information, there is still a regulatory vacuum with regard to the balance of interests. This provides the executive authorities with a justification for maintain its practice of non-transparency and creates conditions for malfeasance and corruption.

Protection of Third-Party Interests

The Supreme Administrative Court's actions in 2004 have provided an interesting and positive response to the questions related to Art. 31 of the APIA that we asked in our annual report last year. Below, we briefly present the analyses provided in our previous annual report.

First of all, the scope of that provision's exception to the right of information access is unnecessarily broad, since a third party may constitute a commercial company, another type of legal entity, a person or even a state body, although not all of these subjects are exposed to the same level of public scrutiny. In general, state bodies are obliged to disclose all of the information that they create or possess; commercial companies must disclose only the information covered in the scope of Art. 3, Para. 2, Item 2 of the APIA; the mass media are only required to disclose information covered by Art. 18; and individuals and legal entities are only required to provide information regarding their activities that are financed by funds from the state budget. Accordingly, the principles governing exemptions from the right of access to information from any of these bodies should be different. In a number of cases, the requirement to protect third-party interests overlaps with another acknowledged protected interest.[25] For example, government entities may use the state secret and administrative secret exemptions to protect certain categories of information; commercial companies can use the trade secret exemption; mass media can use the exemption contained in Art. 19 of the APIA; and finally, all

[24] In case the declaration shows an obvious economic interest, for example. Of course, in order to strike such a balance, all these declarations should generally be public in the first place, even if they are also anonymous.

[25] Except in cases that fall under Art. 31, Para. 5 of the APIA.

citizens can use the protection of personal data guaranteed by the PDPA, which also constitutes a legally protected category under the terms of the APIA.

The next question arising from the text of Art. 31, Para. 1 of the APIA, is when is it necessary to obtain the consent of the third party. Is third-party consent required:

1. when provided for by an existing law (such as the PDPA);
2. when there is real danger of harm to the legitimate rights or legal interests of the third party; or
3. in all cases, except those under Art. 31 Para 5 of APIA?

Court practice in 2004 has provided the following interpretation of this question: with the purpose of guaranteeing the right of access to government-held information, the responding institutions must check whether the disclosure of information might harm the legitimate interests of third parties. In cases in which such interests would not be harmed, the institutions should disclose the information requested, regardless of the consent of the third parties.[26]

There is yet another problem arising from Art. 31, Para. 4, which is connected to the third party's expressed lack of consent. We should underline the fact that the lack of reply to a consent request is considered to be a negative response; i.e., the third party is assumed to have passively exercised his/her right to protection.[27] When the responding institution has establishes the lack of consent of the affected persons, it should provide the information in a form and manner, so as not to disclose data about the third party. Although partial access satisfies the right to information access in a number of cases, this still falls short of a real *balance of competing interests* procedure.

The third party is offered absolute protection, regardless of either the public interest served by disclosure or the nature of the information requested.[28] Please refer to the text above regarding the necessity of having a legislatively established balance of interests test.

Trade Secrets

The exception of ***trade secrets*** from the right of access to public information is one of the ways in which the rights and legitimate interests of third parties are protected. In our annual report last year we posed the problem arising from the tautology created by the lawmakers in Art. 17, Para. 2 of APIA, wherein they separately list both trade secrets and unfair competition.[29] Court practices have partly solved this problem, with their

[26] See SAC Decision No. 4716/04 on Administrative Case No. 8751/04 and SAC Decision No. 4717/04 on Administrative Case No. 8752/04.

[27] It follows that in cases in which the third party acts indifferently, sluggishly, or even does not act at all, his/her right to protection from public disclosure of government-held information is still upheld.

[28] Following a request for access to information about the apartments received by public officials from the housing fund of the Council of Ministers, the Personal Data Protection Commission established a similar position.

[29] It is not clear what other form of an unfair competition could arise from public information disclosure, except in cases of the disclosure of a trade secret. Trade secret in accordance with Art. 35 of the Fair

interpretation that unfair competition is in fact a result of the disclosure of trade secrets. Even though there is still no detailed regulation of the scope of this exemption, the court practice – in line with AIP recommendations – has already adopted a narrow interpretation of the term *trade secret.*

Preparatory Documents

This exemption is one of the most frequently cited ones in decisions to withhold information. It is very convenient for the institutions of the executive, when they wish to keep their processes obscure. This is the case because Art. 13, Para. 2, Item 1 of the APIA does not require administrative authorities to prove the harm or potential harm from the disclosure of information. Court practice has not been consistent in interpreting whether the list in the brackets of the above provision is suggestive or exhaustive, leading to an extensive applicability of the exemption. There are some cases in which public officials' imagination greatly widens the scope of the terms contained in the brackets: "opinions, comments, recommendations and suggestions." This creates unlimited opportunities for the citation of the exemption regarding ***preparatory documents*** and contradicts the purpose of the law, which is to allow citizens to form an adequate and critical opinion about those governing them. The formation of such an opinion is impossible without knowing not only ***what***, but also ***why***, and on the ***basis of what arguments***, a certain decision is made by those in power.

Rather than attempts to narrow the scope of this exemption, last year saw attempts by the executive power – as we noted earlier – to apply it to the limitation of public participation in the discussion of a draft law – participation that is otherwise legally guaranteed.

The situation urgently calls for an initiative by lawmakers to narrow the scope of Art. 13, Para. 2, Item 1 of the APIA. The exemption contained in it should not apply to information created in the discussion of draft laws. Parliament should pass the proposed amendments to the Access to Public Information Act, which would protect such preparatory documents from disclosure only until the adoption of the final law.

In order to achieve transparency in the decision-making process – which currently does not exist – and in order to avoid corruption practices, the law should guarantee the openness of meetings of the collective bodies of the executive, as well as the availability of all documents recording their discussions, except in cases there are legal exemptions from (limitations to) the right of access to information. In other countries, such pieces of legislation are known as ***sunshine government***. Such transparency was introduced in Bulgaria by the 2004 amendments of the Judiciary Act, guaranteeing openness of the meetings of the Supreme Judicial Council (SJC). We believe, however, that the bodies of the executive branch have no less of a role, authority, or ability to affect public policy and to operate with public money, than the SJC does. For this reason, the need to ensure transparency in the work of the executive bodies is at least equal, if not stronger in certain cases.

State and Administrative Secrets

Competition Act (FCA) constitutes a concrete hypothesis of the general notion of unfair competition set forth in Art.30 of the FCA.

We maintain the view expressed in last year's access to information report, that of the necessity for synchronization between the Access to Public Information Act (APIA) and one of the most important pieces of legislation regulating the exemptions to it – the Protection of Classified Information Act (PCIA). One of the fundamental problems is that lawmakers do not view the PCIA as being part of the legislation that regulates the right to seek, receive, and impart information. An indication of this can be found in the legislative arguments for the PCIA. When the sponsors introduced their draft of the law in Parliament in 2001, they never referred to the right of access to information.[30] A number of specific provisions in the PCIA are not in conformity with the legal framework regulating access to public information. This contributes to a broad interpretation of the exemptions from the right of access to government-held information that are related to state and administrative secrets.

Administrative Secrets

We have already noted, in our annual report from last year, that the "administrative secret" exemption is extremely broadly formulated in the law. As the name suggests, this exemption historically relates to the work of the administration. In other words, the concept is not filled with content and does not define the nature of the information protected by it. The broad formulation of Art. 26, Para. 1 of the PCIA is actually the result of the impossibility of defining the scope of an anachronistic precept.

We will try to clarify the concept of administrative secret, as defined in the PCIA. Art. 26, Para. 2 of the Act requires that this exemption be instituted ***by law***. This condition – which derives from Art. 41, Para. 2 of the Constitution – has caused great uneasiness within the executive branch. Attempts were made during the discussion of the draft in Parliament to replace the word ***law*** with ***regulation.*** In 2004, the State Commission on Information Security was involved in the drafting of proposed amendments to the PCIA, which would abolish Art. 26, Para. 2. It is highly satisfying that this idea was not reflected in the final text of the bill introduced in Parliament by the Cabinet.

While the term ***administrative secret*** can be found in about thirty laws, few of them actually list specific categories of information. Most of these pieces of legislation contain either ***blank*** or referring provisions. A number of laws refer to facts, which become know to public officials in the course of their duties. This would mean exempting all such facts from public access, without specifying the different categories of protected information. This is a clear violation of Art. 26, Para. 2 of the PCIA, which derives directly from Art. 41 of the Bulgarian Constitution. There has been little improvement since last year in this respect; nor has there been any reaction to AIP's recommendations. According to the precedent established by court practice, an information refusal that lacks a reference to the specific category of exemption and a citation of the piece of legislation in which it is defined is illegal.[31]

[30] On the contrary, the arguments submitted in favor of the draft of the Personal Data Protection Act, which was introduced in Parliament at a similar time, referred to the right of access to information in the very first sentence: "Adoption of the of Personal Data Protection Act will complete the regulation of the right to access government-held information and of the information protected from disclosure."

[31] SAC Decision No. 10539/02 on Administrative Case No. 5246/02; compare with SAC Decision No. 2113/04 on Administrative Case No. 38/04 (five-member panel).

Art. 26, Para. 3 of the PCIA obliges the heads of organizational units – including the bodies of the executive power – to adopt a list of categories of information generated in the scope of their activities that is subject to classification. Although these classification lists should be made public, in accordance with the provision of Para. 4, AIP is not aware of any such list of categories of administrative secrets. What we are aware of, however, is a large number of refusals to provide information, which cite the administrative secret exemption. This lack of transparency with regard to the administrative secret lists was reinforced when we learned that one such list has been marked *for administrative use only*, and also when our request to receive such a list under APIA was turned down. According to our information, certain institutions have included arbitrary categories of data on their administrative secret lists, without conforming to the relevant legal norms.

Not only does the lack of public disclosure of the lists under Art. 26, Para. 3 of the PCIA hinder citizens' efforts to access government-held information, it does not allow the institutions to coordinate and harmonize their practices. In other words, publication of the classification lists is not only a legal obligation, it is also the only way to unify the policies of different public institutions, ensuring their compliance with access to information regulations and facilitating the flow of documents between the institutions.

The third guarantee set forth in the Protection of Classified Information Act is the period of *two years*, during which information may be protected as an administrative secret. This term is indeed satisfactory, bearing in mind the indications that large amounts of otherwise publicly accessible information is being classified "just in case." In this respect, the Cabinet's suggestion of the Cabinet to allow for the extension of the period of classification by specially adopted laws (to five years) is totally unjustified – especially given the obscurity of the concept and scope of the term *administrative secret*.

State Secrets

AIP has analyzed the Protection of Classified Information Act in detail in its last two annual reports. We have identified two main problems: the tendency of over-classification (excessive secrecy) of documents, and the lack of any oversight over classification decisions.

Amendments made in 2004 to Art. 39, Para. 1, Item 7 of the PCIA have allowed free access to classified cases for lawyers. The newly-adopted Art. 39a allows litigants to review classified court cases without being investigated. These amendments have truly guaranteed the right to adequate defense in classified court cases, such that the only remaining problem is the fact that they are held *in camera*.

None of the other recommendations regarding the PCIA that AIP made in our last annual report have been followed. The main problem is the general trend of over-classification of information; i.e., decisions to classify documents that are outside the scope of the categories listed in Art. 25 of the PCIA. We will not even discuss here the fact that not all information that falls within the scope of the listed categories should be classified automatically. There are many cases in which the disclosure of such information would not harm, or would not be likely to harm, any protected interests.

A few provisions of the PCIA support this tendency towards over-classification. One example is the text of Art. 30, Para. 3, according to which "a set of materials and/or

documents that contains information with different levels of secrecy is subject to be marked with a security seal corresponding to the highest level of classification of any document or material within the set." In our annual report from last year, we discussed one of the practical applications of that provision – the increased secrecy marking of entire court case files. The truth is, this contributes to an unjustifiably huge increase in the scope of classified information.

Art. 31, Para. 1 of the PCIA also contributes to the above-mentioned problem. It gives the authority to every official who has the right to sign a document, to determine that document's classification level, thus in practice authorizing a large number of officials to affix security seals. This inappropriate decision by the lawmakers, coupled with the lack of training, is another likely reason for the observed tendency towards over-classification.

The number of categories listed in Art. 25 of the PCIA is much too large (nearly twice as many as the list from 1990), but far more problematic is the fact that a number of the categories are too broadly or unclearly formulated and can be subjectively embellished. A bill was introduced in Parliament last year with proposed amendments to the PCIA that would abolish one of the categories. One of the many arguments for doing so is that the information within the scope of that category is in practice public.[32]

Another problem with the PCIA is the lack of any provision for the review of classification decisions. Currently, the only possibility for review is by the courts. This is by no means sufficient, because it covers only certain classified documents accidentally discovered by requestors when they seek access to information.

The register of classified documents should be made public, or there should at least be a prescribed procedure for the publication of declassified documents. Although this problem has often been acknowledged by the chairperson of the State Information Security Commission (SISC), the amendments proposed by the Council of Ministers lack any solution. A minimum standard would be a requirement for publishing declassified documents before destroying them.

All of the problems analyzed here should be solved by legislative changes. Maintaining a level of secrecy that goes well beyond the need to protect national security is against the interests of everybody, with the exception of some public officials who may wish to cover up their misdeeds. From the standpoint of the right of access to information, this is an unacceptable situation. From the point of view of the government, it leads to non-transparent, and thus ineffective, governance. From the standpoint of the fight against corruption, it creates opportunities for covering up malfeasance. From the point of view of information security, it lessens the protection of classified information, because a larger amount of information is harder to protect. From a fiscal standpoint, it increases expenditures and concentrates efforts in areas where no protection is necessary. As SISC members have already publicly expressed all of these arguments, we were quite surprised to see the Bulgarian Government willfully introduce legislative amendments that would in effect compound the above-mentioned problems, rather than proposing legislative changes in the right direction.

Lawmakers' Approach to the Exemptions

[32] Amendments to the PCIA sponsored by Yuliana Doncheva and a group of MPs.

As in 2003, last year saw legislative initiatives from the Bulgarian Government that concentrated on weakening the existing laws, rather than improving them. In early 2005, the Cabinet sponsored a bill to amend the Protection of Classified Information Act. In the parts of the proposed changes that are related to the right of access to information, transparency and the necessity to decrease the scope of classified information, we can see a disturbing step back from what was achieved with the PCIA's adoption in 2002.

The amendments are in contravention of Recommendation R(2002)2, which requires that member states "apply clearly established rules regarding the preservation and destruction of documents." The Cabinet has proposed that it be possible to destroy secret documents before declassifying them, when "there has ceased to be a need for their existence." If these amendments are adopted by Parliament, certain information – such as the data gathered using surveillance technology – may be destroyed by the bodies that collected it, with no possibility of court oversight. In other words, the Cabinet has suggested unclear and indeterminate procedures for the destruction of documents that have otherwise been considered important enough to be classified.

Other proposals in the bill are the introduction of:

- the possibility of the unlimited extension of the classification period by the SISC;
- oversight of the lawfulness of classification decisions by the security services;
- the possibility of increased remuneration for public servants, depending on the level and scope of the secret documents with which they work.

Last but not least, the proposed amendments would introduce a requirement that certain categories of people be investigated before they are allowed to work with classified documents. This would include Members of Parliament and lawyers, for whom the preliminary investigation requirement was removed less than a year ago.

AMENDMENTS TO PERSONAL DATA PROTECTION LEGISLATION IN 2004

Not many amendments were made last year to Bulgarian legislation related to personal data. The main law dealing with the protection of personal data, the Personal Data Protection Act (PDPA), was amended to the effect of striking a balance between two interests – those of "national security" and "personal data." In individual sector legislation, the largest legislative adjustments were made with regard to the protection of personal data in the health sector.

General Provisions

Personal Data Protection Act

Two amendments were made to the Personal Data Protection Act in 2004.

The first amendment was meant to expand the definition of the term "personal data," by adding the data found in the human genome to the categories of protected data.[1] The amendment was adopted in conjunction with the newly-passed Health Act.

The second amendment, or rather batch of amendments, to the PDPA, came as part of the Closing Provisions of the Law for Amendment of the Defense and Military Forces Act. These amendments were meant to establish the relationship between the terms "national security" and "personal data." The amendments dictate that if the two interests come into conflict, priority is to be given to the national security interest.

The amendment made to Article 34, Para. 3 of the PDPA[2] gives officials the absolute freedom to refuse individuals access to their own personal data, on the grounds that disclosure might present a danger to the defense of the country or national security, or for the protection of classified information. Furthermore, this provision frees data administrators of the requirement that they provide the factual grounds for their refusals, as well as of the obligation that they apply the three-part test for the balance of interests, as stipulated by Article 8 of the European Convention on Human Rights.

The provisions of Article 18, Item 6; Article 19, Para. 1; and Article 25, Para. 3 of the PDPA,[3] regarding the permissibility of the processing and storage of personal data and

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1 PDPA, Art. 2 (2) (State Gazette, issue 70, 2004): "Personal data is information about a natural person which that reveals his/her physical, psychological, mental, family, economic, cultural or public identity, including the data on the human genome"; Closing Provisions §10 (State Gazette, issue 70, 2004): "The 'human genome' is the complete set of genes in the chromosomes of each cell of a particular individual."

2 PDPA, Art. 34, Para.3 (New - State Gazette, issue 93, 2004) "The personal data administrator refuses full or partial access to the data of the individual under Para.1 if its disclosure could endanger the defense or security of the country, or in order to protect classified information. The refusal should state the legal grounds only."

3 PDPA, Art.18, "The processing of personal data is only allowed when one of the following conditions is satisfied:

- Section 6 (new – State Gazette, issue 93, 2004) for the purpose of defense and the protection of national security.

PDPA, Art.19 (1) (Supplement – State Gazette, issue 93, 2004) The administrator under Art.3 (1) can process an individual's personal data after receiving his/her consent, with the exception of cases

the obligations of the administrators with regard to such processing, were also amended. The changes made to these provisions gave state data administrators the unrestricted freedom to collect and process data, every time they consider it necessary to do so for the protection of national security. Considering the broad definition of the term "national security" that is given in the Protection of Classified Information Act, we find that this authority gives too much discretion to the administrators, which could result not only in the processing of personal data without the consent of the individual in question, but also without any legal grounds for doing so.

Sector-Specific Legislation

Protection of Personal Data in the Public Affairs and Security Sector

Witness Protection Act (WPA) – Promulgated in the State Gazette, issue 103, October 23, 2004; effective as of May 24, 2005.

The purpose of this law is to provide support in the battle against severe premeditated crimes, as well as against organized crime, by ensuring the safety of individuals whose testimony, explanations, or information are of substantial importance in criminal proceedings. In order to achieve that purpose, personal data will be collected from the individuals covered under the law. This data indisputably falls under the category of so-called "sensitive" data. That is why this law needs to stipulate a special procedure for processing this data, different from that stipulated in the PDPA, as well as specific obligations on the part of the administrators who must ensure that the data is protected. Although the WPA contains a section entitled "Processing of Personal Data," no additional security guarantees regarding the processing and storage of data are provided in it. Furthermore, the lawmakers did not provide for any criminal liability for persons who misuse witness protection data.

Law on the Preservation of Public Order during Sports Events – Promulgated in the State Gazette, issue 96, October 29, 2004; effective as of November 30, 2004.

This law lays out the measures to be taken in order to protect public order and combat antisocial behavior during sports events. The text's purpose is to provide some preventive measures for avoiding any violent incidents when sports events are being held. In connection with this, the law provides for the establishment of a National Information Center and a central register containing the personal data of individuals whose behavior during sports events poses a threat to public order. The register would contain identifying information about the individuals (name, personal identification number, permanent address, citizenship, place of birth), as well as data about any offences or crimes committed by the registered individual and the penalties imposed or other compulsory administrative measures. The law explicitly provides the possibility of cross-border data transfer.

Protection of Personal Data in the Health Sector

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stipulated by law or when the data processing is related to defense or national security.

PDPA, Art.25, Para. 3 (Supplement – State Gazette, issue 93, 2004) After the completion of personal data processing, the administrator under Art.3, Para. 1 only stores the data under the cases stipulated by the law, or in cases related to defense and national security.

Health Act – Promulgated in the State Gazette, issue 70, August 10, 2004; effective as of January 1, 2005.

The new Health Act makes the first statutory attempt to define terms like "medical information" and "medical records," as well as the legal obligations of healthcare institutions with regard to managing medical records and protecting patients' personal data. In the subsection entitled "Medical Information and Records," the format and content, as well as the conditions and procedures for the processing, use, and storage of medical information are settled. This section also stipulates in which situations information may be shared between different administrators is allowed. The law's chief shortcoming, with regard to the protection of personal data, is the absence of a legal mechanism allowing individuals to access their own medical records. The subsection on "Patients' Rights and Obligations" only provides for the patient's right to "explicit and accessible information about his/her medical condition." The law lacks any explicit obligation on the part of data administrators to provide the individual with access to his/her entire medical record, or copies of documents contained in it. Another deficiency with regard to the protection of personal data in the health sector is the lack of any penalties for the misuse or unlawful processing of data related to patients' medical condition.

Regulation 11 of March 29, 2004, on Maintenance of the Register of the Executive Agency on Medical Transplants – Issued by the Health Minister, promulgated in State Gazette, issue 31, April 16, 2004

In order to comply with the provisions of the Law on the Transplantation of Organs, Tissues, and Cells, this special regulation was adopted in 2004. It dictates the circumstances in which data is to be collected, and the type of data to be entered, in the Register of the Executive Agency on Medical Transplants, as well as the procedures for entering and using the information contained in it. The agency maintains two registers – one public and one official. The public register contains information about the medical institutions that collect, implant, and/or process organs, tissues, and cells, and a list of tissue banks. The regulation stipulates the procedure for accessing the data contained in the registers by explicit reference to the Access to Public Information Act.

There are several types of official registers, but only three of them contain data pertaining to physical persons.[4] The law stipulates the amount of data to be contained in the registers, as well as specifying which data is available to the administrators who maintain them. One serious shortcoming of this regulation is the lack of any penalties for violation of the rules regarding the use of the register. The personal data stored in the Executive Agency on Medical Transplants is particularly sensitive information, directly related to people's health and life. Without question, such information could be seriously abused. Therefore, there should be serious penalties for its misuse.

4 Regulation 11, Art.9. The Official Register (R) of the Executive Agency on Medical Transplants contains: 1. R. of individuals who have expressed their consent or refusal to donate organs, tissues, and cells after their death; 2. R of individuals who require organ transplants, called "national patient waiting list;" 3. R. of individuals under the age of 18 who require transplants of self-regenerating tissues.

Law on the Integration of Disabled People – Promulgated in the State Gazette, issue 81, September 17, 2004; effective as of January 1, 2005

Regulation on the Implementation of the Law on the Integration of Disabled People – Adopted by Council of Ministers Decree No. 343, of December 17, 2004; promulgated in the State Gazette, issue 115, December 30, 2004; effective as of January 1, 2005.

This new law and the regulation regarding it provide for the establishment and maintenance of a database containing information about disabled people. They specify the purpose for collecting this data, in accordance with the requirements of the PDPA. The database will be used to calculate the number of disabled people in the country, analyze their socioeconomic status, and plan activity geared towards meeting their needs in the areas of education, health and social reintegration. There is an explicit designation as to which administrators may exchange data on disabled people.

As written, the law and regulation contain some flaws. There is no enumeration of the categories of personal data to be included in the database. No procedure is given for regulating the provision to individuals of access to their own personal data. The legislation lacks any provision on the right to change or update the data. Furthermore, the regulation stipulates that every change in the data is subject to registration and that factual mistakes may only be corrected by officials. As in many other sector-specific laws, there is no stipulation of penalties for the unlawful collection and use of personal data.

Personal Data Protection in the Telecommunications and High Technology Sector

The Telecommunications Act that was adopted in 2003 provides for the confidentiality of communication and the protection of personal data in long-distance telecommunications. As we noted in our previous annual report,[5] there still exists a legal vacuum regarding the protection of personal data in connection with Internet technologies, which remained unfilled in 2004. Nevertheless, the Council of Ministers adopted an "**Updated Policy for the Telecommunication Sector in the Republic of Bulgaria**" in its Decision No. 885 of November 10, 2004. This policy confirms the need to draft and pass a Law to Amend the Telecommunications Act or new Electronic Communications Act, in order to provide for the protection of personal data contained in electronic messages. An amendment is urgently required, stipulating the right of subscribers to all kinds of electronic services to decide whether or not they want to be included in a public directory.[6] It is expected that the scope of existing personal data protection legislation will be broadened. Legal safeguards need to be put in place against the violation of people's privacy and the misuse of personal data transferred through electronic communication networks.

5 See AIP's Annual Report, "Access to Public Information in Bulgaria 2003."

6 The current Telecommunication Act (Art. 97) stipulates that all subscribers should be included in the public registers, regardless of their will.

Practices in the Provision of Access to Information – Results of Global Monitoring of Compliance with Freedom of Information Laws in Bulgaria, 2004

Following our review of the legislation governing the right of access to information and the exceptions to it, we will now examine practices related to their implementation and exercising the right of access to government-held information.

Access to Information Programme relies upon a number of sources in its analysis of the freedom of information situation in Bulgaria. They include, for example, reports from our network of coordinators, cases referred to AIP's office for assistance, and the problems we encounter when appealing information refusals in court. In this report on access to information in Bulgaria for 2004, we will attempt to give a snapshot of the access to information situation from the point of view of information seekers and the problems they face. This is a natural approach to take, since this is precisely the kind of information that we collect and categorize in our databases: one of information refusal cases and one of court cases under the Access to Public Information Act (APIA).

In addition to summarizing and analyzing the natural demand for information in Bulgaria, Access to Information Programme carries out specialized surveys. For example, AIP has conducted five reviews of freedom of information practices since the adoption of the APIA in 2000.[1] The goal of the first three studies was to assess the institutional preparedness for implementation of their obligations under the law. For the past two years, AIP has participated in a *Global Freedom of Information Monitoring Survey*. In this report, we present our findings from this survey for 2004.

The methodology for the monitoring project was developed by the Open Society Justice Initiative. The so-called *Global Monitoring Pilot Survey* was held in five countries in 2003: Armenia, Bulgaria, Macedonia, Peru and South Africa. An outline of the monitoring results is available on the Web site of the Open Society Justice Initiative.[2] In Bulgaria, the survey was implemented by a team from the Access to Information Programme, with the results presented in the *Access to Information in Bulgaria* annual report for 2003. The findings were also discussed at a number of public events, including workshops and training seminars.

In 2004, the survey was held in sixteen countries, listed below by geographical region:
Africa: Ghana, Kenya, Mozambique, Nigeria, South Africa, Senegal;
Europe: Armenia, Bulgaria, France, Macedonia, Romania, Spain;
Latin America: Argentina, Chile, Mexico, Peru.

The number of countries that are adopting or have already implemented freedom of information laws is constantly increasing.

The monitoring survey covered countries on three different continents, with regional freedom of information standards that are relatively different, yet also comparable. For

[1] See our previous annual reports on access to information in Bulgaria, available online at: http://www.aip-bg.org/rep_bg.htm
[2] Posted in English at http://www.justiceinitiative.org/activities/foifoe/foi/foi_aimt and in Bulgarian at http://www.aip-bg.org/rep_bg.htm.

this reason, the team that developed the monitoring methodology set forth the following access to information standards, to be used as the hypothetical basis for the survey:[3]

1. There should be a prevailing principle of openness;
2. All institutions performing public functions should respond to information requests;[4]
3. Everyone has the right to receive access to information without explaining the reason(s) for his/her request;
4. There should be no discrimination with regard to requestors – everyone should be treated equally;
5. Information should be provided in a timely manner;
6. Requests may be submitted both orally and in written form;
7. Access must be provided to information, rather than to documents;
8. Information should be provided in the requested form, whenever possible;
9. If an institution receiving an information request does not possess that information, it is required to forward the request to another institution, known to possess the requested information;
10. The fees for information provision should not obstruct free access to information and should not exceed the cost of the storage medium (e.g., photocopies, CDs, videotapes);
11. Every information refusal should specify the grounds and cite the legal provisions on which it is based;
12. When some of the information requested is exempt from public access, partial access must be provided;
13. There should be a requirement that assistance be provided to information requestors;
14. Every public institution should have a designated information office or official responsible for processing information requests;
15. Every public institution should publish certain information at its own initiative, even in the absence of information requests.

To a certain degree, Bulgarian freedom of information litigation meets the standards listed above. The monitoring results can thus be considered relevant to the hypothesis, allowing for comparison of practices in Bulgaria with those in the other participating countries.

Other important freedom of information standards, such as the right to appeal refusals, were not measured under the methodology of this monitoring survey.

Monitoring Methodology

As in 2003, the monitoring methodology was the same for each of the participating countries.

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[3] A more detailed review of the standards is available in a report of the *Global Freedom of Information Monitoring Report* for 2003 available at http://www.aip-bg.org/ and on the web-site of Open Society Justice Initiative: http://www.justiceinitiative.org/activities/foifoe/foi/foi_aimt.

[4] This standard is best developed in the South African freedom of information law. In Bulgaria however, private and public companies – even those that hold a monopoly – have no obligation to respond to information requests. Everyone has the right to obtain information from central and local authorities, public law (political) entities and entities whose activities are financed by the budget.

The 2004 survey had the following parameters: a total of 140 requests filed by seven requestors to eighteen institutions, in two waves.

The requestors were: two journalists, two environmental organizations (NGOs), one small business, one private citizen and one representative of the Roma minority.[5]

The following institutions were monitored in 2004: The Council of Ministers (Cabinet), the Ministry of Justice, the Ministry of Defense, the Ministry of the Economy, the Ministry of Labor and Social Policy (MLSP), the Ministry of Environment and Waters, eight municipalities (including district administrations within the capital/Sofia municipality), the Supreme Court of Appeals and the Regional Court of Montana (Bulgaria). The project also covered two other institutions: Bulgarian National Television (BNT) and the National Electric Company (NEC). The former has clear obligations under Bulgaria's Access to Public Information Act, while the latter is not covered by the Act. Under the standards laid out for the *Global Monitoring*, however, the NEC should also provide information to any requestors, bearing in mind that they are also its clients or consumers.

Requested Information

The seven requestors filed 18 oral and 122 written information requests, seeking information in the following areas:

- Environmental protection: requests were filed for information of clear public interest, such as the *Environmental Impact Assessment Report* on the second nuclear power plant near Belene, or information about the air and drinking water monitoring systems;
- Anti-corruption: requests were filed for information related to corruption investigations and statistical information on corruption cases from the courts;
- Management of state and municipal properties: information was sought about public procurements and rentals of public property;
- Organization and maintenance of public registers and requirements that information about the structure of the local administrations be published;
- Information about the property owned by public figures;
- Information about government policies on issues of high public interest, such as its crime prevention strategy;
- Financial accountability: projects financed by European funds, and the *micro-credits* lending scheme;
- Internal rules regulating transparency and information disclosure policies: this information was requested during the second stage of the monitoring.

As in the pilot survey, requests were filed seeking access to three types of information during the 2004 monitoring survey:

- ***Routine*** – information that clearly should be available for public access;

[5] We invited a representative of the Roma organization *Romany Baht* to participate. We presumed that his address in the *Fakulteta* district of Sofia would serve to identify this requestor as a member of the Roma minority, and this assumption proved correct.

- ***Difficult to Provide*** – information that is presumably available for public access, but which requires additional efforts by the institutions to compile it; and
- ***Sensitive*** – Information which, for some reason (e.g., an ongoing political debate), might be viewed as sensitive by administrative officials.[6]

One of the methodological constraints of the survey was the decision not to request information that clearly falls under the scope of exemptions from the right to information access, such as information classified as a state or administrative secret.

Examples:

The Bulgarian team determined that the following information should be considered routine:

- From the Council of Ministers – the memorandum regarding financial support for Bulgaria's accession to NATO;
- From the Ministry of Justice – the Bulgarian Armed Forces Modernization Plan for the period 2002-2015;
- From municipalities – information about the structure of their administrations and the number of public registers maintained by them;
- From the courts – information about the number of lawsuits initiated and concluded in 2003.

The Bulgarian team determined that the following information should be considered difficult to provide:

- From the Ministry of the Economy, a list of the projects financed by European Union funds and administered by the ministry;
- From the Ministry of Justice – a list of the international donors providing support for judicial reform in Bulgaria;
- From municipalities – information about the renting out of municipal properties and the agreements allowing certain people to reside in municipal housing;
- From the courts – the number of lawsuits files under Articles 357 and 284 of the Criminal Code (regarding state and administrative secrets).

The Bulgarian team determined that the following information might be viewed as sensitive by administration officials (e.g., because of an ongoing public debate):

- From the Council of Ministers – a list of the apartments from the Cabinet's housing fund that were sold to officials or other public figures;

[6] The conditional nature of this classification system is obvious. In some instances, information was considered to be routine by the national teams and the representative requestors, but administrative officials insisted that it was exempt from public access. For example, information about the properties owned by a country's prime minister would be considered routine, by international standards. However, the Council of Ministers press center, which reviewed the request for information about the Bulgarian prime minister's properties, apparently considered this information to be sensitive and restricted from access. The global monitoring survey did not include the resolution of such disagreements in the courts.

- From the Ministry of Justice – the Annual Report of the ministry's Anti-Corruption Commission;
- From the Ministry of Labor and Social Policy – information regarding the companies and people receiving micro-credits and those included in the "Start Your Own Business" program;
- From the Supreme Court of Appeals – information regarding the Opitsvet case (a criminal case regarding an illegal amphetamine-manufacturing laboratory);
- From Bulgarian National Television – a list of BNT's outstanding debts.

The Monitoring Process

As in 2003, the monitoring survey was carried out in three stages.

During the first stage, the seven requestors filed the **140 information requests** in two separate waves, in April and May of 2004. In the second monitoring stage, in June, the heads of the national teams filed their so-called **targeted requests**.[7] During the third stage, in July and September, the national team leaders conducted **interviews** with information officials or the chiefs of the monitored institutions, in order to discuss matters related to the institutions' internal information policies and activities, and to seek clarification of the results compiled in the first monitoring stage.

The First Monitoring Stage: Information Requests

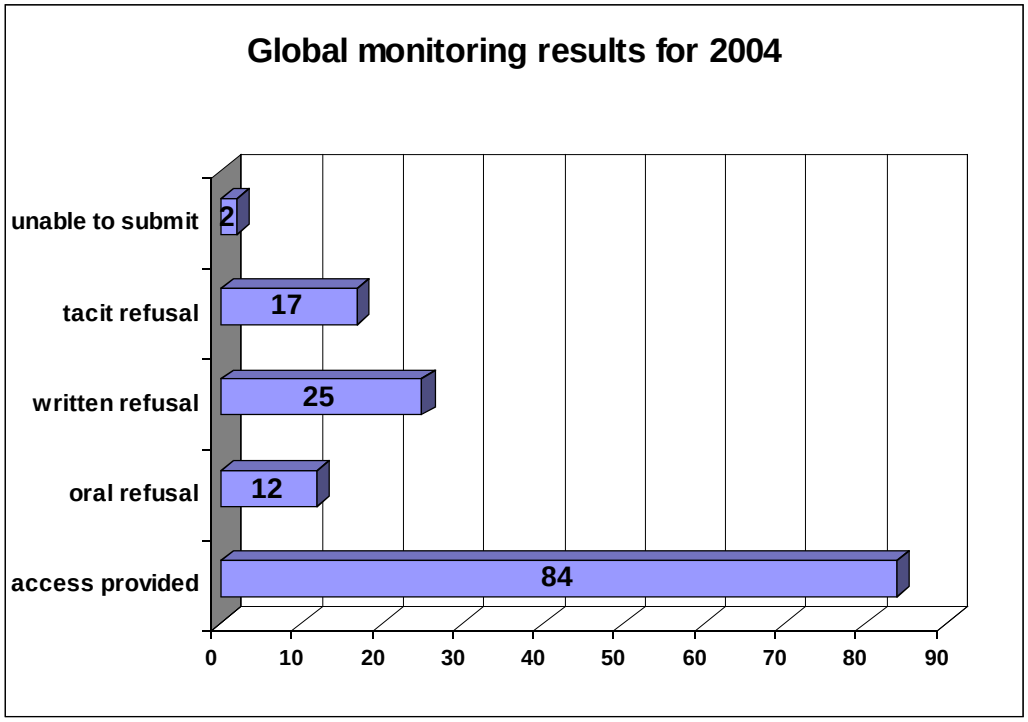
Here we will present and analyze the results from the monitoring held in 2004 and compare them to those obtained in the *Pilot Survey*. For this purpose, we are using the same result groupings as in 2003, so as to illustrate the dynamics in Bulgaria's freedom of information practices.

Unclear decisions on some information requests and tacit refusals (failure to respond to requests at all) were clarified during the interview stage.

We have classified the aggregated results of the information requests as follows:

[7] This is how we will refer to the requests filed by the leader of the national team, seeking information about institutions' access to information policies (i.e., data related to the purpose of this monitoring).

1.



Unable-to-submit: An "unable-to-submit" outcome describes cases when it was physically impossible to file the request. For example, some requestors could not get inside the premises of the relevant institution because security guards did not let them, or once inside, they could not speak to the relevant official, because they were, for instance, either absent, always "at lunch" or "coming in tomorrow." As in last year's results, these outcomes describe cases of impossibility of filing an oral request. There were only two such cases in 2004, when no official able to answer the request could be identified.

2. **Oral refusal:** An oral refusal is when an official orally states that he/she refuses to provide the information, whether or not grounds are given for the refusal. In Bulgaria, such refusals are often accompanied by a recommendation that the requestor submit a written request. During the interview stage, most institutions explained this outcome as arising from the incapability of the officials who work with citizens to provide the information, which is usually held in other departments. In most of these cases, additional conversations with people having different reception hours were required. Therefore, in cases when information was not readily available, the easiest solution was usually to say: "file a written request;"
3. **Written refusal:** A written refusal is notification of a decision not to provide the requested information, made in any written form. There were 25 such refusals in 2004, out of 122 written requests.
4. **Tacit refusal:** This category encompasses the cases in which there was no response at all from the authorities. This outcome was determined to exist after all of the legal deadlines for responding to requests had expired, often with a generous margin given to the authorities to respond. Cases in which no answer was given in response to a clarification request were also considered tacit refusals. There was a significant improvement in the results of the 2004 monitoring, as compared with 2003: while in absolute figures the number of tacit refusals was similar (19 and 17), the percentage dropped from 21% to 12%. There was even one failure to respond to a targeted request filed during

the second monitoring stage, from one of the municipalities. We had requested a copy of its APIA compliance report for 2003, which should have been complete and readily available. Even during the interview stage, the municipal information official gave no rational explanation for this tacit refusal.

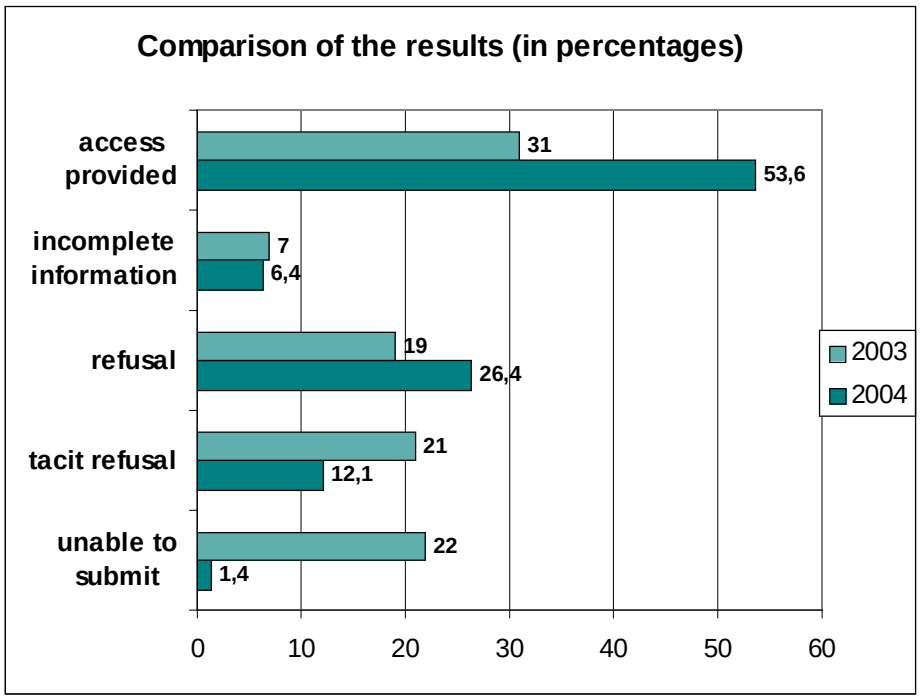
5. **Access provided:** This category includes all cases in which the information was actually provided, although there were cases of incomplete information or of provision of a list of names or companies instead of the documents requested, which were known to exist (nine cases in 2004).

Let us now compare the results of the two monitoring projects in 2003 and in 2004. Because the number of filed requests increased, from 100 in 2003 to 140 last year, the results will be compared in percentages.

If we consider the most general outcomes – namely, whether the information was provided or denied – we see that:

- In 2003, only 38% of the information requests were fulfilled, and 62% rejected;
- In 2004, the numbers were just the opposite: 40% of the requests were turned down, while information was disclosed in response to 60% of them.

As mentioned earlier, in 2004 two cases of *unable-to-submit* requests were recorded, compared to 22 such cases in 2003. The number of tacit refusals decreased from 21%, in 2003, to 12% in 2004. The percentage of requests that were completely fulfilled increased.



All of the visited institutions had appointed an official responsible for duties under the Access to Public Information Act. Internal rules for handling information requests had been adopted and request registers created in most of the institutions required to have them. The law is now better known and attention is turning to the details.

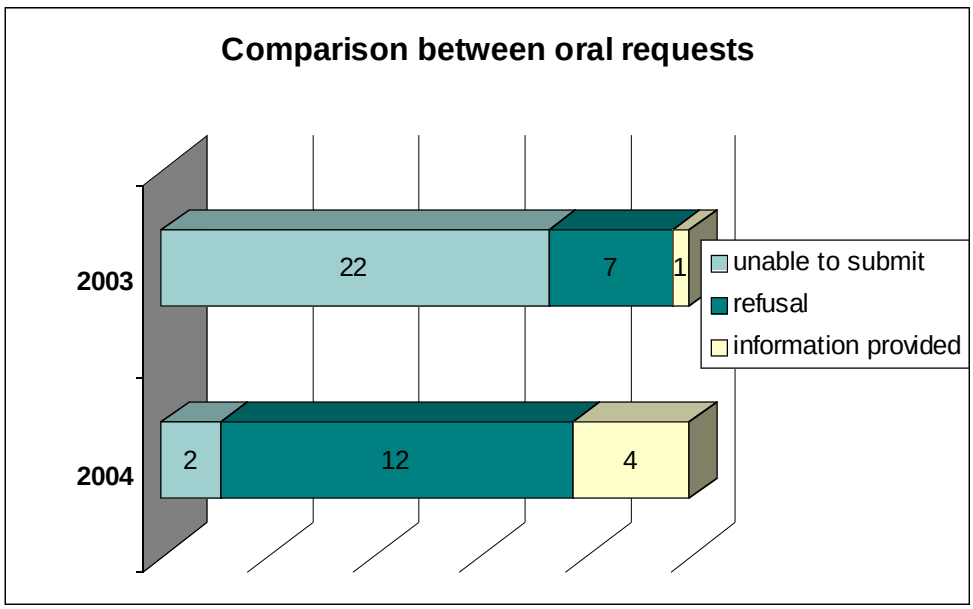
The Defense Ministry has made available the AIP handbook "How to get Access to Information" by publishing it on its Web site.

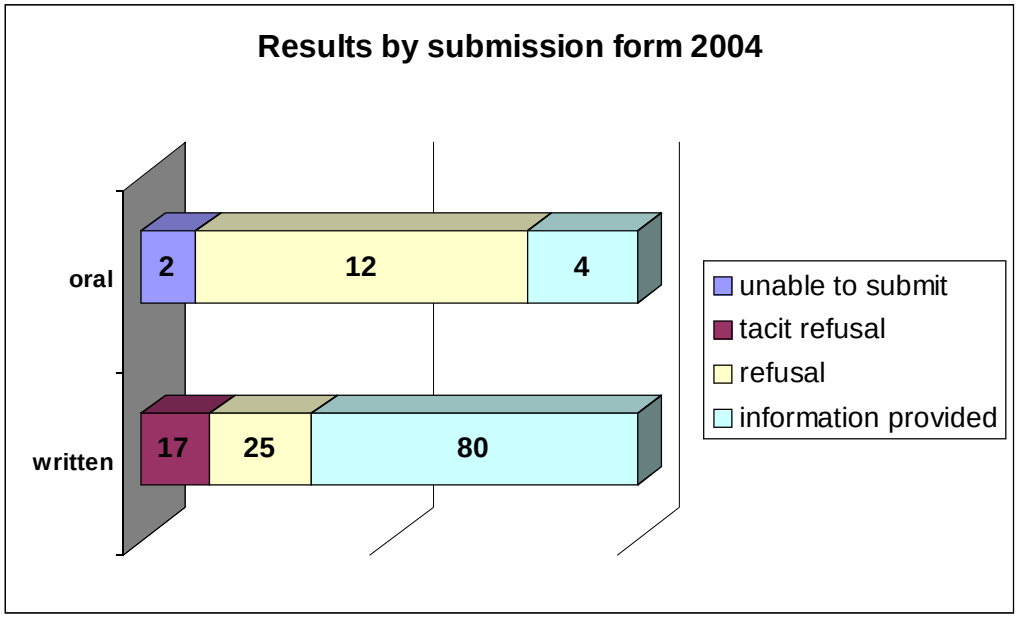
Responses to Oral Requests

As in 2003, requestors had difficulties receiving information in response to oral requests submitted during the first monitoring stage. The difference in 2004 was the significantly lower number of *unable-to-submit* requests (only two, compared to 22 in 2003). Despite this, the requestors were still often unable to receive the requested information, because most of the oral requests they *were able* to submit in 2004 actually resulted in oral refusals (12 cases).

The percentage of overall information refusals increased, from 19% to 26%.

As in 2003, all of the cases that were provisionally assigned as "unable-to-submit" outcomes concerned oral information requests under APIA. In actuality, the ability to exercise this right did no change significantly during the last year. Most information officials are either not sure how to process oral requests, or are not authorized to do so. As a result, they advise such requestors to file written requests. Most of the *oral refusals* (simply included as *refusals* in the table above) were actually of this nature. For those wishing to exercise their right of access to information, it makes little difference whether they find no one to submit their request to, or they *do find* such information official, who advises them to resubmit their request in writing. This is, after all, a matter of perspective.



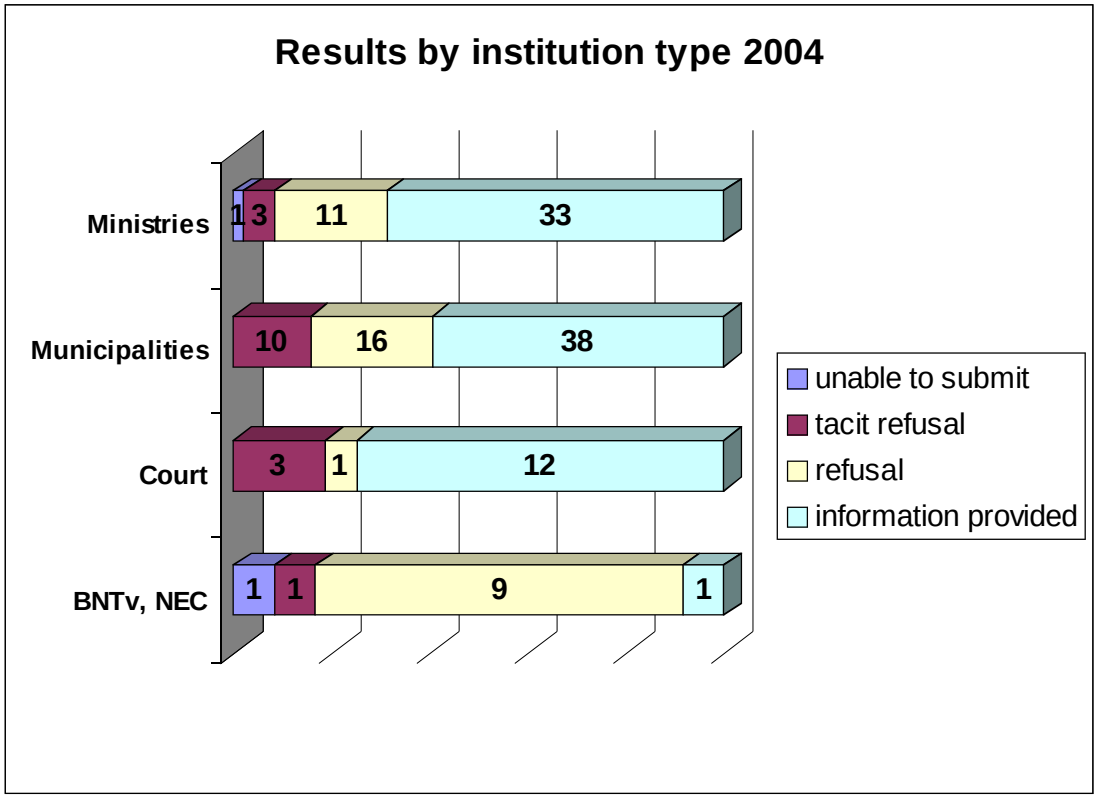


As seen from the table below (results by institution), the *unable-to-submit* cases occurred either at institutions with complicated admittance procedures, like ministries, or at institutions that have not yet established rules for working with citizens, such as the Bulgarian National Television.

In the first case the requestor, representing the Roma minority could not find anyone able to respond to her request for information about the Ministry of Labor and Social Policy's *micro-credit lending scheme.* It is indeed practically impossible to receive any meaningful information in response an oral request at that ministry, except in cases of job-related legal consultations. After having already received a positive decision to provide information in response to target request, the author of this report spent hours in the ministry building waiting for the information official. It finally turned out that she was on sick leave, so no one was able to provide the information, despite the decision for disclosure. Obviously, the system for the provision of information at the MLSP does not conform with the unique circumstances at the ministry – it is a large institution, which administers a number of programs, but has a complicated admittance regime. It seems important to note this, because the people working at the ministry were otherwise extremely kind and helpful.

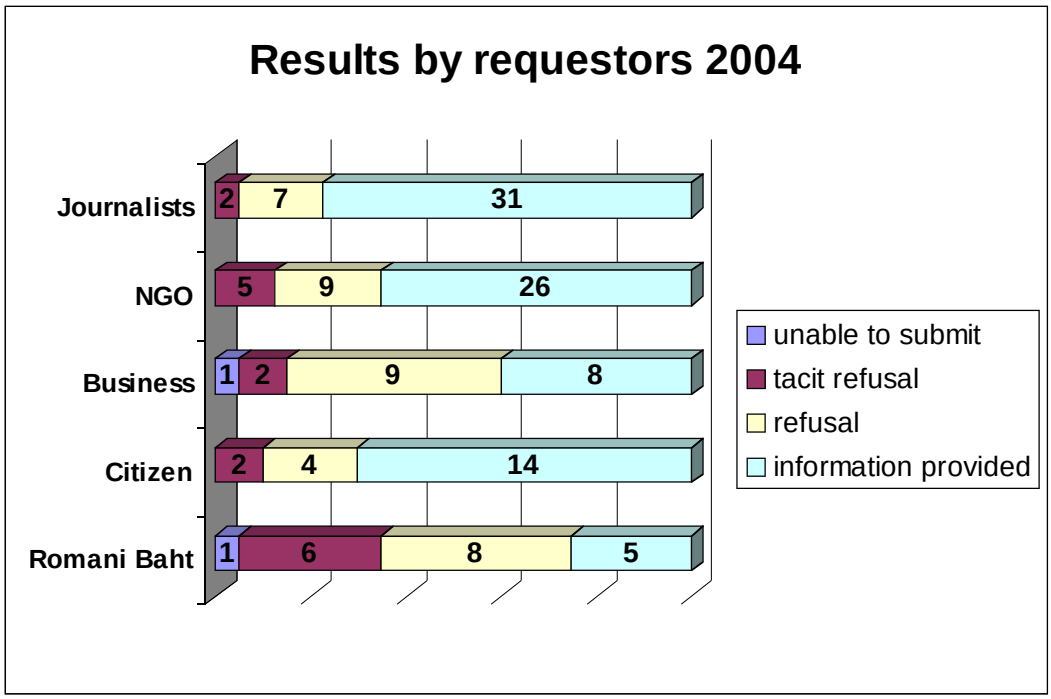
The second case that was assigned an *unable-to-submit* outcome was a request made by a small business for information about the outstanding debts of the Bulgarian National Television. BNT's information officials were not familiar with the law and initially sent the requestor to the accounting office. He was later dismissed with no response to his inquiry.

We are in no position to compare the outcomes in 2003 and 2004 by institution, because municipalities represented a much larger percentage of the institutions in our 2004 survey; 64 of the requests were made to municipalities, forty-eight were sent to ministries, 16 to the courts and a total of twelve to the NEC and BNT.



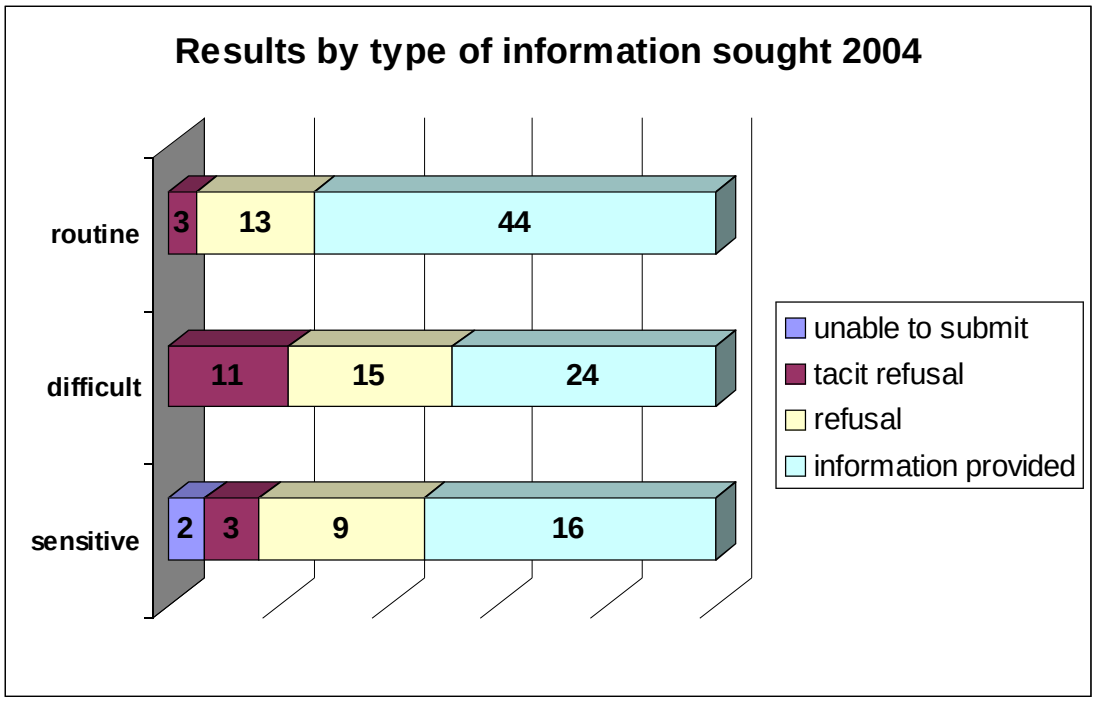
If we only consider the results from 2004 and compare them among the different institutions, we can conclude that the positive response rate was higher in the courts than at the ministries, with the municipalities falling still lower. However, we should also bear in mind the nature of the requests filed with the different types of institutions.

Results by Requestor Type



One of the standards that served as a hypothetical condition measured during the survey was that requestors should be treated equally when exercising their right to information: there should be no discrimination toward any of the requestors. However, as we have already noted, journalists have some advantage when seeking public information. Officials see them as natural information requestors and most institutions have PR departments – a person or office responsible for contact with the media. The privileged position of the media in receiving information is characteristic of less-developed countries, which usually have problems in the area of freedom of expression. Institutional PR offices are specifically trained to disclose information that serves the political party in power and to establish contacts with only certain media. The right of everyone to receive information causes uneasiness within public institutions, as officials always ask themselves the question: *what do they need this information for?* As seen from the following table, journalists indeed have an advantage in receiving information; they enjoy the highest number of fulfilled information requests, while suffering the lowest number of tacit and other refusals. The most disadvantaged requestor groups were minorities and small business.

Results by Request Type



This year there is a stronger link between the type of information requested and the request results. Still, we believe that the results are an indication of under-developed information practices.

Explicit refusals, tacit refusals and *unable-to-submit* outcomes are the most indicative cases for analyses.

As seen from the table above, information was not disclosed in response to 26% of the routine requests, 52% of the difficult requests and 46% of the sensitive ones. Even though these results are rational and consistent, we feel that the number of refusals to provide information in response to routine requests was too high.

During the interview stage, officials rarely expressed concerns about the nature of the information requested. They were more worried by the fact that the information was being sought by someone unfamiliar to them.

The Second Stage: Targeted Requests

During the second stage of the monitoring project, targeted requests were sent by the leader of the national team to all of the eighteen institutions being monitored. The targeted requests were actually inquiries about the institutions' internal structures and their policies related to implementation of the Access to Public Information Act. We also requested an annual report or systematic review of the access to information requests received by the institutions, along with data about, the grounds for, and analyses of any refusals to provide information.

The targeted requests in Bulgaria were filed by the author of this report, representing Access to Information Programme, an organization well known to the institutions and the public as an advocate of the right of access to government-held information and compliance with the law.

All of the requests were sent between June 16 and 19, 2004 by certified mail, since one of the purposes of this project was to check whether the legal time limits were observed at all stages of the process.

All of the reports we requested are usually prepared by the end of March each year, and serve as the basis for the Annual Report of the Minister of State Administration, traditionally published in April. For this reason, we assumed that we were requesting access to routine information.

The only institution that did not respond in any way to a targeted request was one municipal district administration in Sofia.

In four cases, information officials reached us by telephone – right before the expiration of the deadline imposed by the law – in order to schedule a meeting and provide the requested information. Officials had other purposes for requesting these meetings – to provide some additional information and to learn about the purpose behind the requests. One of the institutions – a district municipality – had not compiled an annual report, because its officials insisted that they had not received any information requests (although we had submitted eight information requests to this institution under the first monitoring stage alone). It is clear to us that these requests are recorded in the general administrative register, and due to the lack of any characteristic features cannot be easily distinguished from the letters, notifications, appeals and other sorts of incoming correspondence. In our last year report, we have noted that requestors are not always required to cite the APIA when submitting information requests. If it so happens that an information request does not contain a clear reference to that law, the official who processes the incoming mail is unlikely to recognize it as an APIA request; it will be identified as a letter requesting an administrative service and treated as such. Not only does this prolong the response period, but could alter the whole procedure, perhaps including officials looking for requestors/citizens' legal interest in the provision of certain information. The need to distinguish between administrative services provided in accordance with the

Administrative Services for Natural and Legal Persons Act and those provided under the *Access to Public Information Act* was recognized in the initial stages of the APIA's implementation. Officials have pointed it out at training seminars and in our implementation surveys (2000).

In one case, an institution notified us of its decision to provide information both on the telephone and by post.

Two of the institutions sent their decisions in response to the targeted information requests after a significant delay – one month after we submitted the requests. The administration of the Council of Ministers prepared a report especially for responding to my inquiry. The responding official from one of the municipal district administrations was extremely polite, and I presume that my request followed the path of administrative services for citizens and legal persons, from the general registrar's office to the mayor and the chief of the administration (administrative secretary).

Two of the institutions – the Ministry of Justice and the Ministry of Defense – disclosed the requested information in a letter within the legal deadline (fourteen days), without requiring payment of any access fees.

During our interview with the information official from the Ministry of Defense, we learned that that this is their routine practice. When the amount of information is small enough, they send it by mail, for the convenience of both the requestors and ministry officials. The payment of access fees is required only when information is provided in person.

Prices/Access Fees

In most ministries, the payment of fees for the provision of access to information is a complicated issue, since it involves at least three officials: the chief accountant, another accountant, and a clerk. God help them and the requestor if he or she requires an invoice! These problems are common to almost all state authorities and regional administrations. Unlike the municipalities, they do not have a cashier who works with the general public.

One of the ways of getting around this problem, that good-willed officials have come up with, is to send the responses and documents by mail. This is a legitimate way to avoid access fees and, at the same time, to abide by existing accounting standards. Among the monitored institutions, this procedure had been adopted by the Ministry of Defense, the Ministry of Labor and Social Policy and the Ministry of Justice.

There is another way of dealing with the problem of access fees, which is decidedly not good-willed. The requestors are required to make a bank transfer before they can receive the information they seek. Bank commissions cost the author of this report an additional 50% over the access fees themselves, and two trips to the bank. The official at the Ministry of the Economy had been almost sadistically polite and had not provided me any information regarding the ministry's bank account; I was naive enough to believe that employees of the State Savings Bank would know the necessary numbers. This certainly the case, but this "bank" is also an institution with a

long history that has only recently become a "bank," and it will be some time before everyone working there receives proper customer-service training.

The third way of tackling the issue of access fees is to set up a specialized desk – similar to a *one-stop-shop* with a cashier window serving the public. This has been done at the Ministry of Environment and Waters.

Compliance with Legal Deadlines and Mandatory Publication of Information

All of the information that we requested during the second stage of the monitoring should actually have been published by the institutions at their own initiative. It is supposed to be "available to everybody in every administration" (Art. 16, Para. 2 Item 2 of the APIA). This is one of the few of the Bulgarian APIA's requirements, which actually has a body designated to provide oversight: the Ministry of State Administration. The table below shows how each of the monitored institutions responded to promotion requests. Negative values represent how many days before the legal deadline a decision was issued, while positive values represent the number of days after the deadline by which a decision was delayed.

The Third Stage: Interviews

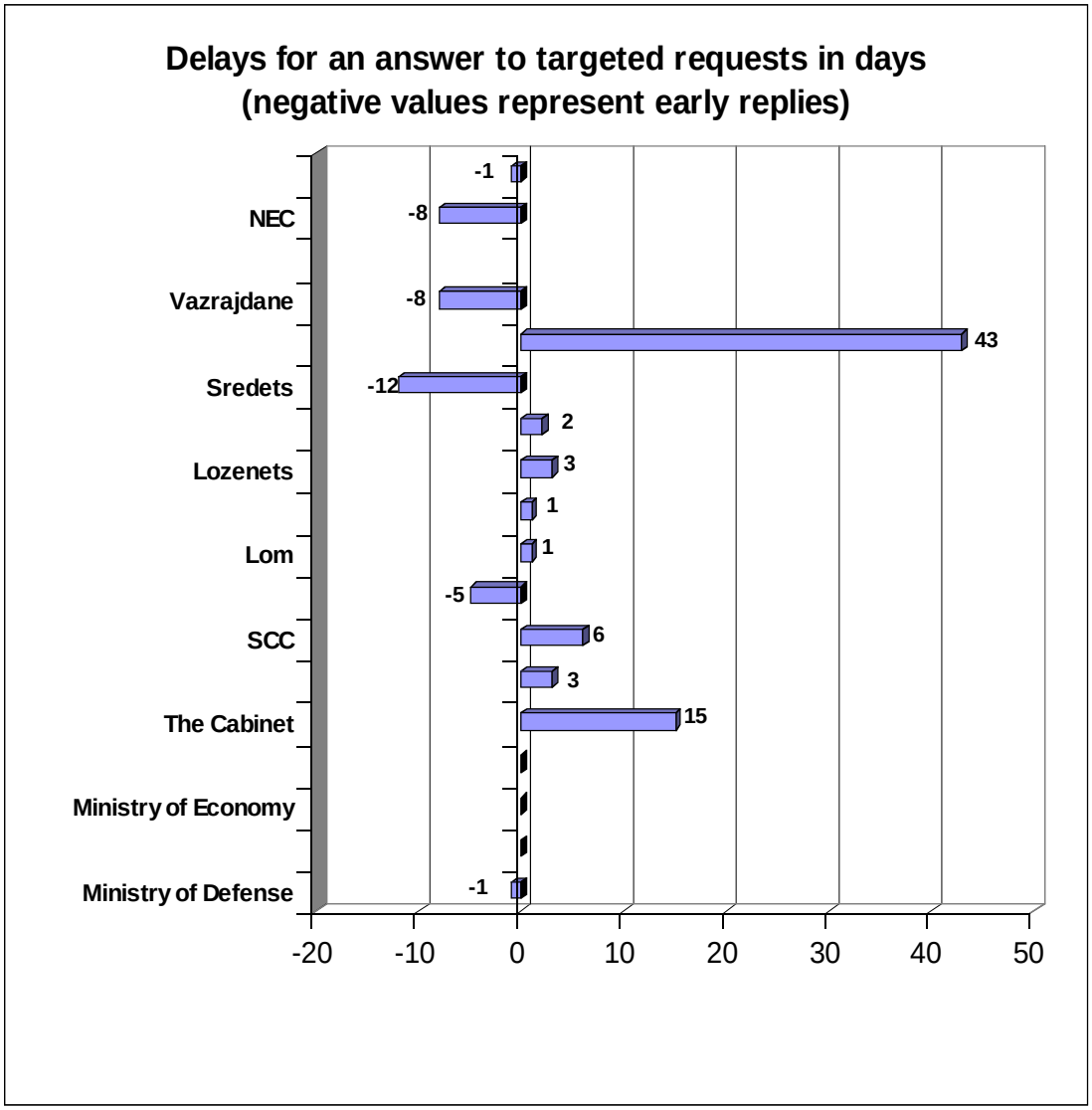
As we previously noted, the *Global Monitoring Survey* for 2004 concluded with the stage of individual interviews. The leader of the national monitoring team discussed with information officials from each of monitored institutions some important issues, which arose during the earlier stages – the information request stage and the targeted request stage.

During these consultations, we discussed and clarified some specifics of the information provision systems in the monitored institutions. AIP received additional details about the internal rules and policies intended to ensure compliance with the Access to Public Information Act.

Most of the institutions monitored have established internal rules on APIA compliance. In most cases, the rules were adopted by order of the mayor or the minister.[8]

In many of the district administrations of the Sofia municipality, the first hurdle that citizens need to overcome when requesting information is posed by security guards from the company *Egida Ltd. Egida* employees often serve as intermediaries, providing some initial information to those entering the municipal administration buildings. If they are not specifically trained for this purpose, then the result depends upon their individual intelligence and communication skills. There were no guidelines regarding how and where to request access to information at any of the municipal district administration offices in Sofia.

[8] Order No. 104 of the Ministry of Labor and Social Policy, June 21, 2002; Defense Ministry Order No. OX-91, February 2, 2001; several orders from the Minister of Environment and Waters. The order by the mayor of Lom is available to anyone who visits the city's municipal building, where it is posted on a bulletin board along with announcements and other information about procurement procedures, tenders, and other events.



Our impression following the interviews with information officials were positive, with the exception of the Ministry of the Economy, where the officer did not wish to discuss anything that had not already been included in the minister's official order. Our conversations with administrative secretaries and institutional lawyers were practically-oriented and included discussion of specific cases they had encountered. All of the officials interviewed expressed their willingness to take part in training workshops and to receive training materials regarding the APIA and compliance with it.

On the other hand, some anxiety obviously remained: *"Why is anyone requesting information from us, what do they want it for?"* Information officials used different rationalizations to explain their uneasiness: AIP or someone else is doing a survey, some opposition party is trying to put us in a bad light, citizens with municipal grievances are filing requests seeking for some remedy, or NGOs are simply carrying out some of their projects. The common thread in all of the interviews was: *"Of course everyone has a right to access government- held information, but still…."*

Case Studies 2004

Common Characteristics

Providing legal assistance in cases of information refusals was one of the Access to Information Programme (AIP) team's main activities during the last year. All of the cases submitted by citizens, journalists, non-governmental organizations – and often even by public officials – received oral or written legal comments and recommendations.

In 2004, the total number of cases, in which AIP was asked for assistance, was 717. According to the way in which they were submitted, the cases were classified among the following categories: 285 from AIP coordinators around the country, 107 office consultations, 143 telephone consultations and 182 cases that arose during the implementation of AIP projects.

A total of 392 cases were registered after submission by the local coordinators or in-office consultations.[1] These cases were recorded in a database. With respect to the type of legal advice these cases required, they were divided into:

- cases related to the right of access to information: 223;
- cases related to the right to seek, obtain, and impart information: 77;
- cases related to the right of personal data protection: 37;
- cases related to violations of the right to freedom of expression: 2.

The free legal advice given by the AIP team in 2004 was provided in the following formats: 236 written consultations, 103 in-office consultations, 143 telephone consultations and 20 consultations given in e-mail messages; 204 written requests for information were drawn up for the requestors.

In 25 of the cases, AIP provided legal representation in court proceedings related to protection of the right to receive access to public information.

Groups Seeking Information in 2004

Access to Information Programme has been monitoring practices related to implementation of the Access to Public Information Act (APIA) since the law's adoption in 2000. AIP's observations have most often been made in the analysis of the cases brought to our office for legal advice and consultation. Some of the cases are referred to AIP by the coordinators' network that has already been operating in the country for seven years. Others come directly from citizens and legal entities who turn to AIP for assistance in cases of access to information refusals. In 2004, AIP developed and maintained a discussion forum on its Web site. The members of the AIP legal team provide their comments on the questions posted in the forum.

The Bulgarian APIA does not discriminate with regard to the individuals who seek

[1]Of these 392 registered cases, 53 had no legal classification, since they were informational inquiries rather than legal consultations.

information. Pursuant to the law, *everybody* has the right to request and obtain access to information, regardless of whether they are physical bodies (Bulgarian citizens, foreigners, or citizens with no nationality) or legal entities (associations or companies). The principle of nondiscrimination and equality in the conditions for access to public information applies to everyone.

AIP statistics show that private citizens, journalists, and NGOs have been the most active groups in exercising their legally-guaranteed right of access to information. On rare occasions, representatives of business groups have requested information under the APIA. This pattern of groups seeking information was preserved in 2004.

1. Information Sought by Private Citizens

In 2004, 65 private citizens turned to AIP for legal assistance. The AIP team provided advice in the form of oral consultations, information request drawn up on citizens' behalf and the preparation and submission of petitions and complaints to the court.

Citizens comprised the highest percentage of those who sought information under the APIA. They required the information for their own use or for the purpose of ongoing court proceedings. Frequently, their reason for filing applications for access to information was the lack of transparency in the work of state institutions and local administrations regarding their conduction of auctions/tenders, competitions or tenure procedures. The most frequently requested types of information sought in applications submitted over the years have been: information about public procurement contracts, concession agreements, privatization documents, etc.

In the autumn of 2004, a citizen residing in a Sofia neighborhood brought her case to AIP's office. She wanted to check on the lawfulness of the activity of a nearby restaurant, which was causing trouble with its noisy visitors, midnight scandals and piles of garbage, so she submitted an access to information application to the district mayor of the municipality, demanding copies of the business' licenses for the preparation and sale of food, and of a permit allowing the construction of a building zoned for commercial use. She received partial information. With regard to the rest of the information she had requested (about the licenses to prepare and sell food, which were recorded in public registers, in accordance with the Foods Act), the requester was redirected to the Web site of the Ministry of Health, on which the national registers of sites licensed for food preparation and sale are published.

Private citizens were again the most persistent seekers of information in 2004. They submitted cases that illustrated their interest in current issues that are part of the public debate. They demanded access to contracts signed by the state and information about the activity of certain politicians. Some of them had previously asked AIP for assistance since the adoption of the APIA and continued to refer to AIP for advice with regard to new cases.

A TV news broadcast about the prime minister's visit to an orphanage in a village in the Rhodope Mountains stirred the interest of a private citizen. At the beginning of November 2004, he submitted an access to information application to the prime

minister's office, demanding information about the price of the television set that had been donated to the orphanage during the visit, the official travel orders, the number of persons who had accompanied the prime minister and a financial accounting of the trip. The director of the Government Information Service replied to the request, providing the information.

In another case, a citizen submitted a written request for information to the administration of the President of Bulgaria, demanding information about all of the unofficial events and initiatives in which the president took part during 2004, a list of all of the gifts given by the president during these events and information about the travel expanses connected with these events. In its response, the president's administration recommended that the citizen consulted the Web site of the Presidency, stating that the requested information was posted there (the Web site, however, contained information only about the president's *official* meetings and visits). The citizen's second attempt to obtain the requested information about the activities of the president by filing a written application resulted in a tacit refusal. The citizen has appealed the refusal in court.

The cases regarding citizens consulted by AIP in 2004 indicated an increased level of familiarity with the APIA and the procedures for obtaining information. Evidence of this trend may be seen in the following examples:

- Citizens preferred to submit written requests for access to information. The completion of request forms had been a major problem for the citizens during previous years, while in 2004 it was noteworthy that the requestors were able to complete the applications by themselves and turn to AIP for corrections and recommendations afterwards;
- There was an increase in the number of cases in which citizens turned to the AIP legal team for assistance after some development; i.e., an information request had been already filed and refused, before the citizen turned to AIP for the preparation of an appeal or for representation in court proceedings.

2. Information Sought by Journalists

The Access to Public Information Act is widely used in the work of the media, since it provides a legal basis for access to information related to the work of the authorities, the activities of official institutions and the most important processes in public life. For this reason, journalists were among the most active seekers of information during 2004.

Usually, the media require quick answers to their questions. This circumstance explains why journalists seldom (in comparison to citizens and NGOs) file written applications. It is often unreasonable to submit a written request, to be registered and responded to within two weeks, on routine questions; such as, what is the salary of the prime minister and the ministers, how many court cases have been filed against a particular institution, how many children have been placed in orphanages, when will social assistance funds for the heating season be released, etc.

The written form of information request is mainly used for obtaining information that contains a greater quantity of data that needs to be verified and processed, in cases of long-term journalistic investigations, in the writing of biographies or surveys of the activity of a particular institution, in cases of inefficient press centers from which information cannot be obtained any other way, etc.

The requirement that the APIA imposes on official institutions, that they disclose certain information at their own initiative,[2] would considerably facilitate the work of journalists – if it was strictly adhered to in practice. The cases referred to AIP in 2004 prove that instead of publishing information on their Web sites or disseminating it to the media in press releases, some institutions even refuse to provide it in response to journalist requests.

This was the case of a national daily's local correspondent in the town of Kurdzhali, who asked the director of the town's Social Assistance Agency for information about a program initiated by the Ministry of Labor and Social Policy. The purpose of the program was to provide social assistance to people who care for their disabled relatives, and to provide for better in-home care for the disabled. Obviously, in order to implement such a program the social services agency would have to inform citizens about its planned activities and the conditions under which they could apply. The Kurdzhali social assistance director must have thought differently, since he refused to provide any information about implementation of the program in his town. At the same time, detailed information on the topic, as well as implementation practices in other towns, was published on the Web site of the National Social Assistance Agency. In the end, the information was obtained, after the media storm that was provoked by this case.

The above-mentioned case is one of many,[3] directed to AIP by its coordinators' network during the year, thanks to which AIP became acquainted with journalists' current problems in seeking information in different towns throughout Bulgaria. It is worth noting that local administrations are still not prepared to fulfill their obligation to provide information. This lack of administrative capacity makes the formal request for information a difficult task to complete. From the cases referred to us, AIP learned that four years after the adoption of the APIA, the reasons given for refusing journalist's requests are still given in statements such as: "We don't speak to journalists," "We're not going to tell you anything, since you scare the people and twist the truth," "File a written application, and then we'll give you answers."

AIP's assistance has been sought by journalists wishing to obtain information on subjects of particular public interest and pertaining to ongoing public debates, as in the case of the apartments bought by ministers at preferential prices, or the question about the prime minister's citizenship. In 2004, due to the increased interest of journalists, the involvement of Bulgarian citizens and companies in embargo-breaking oil trading with Iraq during the time of Saddam Hussein was uncovered (known as "Petrolgate"). In relation to that case, a journalist from "Monitor" newspaper filed a

[2] If the information can prevent a threat to the life, health, or safety of the citizens or their property; if the information is or could be of public interest; or if it refutes untruthful information that pertains to significant public interests (Art.14, Para.2 of the APIA).
[3] 285 cases in total.

request for access to information at the press center of the President's Administration, demanding a copy of the secret services report that the president had ordered. The document had been prepared at the beginning of the year by the National Investigation Services and the National Security Services, and was supposed to contain the answer to the question as to whether there really had been any illegal dealings between Bulgarians and the regime of the overthrown dictatorship. The response to the request was that the report was classified and that access could therefore not be provided. This refusal was appealed in court with AIP's support. Since the information was not disclosed, the case received widespread public debate and the Parliament established a temporary commission to investigate the case.

3. Information Sought by Nongovernmental Organizations (NGOs)

Nongovernmental organizations are also among the most active groups seeking access to information.[4]

There are a variety of types of cases in which NGOs use the APIA-provided procedure to obtain access to information from official institutions; sometimes the information is needed for research, sometimes it is required in order to monitor the activities of state authorities and sometimes it is sought in order to prepare analyses or recommendations or for the implementation of specific projects.

NGOs often have the goal of exercising ongoing observation and grass-roots monitoring over the actions of government or local administrations in a specific sphere of public life. Achieving that end proves to be very difficult sometimes, and can take a lot of time and efforts on the part of the requestors.

Such is the case with an NGO in the town of Stara Zagora, whose activity is focused on oversight and monitoring of the street traffic in the town. At the beginning of November, the NGO's chairman filed two applications for access to information, with the purpose of preparing an analysis of the causes of car accidents, on the basis of which to make recommendations to the municipality regarding the elimination of these causes. The first request was filed with Stara Zagora Municipality and the second was filed with the Traffic Police Division of the Regional Police Department. Identical information was demanded in the two requests: monthly statistics on the number of car accidents in the town, the type of measures taken by the municipality to prevent accidents, and the amount of municipal budget expenditures for prevention activities. The subsequent intensive correspondence with the two institutions, in order to further clarify the information being requested, went on for two months: a new information request, letters to remind the authorities that the information was public, etc. In the meantime, the NGO's chairman "learned" from one of the municipality's responses that the NGO could assist the local administration and the traffic police "…with specific proposals, recommendations, and financial aid, but it has no legal right to request detailed information or monitor the above-mentioned institutions." The story ended with a final refusal from the municipality. The NGO has appealed the decision in court.

[4] NGO representatives turned to AIP for legal assistance in 21 cases during 2004.

Cases often are referred to AIP in which environmental organizations are seek information about government decisions related to the environment, minutes of public discussions, data from air and water quality tests or information regarding the implementation of projects directly related to the environment.

One such interesting case is that of an environmental organization that tried to obtain information from the Varna Municipality. The organization "Movement for Green Balkans" requested information about the city's current environmental problems, in order to include the information in the "Green Book" that it was preparing. In response to the request, a document was prepared that contained a genuine assessment of the environmental problems in Varna. After the intervention of the mayor, however, the document was edited and a new version provided, which contained a softened account that completely lacked some of the information previously provided (e.g., all information related to the problems in the Black Sea had been deleted). Thus, although the NGO's information request had not been denied, it had not been answered satisfactorily. The story was publicized in the local media thanks to a conscientious municipality official, who disclosed the original version of the document.

Grounds for Refusals to Grant Access to Information in 2004

The reasons given for information refusals in 2004 fall into the same main categories encountered in previous years. These were:[5]

- groundless refusals: 38;
- refusals due to an order/assessment of a superior official: 17;
- lack of authority to provide information: 9;
- reference to the central administration: 9;
- official secret: 7;
- protection of personal data: 7;
- tacit refusals: 7;
- protection of third party interests: 6.

The data above show that for a third successive year, most of the refusals were **groundless refusals** and **refusals due based on assessment of a superior official**. With regard to **tacit refusals**, we observe that their number decreased in comparison to previous years. This might be a result of the emerging practice of appealing refusals in court.[6] The possibility of appealing tacit refusals by the administration has gradually become an effective tool in preventing the casual and unchecked silence of the obligated subjects. **Lack of authority to provide information** and **reference to the central administration** were the stated grounds for refusal characteristic of the directorates of various state authorities. Very often, information could not be obtained directly from local administrative offices, even though they generate and store it, since they are not explicitly named in the APIA as being required to provide information.

[5]The refusals registered in the AIP database are 140 in total. Most of them came as a result of oral requests from journalists.

[6]The law provides that citizens have the right to appeal if an answer is not provided within the stipulated time period.

Most Common Access to Information Problems in 2004

After review of the cases received by AIP for assistance, we can indicate the following problems in exploring right of access to information rights as the most typical ones:

1. Active provision of information

The level of active provision of information by the institutions covered by the law is far from what it should be. Currently, compliance with the requirements of Article 14 and Article 15 of the Access to Public Information Act just entails publishing pieces of information about the relevant administrative structure and, sometimes, publishing information newsletters.

2. Access to Information from Monopoly-Holding Commercial Companies

There is a loophole in the legislation concerning the provision of public information from commercial companies that hold monopolies, and specially those that provide public utilities, such as water, heating, electricity, and postal services. For the clients of the above-mentioned companies, it is even difficult to get access to some simple information about their activities and the quality of their services.

A good example here is the long and fruitless investigation of the Sliven NGO "Obshtestven Barometar" and its search for information about the company that supplies water on the territory of the city of Sliven. The organization tried to obtain access to information from "Water and Sewage Ltd." of Sliven about the formulation of its prices for supplying drinking water in the town. It was found that, in practice, there is no a legal procedure by which the company can be required to provide this information, which is obviously of public interest.

3. Access to Information from Commercial Corporations having State or Municipal Participation

Similar problems are faced in seeking access to information from commercial corporations in which the principal shareholder is the state or municipality. In accordance with the Access to Public Information Act, citizens should seek and receive information about these organizations from the state or municipal bodies that act as a principal in the relevant companies. It is most often journalists who are interested in the activities of these companies. In many cases, journalists have tried to obtain access to information directly from the company, but they almost always receive the answer that the corporation is not obligated to provide information under the APIA, which is in fact correct. When the information is sought from the state body that is the principal shareholder of the company, however, the answer is usually given that the institution does not collect or store such information.

As a classic example of this, we could cite the "adventure" of journalist Milena Dimitrova, who tried to get information from the National Electricity Company by following the APIA procedure. The journalist applied to receive a copy of "all of the available documentation on the tender procedure held by the National Electricity

Company in 1998 for a delivery and installation of a steam turbine for the second block of the "Maritsa-Iztok 2" thermo-electric power plant. Over the course of several months, the journalist was sent back and forth between the NEC and Maritsa-Iztok, with the statement that "commercial companies are not obligated to provide information under the Access to Public Information Act" included in all of the answers received from both companies.

In the end, the journalist applied to obtain the information from the Minister of Energy and Energy Resources, who has exercises the rights of sole owner in the NEC. It turned out that the ministry did not have such information at its disposal, but the minister promised to try to obtain the documents from both companies and to provide them to the journalist.

4. Access to Information in Preparatory Documents

Another common problem with access to information identified during the year 2004 was the large number of denials of access to information to so-called *preparatory documents*. Usually, these documents consist of the reports, expert statements, minutes of the meetings of collective bodies, etc. that lead up to the adoption of a final administrative act.

An example of this type of refusal is presented by the case of the NGO "Citizens for a Green Sofia," which requested information about the preparation of the city's new general infrastructure plan. The NGO filed an information request application with the Ministry of Regional Development and Public Works, demanding copies of any and all documents – blueprints, assessments, expert opinions, etc. – generated and discussed in the course of the infrastructure plan's development. The requested information was refused under Art. 13, Para. 2 of the APIA, on the grounds of its being preparatory information, with no significance of its own.

The reasons for increased public interest in these document is obvious. The seekers of the information were not only interested in the final decision of the particular administrative body, but also in the way in which it was reached, what evidence had been presented in its favor and what the different viewpoints and alternative proposals had been. In fact, examination of such material is the only way in which effective civil control can be exercised over the activities of the administration.

LITIGATION 2004

The AIP legal team continued in 2004 to provide free legal assistance to citizens and NGOs, representing their interests in court cases regarding access to information refusals.

Legal assistance was provided in 35 court cases, including representation in court, preparation of written complaints, writing opinions, etc. The AIP legal team also observed another 15 court cases. The team's legal assistance in 25 cases heard by the Supreme Administrative Court (SAC) was of particular importance. The court decisions on these cases, once they become effective, provide authoritative interpretation of the law. Final decisions had been delivered in 20 of the cases by the end of the year, three of them by five-member panels (in two of these, the court overturned the information refusals, and in one it rejected the complaint against a refusal). Refusals to provide access to information were either overturned or pronounced invalid in 15 of the above-mentioned 20 cases. Five of the complaints were rejected. Decisions ordering that the information be provided were handed down (but had not become effective by the end of the year) on three out of five pending cases; the complaint against an information refusal was rejected in one, and one was reverted to the Sofia City Court (SCC). Information has already been provided on one of the pending cases (AIP vs. Council of Ministers, regarding the Rules on the Protection of State Secret of People's Republic of Bulgaria, dating from 1980). By the end of 2004, out of the ten cases that were heard in the SCC and the District Courts during the year, the final decision had become effective in one of them: in it, the refusal of the Ministry of the Interior to provide information was pronounced null and void.

AIP lawyers prepared 11 complaints challenging government information refusals. Six of these were filed in the SAC and five in the SCC. Proceedings were initiated in the respective courts on ten of the cases, while one of the complaints was held back by the defendant, the Chief Prosecutor.[1]

The successful conclusion of court proceedings in four cases that had been initiated outside Sofia in 2003 provided a significant stimulus for citizens to seek the protection of their rights under the Access to Public Information Act (APIA).[2] In all four of these cases, the SAC upheld the District Courts' decisions, which had been in favor of the plaintiffs in three of the cases.

Increased public interest in APIA lawsuits was observed, as information refusals on issues of social debate were contested in the courts. The following cases are particularly illustrative of this tendency: the complaint of the online publication "Vseki Den" against the refusal by the Ministry of Foreign Affairs to disclose correspondence from 1970 between Bulgaria and Spain, regarding the status of the present Bulgarian Prime Minister; the case of journalists from four media companies against the Supreme Judicial Court's refusal to provide access to its sessions, which are public by law; the complaint of a journalist from *Dnevnik* newspaper against the refusal by the Interior Minister to provide access to the ministry archives, for the purpose of a journalistic investigation of the facts surrounding the murder of the

1 The proceedings initiated on two of the complaints were terminated.

2 One in Burgas, one in Veliko Turnovo and two in Vidin.

Bulgarian author Georgi Markov in London; the case of a journalist from *Monitor* newspaper against the President's refusal to disclose a security services report on trade relations between Bulgarian companies and Saddam Hussein's Iraq; and the complaint of a journalist from *24 Chassa* newspaper against the refusal by the government to provide information about the costs associated with official travel by ministers, as well as the financing of the spa centers and other residences belonging to the Council of Ministers.

The number of journalists from national and local media who have sought remedy in the court for the violation of their rights has increased. Ten of the lawsuits from 2004 discussed in this section were initiated based on complaints filed on behalf of journalists. These court proceedings stir up public response, so they are important to AIP's campaign for the increased exercise of citizens' APIA rights.

Cases from the jurisprudence of the SAC that are considered to be of particular importance are published in "Administrative Justice" magazine. Two decisions related to the interpretation of the APIA, on cases for which AIP provided court representation, have been published in it – one from 2003 and another from 2004.

In 2004, AIP published its second volume on "Access to Information Litigation in Bulgaria," containing analyses of court practices in 2003 and studies of ten cases.

The Supreme Administrative Court's decisions last year provided some important interpretations regarding the right of access to information, the limitations on it and some other contentious issues. All of these will be analyzed in detail in AIP's third volume on FOI litigation, which is to be published. Here, we will outline briefly what some of these interpretations are:

- The Supreme Administrative Court made a restrictive interpretation of the term "trade secret," in its ruling that a municipality cannot deny access to a procurement contract citing the protection of a third-party interest. Furthermore, the court held that even in cases when a trade secret is present (though that was not the particular case), partial access to the requested information should be provided.

- The Supreme Administrative Court gave guidelines as to the application of the exemption from public access to information regarding state secrets, indicating that simply citing the text of APIA or stating that a document is classified does not comply with the statutory requirement of providing the grounds for a refusal. The administrative bodies subject to the APIA are required to specify the relevant category of secret from the appendix list under Article 25 of the Protection of Classified Information Act (PCIA) and to provide factual reasons. In some cases, the SAC and SCC have requested classified documents inspection in closed chambers, in order to check whether they have been properly marked by an official authorized under the PCIA. A five-member panel of the SAC held that secret documents should be inspected in closed session with the participation of the parties in the case.

- The Supreme Administrative Court made a restrictive interpretation of the exemption related to so-called "preparatory documents" provided in Article 13, Para. 2, Item 1 of the Access to Public Information Act. In a judgment delivered in

the autumn of 2004, the Court held that requests for preparatory documents related to public procurement procedures do not fall under the law's exemption and ruled that the public institution should provide access to the information.

- Other important legal matters were considered and decided during the year. Until 2004, the Supreme Administrative Court's practice in its lawsuit decisions was to return information requests to the public administrative entities for reconsideration, without actually obliging them to provide the information requested. Last year, the Supreme Administrative Court delivered several judgments obliging the defendants to provide access to the information that had been requested. With regard to the so-called "tacit refusals" of public authorities to grant access to information (by failure to respond to a request within the prescribed time limits), the Supreme Administrative Court stood firmly behind its statement that they are "unacceptable"; i.e., they are not equal to a decision to deny access. This is important for the prevention of irresponsible behavior by some institutions, which prefer not to respond to FOI requests and only take a position on a case when it ends up in court.

APPENDIX

LITIGATION – CASE NOTES

1. Vassil Chobanov vs. Supreme Judicial Council

1st Instance Court – Administrative Case No. 7897/2004, Supreme Administrative Court (SAC)

Request:
After the adoption of the new Paragraph 3 of Article 27 of the Judicial Branch Act, which guaranteed the openness of sessions of the Supreme Judicial Council (SJC), four journalists – Vassil Chobanov (Radio *New Europe*), Bogdanka Lazarova (*Darik Radio*), Elena Encheva (*Sega* newspaper) and Petya Ilieva (*Dnevnik* newspaper) – submitted a letter to the SJC requesting full access to the Council's next ten sessions. The request suggested that access be provided by means of a video camera and microphone, due to the limited capacity of the SJC conference hall.

Refusal:
The request of the four journalists had not been discussed at the following session of the SJC.

Complaint:
The journalists considered the lack of a response to their request to be a tacit refusal, which they challenged before the Supreme Administrative Court (SAC).

Developments in the Court of the First (and only) Instance:

The Council did not send a representative to the single court hearing, and the judges adjourned for their final decision.

Judgment:
In Decision No. 9595 of November 19, 2004, the Supreme Administrative Court reversed the tacit refusal by the SJC and returned the information request to the respondent for compliance with the law and the instructions of the court. The court found the journalists' complaint to be admissible and justified, and that the SJC's tacit refusal was contrary to the law. The text of the decision stressed that the concept of *public* by definition means *accessible to members of society.* Therefore, the SJC has an obligation to ensure that their meetings are open to all members of society, including the media, who serve an important function by publishing information of public interest. The choice of the specific information technology by which access to information is provided is in the authority of the public institution. The decision of the SAC was final.

All of the journalists present during the first SJC session following the decision were invited into the conference hall to attend the meeting.

2. *Vseki Den* online publication vs. the Ministry of Foreign Affairs

1st Instance Court – Administrative Case No. 3487/2003, Sofia City Court (SCC) Administrative Division, Panel 3-g

Request:
In connection with media publications from May 2003 regarding the citizenship of the Prime Minister of Bulgaria, Mr. Simeon Saxe-Coburg Gotha, the online publication *Vseki Den* ("Every Day") submitted an access to information request addressed to the director of the International Relations Department of the Ministry of Foreign Affairs (MFA). The requestor (the publication's editor-in-chief), citing the necessity of elucidating a matter of growing public debate, requested access to the document or documents containing data about Mr. Saxe-Coburg Gotha's citizenship status during his years in Spain. According to media publications, the specific document or documents, to which access was being requested, were diplomatic notes, exchanged between Bulgaria and Spain in 1970. The application also specified that if the requested documents fell under the Protection of Classified Information Act, the applicant wanted to be given in writing the legal grounds for classifying the information, as well as a copy of the security stamp indicating the level of classification, the date of classification and the expiration date of the classification period.

Refusal:
A refusal to grant the request was received at the office of the electronic publication, signed by the director of the MFA International Relations Department. Two reasons were specified for the denial:

- In 1970, in the process of establishing consular and trade relations between Bulgaria and Spain, the ambassadors of both countries exchanged diplomatic correspondence in the form of notes. These contained references to the social identity, public and representative functions of the current Bulgarian prime minister. The refusal went on to state that other issues related to the premier's private life – his citizenship falling in that category – had not been discussed. Relying on that argument, the MFA International Relations director considered the request to be one

for access to personal data, in which case the Access to Public Information Act could not be applied;
- Second, part of the above-mentioned diplomatic negotiations stipulated the obligation of preserving the confidentiality of the correspondence between the two countries.

Complaint:
With the help of AIP, the refusal to provide access to the requested information was challenged before the Sofia City Court (SCC).

Developments in the Court of the First Instance:
The MFA's attorney did not produce in court evidence that the official who had signed the refusal had been authorized to handle APIA requests by the foreign minister, Mr. Solomon Passy.

Judgment:
The court pronounced the International Relations director's refusal void. The court ruled that the lack of authorization should not impede the initiation of court proceedings. On the contrary, issuing a refusal without authorization to do so was considered a serious violation of law. The Sofia City Court referred the court file to the minister of foreign affairs, for reconsideration of the request for information access.

The judgment was not appealed and came into effect.

In August, the MFA informed *Vseki Den* that the diplomatic correspondence had been declassified (though it had never been stated that it was secret!), after the Spanish side gave its permission. The requested information was provided to the online publication.

3. Diyana Boncheva vs. the President of the National Audit Office

1st Instance Court – Administrative Case No. 385/2003, Sofia City Court (SCC) Administrative Division, Panel 3-b
2nd Instance Court – Administrative Case No. 10889/2003, SAC, 5th Division

Request:
Ms. Diyana Boncheva, editor-in-chief of the Yambol-based newspaper *Tundzha*, submitted a request for access to public information with the chairman of the National Audit Office (NAO). She requested access to the property declarations, stored in the public register of the National Audit Office, made by the appellate prosecutor of the city of Burgas in his capacity as a member of the Supreme Judicial Council. She also requested information about any verifications made of the declarations submitted by him, as well as any penalties imposed for failures to meet deadlines for the submission of declarations.

Refusal:
The applicant received a letter from the chairman of the NAO asking her to specify her request with respect to Article 3 of the *Public Disclosure of Property Owned by High Government Officials Act (PDPOHGOA)*, which contains a list of types of

property and income that are subject to declaration under that law. Ms. Boncheva specified nature of her request in a letter. Despite this, she did not receive a response within the period prescribed by Article 6, Para. 2 of the PDPOHGOA.

Complaint:
The tacit refusal of the NAO chairman was challenged before the SCC.

Developments in the Court of the First Instance:
The case was heard in a single session and scheduled for judgment.

Judgment:
The SCC's judgment of July 15, 2003 rejected the complaint. In interpreteing Article 6 of PDPOHGOA the judges concluded that the chairman of NAO was only obliged to provide information whether or not the persons required to file declarations had done so, and was not obliged to disclose the content of these declarations. According to the court panel, data that is declared for entry into a public register is personal data, afforded the protections of the Personal Data Protection Act.

Court Appeal:
With the support of AIP, the SCC decision was appealed before the Supreme Administrative Court (SAC), with the argument that under Article 1 of PDPOHGOA, the public character of the information is to be achieved by the establishment of a public register, in which declarations by high-level state officials of their about property, incomes and expenses are recorded. Assuming that public access to the information from public registers is limited to finding out who had submitted their declaration and who had not would mean make the PDPOHGOA pointless, obviating its purpose: that of fostering greater transparency regarding the officials in high-level state positions.

Developments in the Court of the Second Instance
Ms. Boncheva's attorney argued before the court that pursuant to Article 6, Para.1 of the PDPOHGOA, the public media, represented by their leadership staff, are permitted access to the information contained in public registers. At the present time, the plaintiff was undoubtedly such a representative in her capacity as editor-in-chief of the regional newspaper *Tundzha*. It was also a well-known fact that the property declarations of state officials had already been published in national dailies several times.

Judgment:
The Supreme Administrative Court reversed the SCC decision in its Decision No. 3508 of April 20, 2004. The SAC rejected the tacit refusal by the NAO chairman as intolerable (legally unacceptable) and referred the case file back to the respondent for an information access decision based on merit, following the interpretation of the law and the instructions of the court. In the motivations for its decision, the court pointed out that the legislator's intention expressed in the Public Disclosure of Property Owned by High Government Officials Act, which was explicit in the name of the law, was that it the property declared by these officials should be public information. It was an anticorruption measure, which should not be overridden by the Personal Data Protection Act. The justices also stated that besides information from the declarations submitted by the Burgas prosecutor, two other requests had also been articulated in

the original information request, regarding any verifications made or penalties imposed. The court ruled that this information must also be provided.

The SAC decision was final.

4. Kiril Karaivanov vs. the State National and Wartime Reserves Agency

1st Instance Court – Administrative Case No. 4408/2004, SAC, 5th Division

Request:
In connection with a year-long investigation of violations of the law related to the activities of the state-owned company Briliant Ltd., situated in the village of Krusheto, and the State National and Wartime Reserves Agency (SNWRA), Mr. Karaivanov had collected a considerable amount of information and needed three more documents, which were of particular importance to the case.

On July 22, 2003, Mr. Karaivanov submitted an application to the SNWRA requesting the following information:

1. A copy of the 1998 contract between the SNWRA and Briliant Ltd, (including log number and date of signature);
2. A copy of the document verifying that the processing of 838 tons of raw (unrefined) sunflower oil had been carried out within the timeframes stipulated in an order issued by the chairman of the SNWRA (including log number and date of the order's issuance);
3. Copies of four receiving manifests, indicating the amount of refined oil extracted (log number and dates requested as well).

Mr. Karaivanov received a denial of his request from the chairman of the SNWRA. He challenged the refusal in court, and SAC Decision No, 111 of January 9, 2004, rejected the refusal as ungrounded and referred the case back to the state agency for reconsideration.

Refusal:
Mr. Karaivanov received another written refusal of his access request. Regarding the first document requested, the agency said it did not possess it, since the time for its storage had expired in April 2002, according to the internal record keepeng rules for the agency's overt auctions. The document verifying the processing of raw (unrefined) oil, which had the nature of a receipt, was marked with a security seal, since it contained a state secret. The complainant was referred to Appendix 1 to Article 25, Para. 2, Item 10 of the Protection of Classified Information Act for the grounds upon which the document had been classified. (That provision covers "information about the allocation and expenditure of the state budget and state property related to special purposes that concern national security.") Mr. Karaivanov was informed that following payment of the access fees, he would be given the copies of the documents requested under point 3 of his application.

Appeal:

The new refusal was also challenged before the SAC, on the grounds that the chairman of the SNWRA had not provided in it the factual grounds to support the statement that the contract requested was not at his disposal. The refusal failed to explain whether the contract had been destroyed or sent to another place for storage (the National Archive, for example). The factual grounds for the refusal to provide copies of the processing receipt, other than the passing reference to Appendix 1 to Article 25 of the PCIA, were also lacking.

Developments in the Court of the First Instance:
The claimant, Mr. Karaivanov, presented as evidence at the court session, four receiving manifests related to the implementation of the same order by the agency chairman for the processing of raw sunflower oil, which, according to the plaintiff, indicated the absence of classified information in the refused documents. The SAC obligated the agency chairman to present a certified copy of the first page of the receipt verifying the amount of oil extracted, in order to check whether the document had been stamped classified, along with evidence regarding the official who affixed the seal and on what grounds. The agency's legal counsel claimed that the requested contract had been fulfilled in 1999, that the document could not be found in the agency archive, and that there was no record of its destruction or transfer to the National Archive.

The SNWRA subsequently failed to fulfill the court's order for the additional evidence mentioned above.

Judgment:
SAC Decision No. 9154 of November 9, 2004, rejected the information access refusal as unlawful and referred the file back to the agency for reconsideration of points 1 and 2 of the information request application. With regard to the first point, the court ruled that the statement that the contract could not be found was unsupported by evidence and did not give grounds for denying access to the information. The SNWRA would need to present evidence either that the contract had been destroyed after the approval of an expert committee, that it had been archived and data noted that would facilitate finding its current storage place, or that it had been lost and the required certification statement been filed to that effect. Regarding the refusal to grant access to the information in point 2 of the application, the justices presumed there was no data supporting the agency's statement that the information was classified. Nor were there any factual grounds given for the classification of the information contained in the receipt as a state secret (i.e., no criteria for classification, nor grounds for identifying the requested information as state secret were presented). This circumstance prevented verification by the court of the statement that the information was a state secret. The mere statement that the information contained in the document constituted a state secret did not conclusively identify the information as such.

The judgment was not appealed and took effect.

5. Kiril Terziiski vs. Minister of Finance (*Crown Agents* contract) 2

1st Instance Court – Administrative Case No. 4120/2004, SAC, 5th Division
2nd Instance Court – Administrative Case No. 592/2005, SAC, Five-Member Panel, 2nd Tribunal

Request:
Decision No. 2113 of March 9, 2004, on Administrative Case No. 38/2004 by a five-member panel of the Supreme Administrative Court (SAC), upheld Decision No. 11682/2003 by a three-member panel of the same court on Administrative Case No. 3080/2003. That original decision had rejected the refusal of the Ministry of Finance to provide to Kiril Terziiski a paper copy of the contract between the ministry and the British consulting company *Crown Agents*. The justices found that the lack of any grounds as to why the requested contract constituted a state secret prevented the court from reviewing the lawfulness of the refusal and exercising effective judicial control over the minister's decision to deny information access. The file was returned to the finance minister for reconsideration of the information request.

Refusal:
The court decision was followed by a new written refusal of access to information. The contract had been classified as a state secret as early as December 2001, as noted by the Information Security Department of the ministry. This classification had been based upon Item 24 of the repealed List of Facts, Subjects and Other Information Constituting State Secrets, namely: "*Records concerning the organization and technical characteristics of programs for the protection of automated information management systems for use in ministries and other institutions of power and governance*."

The minister insisted that the contract still contained information, classified as a state secret, even after the adoption of the Protection of Classified Information Act (PCIA). Information contained in the contract fell under the scope of the following categories from the list appended to Art. 25 of the PCIA:

- "*research of high importance to the interests of the national economy, prepared on behalf of a public institution;*
- *information regarding technical, technological and organizational decisions, the disclosure of which is likely to harm important economic interests of the state*."

Complaint:
The refusal was challenged before the SAC, with the main argument that the court's instructions had not been followed. The minister had not indicated what kind of information was contained in the contract, making it impossible for the court to assess whether it really fell under the scope of exemptions under the PCIA. The plaintiff requested that the court exercise its authority under Art. 41, Paras. 3 and 4 of the Access to Public Information Act (APIA) and request for inspection both the contract and the decision to classify it.

Developments in the Court of the First Instance:
At a court hearing the plaintiff's representative requested that the court demand the transcript of a Council of Ministers session held on October 25, 2001. At this session, the Cabinet discussed the relationship between the requested contract and national security. The court rejected the request, but did order the finance minister to present the contract for inspection *in camera*, and to provide information about the public official who had classified it and the justification for the classification decision. In case the contract had been classified as secret by the decision of an authorized official, the minister was to show evidence of that official's authority to assign classification

levels. In order to speed the legal proceedings, the court agreed to hear the case, but assured the parties that a judgment would be delivered only after review of the documents in accordance with Art. 41, Paras. 3 and 4 of APIA, which would be crucial to the outcome of the case.

After hearing the arguments of the two parties, the court adjourned.

Preliminary Ruling:
The court reviewed the contract between the Ministry of Finance and the British company, and afterwards issued its Ruling of November 10, 2004. The judges had determined that the first page of the contract had been stamped with a security seal reading *secret*, and that the stamp was later crossed out and the document stamped with the security seal *confidential*. An authorized official had signed below the new stamp, also indicating the grounds for classification – § 9 of the Transitional and Closing Provisions of the PCIA – and the date: September 20, 2004.

Court Decision:
In its Decision No. 9472 of October 16, 2004 the three-member panel of the SAC **rejected** Kiril Terziiski's complaint against the finance minister's refusal to disclose a copy of the contract between the ministry and the British consulting company *Crown Agents*. Basing its decision solely on the classification stamp discovered during the inspection in camera, the court adopted the view that the refusal was in compliance with Bulgarian law. The court held that the minister's affirmation, that information contained in the contract falls within one of the exempt categories of state secrets listed in Appendix 1 of the PCIA, was enough to demonstrate that the contract had been lawfully classified. The presiding judge, however, delivered a dissenting opinion. He argued that in order for the court to review the lawfulness of the classification decision – as required pursuant to Art. 41, Para. 4 of APIA – it would have to interpret the substance of the two categories of state secret quoted in the minister's information refusal. The presiding judge held the opinion that the information in the contract fell outside the scope of either of them.

Court Appeal:
The court decision upholding the lawfulness of the information refusal was challenged by the AIP legal team, before a five-member panel of the SAC. The plaintiff argued that the three-member panel had not fulfilled its obligation to review the classification decision, per Art. 41, Para. 4 of the APIA. Instead, the judges had adopted the view that just because a security stamp was present, it must have been affixed in conformity with the law. The first-instance panel had not even considered the question of whether information contained in the contract had any relation to the interests protected by Art. 25 of the PCIA, nor whether any harm could result from the contract's disclosure.

Developments in the Court of the Second Instance
The hearing of the appeal case is still being scheduled.

6. Lyubov Guseva vs. the Municipality of Vidin

1st Instance Court – Administrative Case No. 128/2003, Vidin Regional Court
2nd Instance Court – Administrative Case No. 3351/2004, SAC 5th Division

Request:
Ms. Lyubov Guseva, a member of the board of directors of the Animal Protection Society in Vidin, sent a written application to the mayor of Vidin in which she requested access to all available information relating to the previously announced and concluded public procurement procedure. The subject of the contract was the *reduction of the number of stray dogs in the town of Vidin*. More precisely, Ms. Guseva requested information about the total number of bidders, the number of bidders who qualified to participate in the tender and their proposals for meeting some of the compulsory conditions for participation in the tender (qualified staff, equipment and technology for the dogs' capture, transportation and isolation, and the pricing of their bids).

Refusal:
A written refusal was issued with no legal grounds specified, but rather containing the explanation that the requested information (regarding the applicants' bids) pertained to information of an economic nature, which was related to the preparation of the mayor's administrative actions and had no significance of its own.

Complaint:
The refusal was challenged on the grounds that it had indicated no legal or factual basis, pursuant to Art. 38 of APIA. The "information of economic character," as stated in the mayor's refusal, did not fall under any category of exemption to the APIA under which the public right to information was restricted. Part of the information requested – that regarding the winners of the procurement competition – was even subject to publication under the provisions of the Public Procurement Act (PPA).

Developments in the Court of the First Instance:
No representative of the municipality appeared in court, and the case was scheduled for judgment.

Judgment:
Judgment No. 188 of December 10, 2003, by the Vidin Regional Court (VRC) rejected the information refusal as unlawful and referred the case back to the mayor of Vidin, requiring him to provide access to the requested information which, according to the court, pertained to the selection of a contractor by the municipality and the conditions under which the procurement contract was to be executed.

Court Appeal
The VRC's judgment was appealed before the SAC by the Mayor of Vidin Municipality. The appeal restated the arguments that had been provided in support of the refusal – that the information was of economic character, which pertained to the preparation of the mayor's acts and had no significance of its own. The appeal also contained the statement that the refusal had been issued on the basis of protecting third-party interests; specifically, those of the participants in the PPA procedure.

Developments in the Court of the Second Instance:
The Supreme Administrative Court (SAC) heard the case in a single session and scheduled it for judgment. The municipality representative who appeared at the court hearing grounded the legality of the information refusal with the argument that the requested information fell under the category of commercial secrets, pursuant to Art. 7

of the APIA.

Judgment:
Decision No. 8459 by an SAC panel of the 5th Division overturned the VRC's judgment requiring that the mayor provide the information about the winning bidder and the terms of the public procurement contract, instead obligating the mayor to provide access to the requested information, pursuant to the prescriptions of the current court decision upholding the rest of the VRC decision. The supreme court justices' decision thus corrected the VRC's judgment, which had rightly rejected the mayors' refusal as unlawful but had wrongly specified the subject of the requested information. The deliberations of the court regarding commercial secrets and the offers of the selected contractors deserve special attention.

The judgment of the SAC was final.

7. Pavlina Trifonova vs. the Council of Ministers

1st Instance Court – Administrative Case No. 2860/2003, SCC Administrative Division, Panel 3-z
2nd Instance Court – Administrative Case No. 10635/2004, SAC 5th Division

Application:
In June 2003, Ms. Pavlina Trifonova, a journalist from the national daily newspaper *24 Chassa* ("24 Hours"), submitted two applications for access to public information with the Government Information Service (GIS) at the Council of Ministers (CM). In them she requested information about the official trips of the ministers and the conditions in the vacation centers belonging to the CM. Concerning the official trips, she requested information as to the number of days (during the period to July 2001 to the present) spent by the ministers abroad and the list of places visited, the amount of per diem and other official travel expenses, and the name of the company that provided the airplane tickets and the type of contract the government had signed with it. With regard to the vacation centers and residences belonging to the CM, she requested information about the amount of the budget funding allocated to them, the amount of revenue generated by them, the number of people who had visited the centers during the past year and a price list for the current season.

Refusal:
The MC issued a written notification of its decision to refuse access to the information indicating the following reasons for the refusal:

- the report on cabinet ministers' per diem and other travel expenses and the report on the conditions at the CM vacation centers had been completed as part of preparation of the annual report on budget spending at the end of the fiscal year;
- the annual report on budget expenditures for the previous year had been submitted to experts at the National Audit Office (NAO) for an annual audit;
- information about ministers' official trips in 2001 and 2002 had already been provided to the journalist.

Complaint:

The plaintiff's complaint listed five arguments for the unlawfulness of the refusal. In response to previous information requests submitted by the journalist, an inadequate amount of information had been provided (concerning CM official travel). Information had been provided with regard to a considerably shorter period of time than that requested, responding only to the first three points of the application. This made the subject of the current information request significantly different in terms of numbers, and thus in practice completely new information. The complaint also emphasized the fact that the provision of information in response to previous requests had not been obstructed by the development of the annual report on budget spending, nor by its submission to the NAO. Finally, there was no relationship between the statements in the written refusal and part of the requested information: regarding the company that provided the airplane tickets, its contract with the government, and the price lists of the vacation centers.

Developments in the Court of the First Instance:
After two court sessions held to gather evidence regarding the GIS' previous responses to the reporter's information requests, the court panel scheduled the case for judgment.

Judgment:
The Sofia City Court rejected the GIS' refusal to provide access to the requested information as unlawful, in its Decision of August 23, 2004. The court acknowledged the right of the plaintiff to access the information, pursuant to the Access to Public Information Act (APIA), and obligated the GIS to provide the information. The justices asserted that in her request, the plaintiff had made several different requests for information, which should have been considered separately in the refusal. The determination of the refusal's lack of conformity with the law was grounded in its lack of any factual or legal grounds pursuant to the APIA. The mere statement that the report on the per diem and travel expenses and the report on the conditions at the rest centers had been prepared as part of the annual report on budget expenditures, without any explanation as to how this made the requested information restricted from public access under the exemptions of the law, made the refusal unlawful. The court panel concluded that the director of the GIS, who had frequently been approached for information, had an emergent obligation to provide access to the requested information, since it was official public information per Article 11 of the APIA and did not fall into any of the legal exempt categories.

Court Appeal:
The Council of Ministers appealed the SCC judgment before the Supreme Administrative Court. The judgment was appealed on the grounds that the GIS *refusal* was actually an informational letter, informing the journalist that the requested information did not yet exist, and should not have been assumed to be an official refusal under the APIA.

Developments in the Court of the Second Instance:
Court sessions for the appeal are being scheduled.

8. Access to Information Programme, Stoicho Katsarov and Ivan Ivanov vs. the Minister of Public Administration

1st Instance – Administrative Case No. 9502/2003, SAC 5th Division
2nd Instance – Administrative Case No. 1286/2005, SAC Five-Member Panel, 2nd Tribunal

Request:
In March 2003, AIP, along with two members of Parliament - Ivan Ivanov and Stoicho Katsarov - submitted a written application to the Minister of Public Administration, in which we requested access to the following information: the entire contents of the contract between the ministry and Microsoft Corporation for supplying 30,000 software packages for the needs of the Bulgarian public administration, and all related documents, such as the offer, any additional agreements, and any contract with an intermediary.

Refusal:
No response to the request was received within the deadline stipulated by law.

Complaint:
The tacit refusal was challenged on the grounds that it was a substantive violation of the law, since the requested information was public and did not fall within the scope of any restrictions provided for in the APIA and that failure to comply with the requirement that the refusal be given in writing was a material breach of the procedural rules. The complaint was sent to the minister of state administration, who was required by Bulgarian law to forward it to the Supreme Administrative Court (SAC).

On the following day, the minister sent a letter to the complainants, in which he provided a summary in writing of only part of the content of the contract, as well as presenting arguments to support the selection of software supplier. The letter indicated that a copy of the contract could not be disclosed, because no consent had been obtained from the relevant third party – Microsoft. The minister also argued, that the software company did not constitute an entity subject to APIA disclosure in the sense of Art. 3, Para. 2, Item 2 of the APIA, because payments under contractual agreements do not constitute "financing from the state budget" in the sense of APIA.

However, the minister failed to send the complaint and the full packet of relevant documentation to the SAC.

Finding their right of access to information to have been infringed, the claimants filed a request with the court together with a copy of the complaint, and the court initiated proceedings by demanding the documentation from the minister *ex officio*.

Developments in the Court of the First Instance:
The minister sent no representative to the first court hearing. It turned out that the minister had failed to fulfill his statutory obligation under Art. 16, Para. 2 of the Supreme Administrative Court Act (SACA) to submit the complaint and all of the relevant documentation to the court. The court panel considered the minister's request that the complaint be dismissed. The legal counsel for the minister argued that since the requested information had already been provided to the applicants, proceedings should be discontinued, due to a lack of any legal interest served by challenging the refusal in court. The respondent produced a copy of the response letter it had sent, but

did not submit any of the other documentation to the court, including the original information request.

The plaintiffs' representative requested that the court demand the full packet of documentation from the minister, because his response had not provided the requested information.

The court postponed the case and instructed the Minister of state administration to compile and submit the full documentation.

At the second court hearing in May 2004, it turned out that the Minister of state administration had not been duly summoned. He had neither sent a representative to the court, nor had he followed the court's instructions of the previous month that he submit the full documentation.

The court postponed proceedings yet again and scheduled a new hearing for October 2004, advising in its summons to the Minister of State Administration that he was obliged to submit the full documentation in compliance with the court's ruling from February.

Although the minister had not been duly summoned to the third court hearing, he was represented at it by two members of his legal counsel. They testified that the ministry possessed no further documents, other than those already presented to the court in February. They did not have a copy of the original information request. The plaintiffs' representative argued that the refusal contained in the minister's letter had been unlawful. They believed that under the hypothesis of Art. 31, Para. 5 of the APIA, Microsoft's consent was not required for access to the agreement, because the company falls under Art. 3, Para. 2, Item 2 of the APIA. The plaintiffs also argued that the term "financing" does cover payment to a contractor, as used in the new Public Procurement Act. After hearing the arguments of both parties, the judges adjourned and announced that a decision would be delivered within in the period provided by the law.

Judgment:
With Decision No. 10168 of December 07, 2004 the three-member panel of SAC **rejected** the minister's tacit refusal and **returned** the file to the minister for reconsideration of the information request based on merit. The judges held the view that disclosure of the contract would present the public with an opportunity to form its own critical opinion about the actions of the minister. The court concluded that the requested contract was a document of significance in its own right, and could not be withheld on the grounds of Art. 13, Para. 2 of the APIA.[3]

Court Appeal:
The minister, who argued that no tacit refusal had existed, challenged the three-member panel's decision. He insisted that a detailed response to the information request had been provided in his letter.

Developments in the Court of the Second Instance:
Hearing of the appeal case is pending.

[3] **Quote the law here**

9. Rossen Alexov vs. the National Forestry Service at Simitli

1st Instance Court – Administrative Case No. 189/2004, Blagoevgrad Regional Court
2nd Instance Court – Administrative Case No. 11019/2004, SAC 5th Division

Request:
In March 2004, Mr. Rossen Alexov submitted a written application to the director of the National Forestry Service office in the town of Simitli, requesting access to information about the number of licenses for individual hunting of waterfowl issued February 11, 14 and 15, 2004. Mr. Alexov also requested a copy of a such license, issued on one of the above-mentioned dates.

Refusal:
A written refusal was sent to the information requestor. The license in question is issued by the hunting specialists of the hunting associations, so the information should therefore be requested from the appropriate hunting association.

Complaint:
The refusal was challenged before the regional court, on the grounds that it was of no importance who had generated the information – if the Simitli NFS director had it at his disposal (since the licenses, which are indeed issued by the hunting associations, are registered at the NFS office), he had the obligation to provide access to it.

One month after the complaint was filed with the court, the NFS provided information to Mr. Alexov with regard to the first part of the request, concerning the number of the licenses issued.

Developments in the Court of the First Instance:
At the court hearing, the NFS representative justified the refusal on the second part of the information request – for a copy of an issued hunting license – with the statement that such a request was unacceptable because it was related to official information subject to the Personal Data Protection Act (PDPA). A copy of the application form for an individual hunting license was provided as evidence.

Judgment:
The Blagoevgrad Regional Court's Decision of October 21, 2004, rejected the complaint. The court grounded its judgment in the fact that information had been provided with regard to the first part of the request, making a complaint on that part of the application groundless. The complaint was also ruled ungrounded with respect to the second part of the request, since the information contained in a specific license was not publicly accessible under the APIA since it contains the personal data (names and personal identification number) of the hunter to whom it was issued, and therefore constitutes protected information under the PDPA.

Court Appeal:
The regional court's decision was appealed before the SAC, on the grounds that the requested information did not fall under the category of personal data and should not have been excluded from the right to public access. Pursuant to Article 35, Para. 1, Item 2 of the PDPA, personal data may be disclosed to third parties without the

consent of the individual concerned, when the data is recorded in a public register. A hunting license contains the same data as a hunting permit. According to Article 25, Para. 5 of the Hunting and Game Preservation Act, the register of permits issued and renewed is public. Furthermore, in this particular case, personal data had not been requested, since the requester had not inquired as to the identity of any individual hunter, but had rather requested the information contained on a license (e.g., a copy of any license at random, issued on the specified date).

Developments in the Court of the Second Instance:
Court hearing of this case is pending.

10. Svetlana Ganevska vs. the Italian Academy at Gorna Banya

1st Instance Court – Administrative Case No. 2379/2002, SCC Administrative Division, Panel 3-g
2nd Instance Court – Administrative Case No. 3371/2004, SAC 5th Division

Application:
In June 2002, Ms. Svetlana Ganevska submitted a written application for access to public information to the principal of the *National Cultural School Complex with Italian-Language Instruction* at Gorna Banya, requesting information about the school's admissions process for first graders for the 2002/2003 academic year. The requested information was detailed in five points in the application: copies of all methodology plans for implementation of the admissions process; information about the procedure for keeping the methodology secret; information regarding the individuals responsible for the admissions campaign; the number of children admitted to the first grade who had also attended the school's kindergarten; and copies of rental agreements for the property of the complex.

Refusal:
The school's principal did not respond to the information request within the 14-day period prescribed by law.

Complaint:
With the support of AIP, the tacit refusal was challenged before the SCC.

Developments in the Court of the First Instance:
At the first court hearing, it turned out that an explicit refusal had been issued by the school's principal on the basis of Article 37, Item 2 of APIA (regarding the protection of information related to a third party's interests). However, no evidence that the written refusal had been delivered to the requester was presented. The counsel for the school requested a postponement, in order to collect and present orders pertaining to the interests of third parties, and also requested that two witnesses be summoned, who represent the third parties mentioned. The court postponed the hearing, ordered the defendant to complete the file by appending all of the relevant evidence and instructed the plaintiff to submit the grounds for her challenge of the explicit refusal as unlawful.

At the second hearing, the plaintiff presented her grounds for the unlawfulness of the explicit refusal. The defendant's representative submitted in evidence the order

designating two experts from Sofia University to develop, independently of one another, the tests and other methodology for use in the admissions process. After its deliberations, the court did not question the two witnesses. The case was scheduled for judgment.

Judgment:
The SCC Decision of May 30, 2003 rejected the complaint against the initial tacit refusal and subsequent explicit refusal to refuse access to the information requested. The court panel presumed that the requested information was related to the work of the individuals who had developed the plans and methodologies for the admissions procedure. The court also assumed that these third parties had withheld their consent for the disclosure of that information orally, since their refusal to allow disclosure had not been appended to the case as evidence. On the basis of their lack of consent, the defendant was determined to have refused access to the information lawfully. The justices also stated that in order to receive such a large quantity of information, the claimant should have given the reasons for her request.

Court Appeal:
AIP appealed the SCC judgment before the SAC, on the grounds that the lower court had not specified which of the information, requested under the five points, would harm the interests of the third parties. The SCC panel had wrongly rejected the lawfulness of the complaint with its argument that in order to receive such a large quantity of information, the claimant should have given the reasons for her request.

Developments in the Court of the Second Instance:
The case was heard in a single hearing and scheduled for judgment.

Judgment:
SAC Judgment No. 8969, of March 3, 2004, reversed the SCC judgment, rejecting the initial tacit refusal and subsequent explicit refusal of the school principle and referring the file back to him for reconsideration in compliance with the court's instructions. The justices pointed out in their motivations for this judgment that a refusal on the grounds of Article 37, Para. 1, Item 2 of the APIA should contain the assessment that disclosure of the requested information would harm the interests of a third party, as well as documents proving that the consent of said third party had been requested in accordance with Article 31 of APIA. That requirement had not been fulfilled. Furthermore, no data regarding any possible harm to the third party's interests existed and such a motivation did not provide grounds for refusing access to the information under all of the points raised in the application.

The judgment was final.

11. Tanya Petrova vs. the Ministry of Education and Science

1st Instance Court – Administrative Case No. 4544/2004, SAC 5th Division

Request:
In March 2004, Ms. Tanya Petrova, a journalist from *Sega* newspaper, submitted a written application to the Minister of Education and Science (MES), in which she

requested copies of all letters from the period of January 1, 2002 through December 31, 2003, containing the minister's approval for the registration of extra students, above the planned limits, in schools requiring entrance exams for entry after the seventh grade. The journalist also requested the written requests on the basis of which the letters of approval had been issued. She specified that she would accept copies of the letters with the names excised from them. (The reason for the submission of such an application was to review the minister's practice of allowing children with low exam scores to study at the prestigious schools of their choice, in exchange for donations.)

Refusal:
The minister provided no response within the deadline stipulated by law**.**

Complaint:
With the support of AIP, the tacit refusal was challenged before the SAC.

Developments in the Court of the First Instance:
The MES did not send a representative to the court hearing. The claimant's attorney presented evidence (the minutes from a session of the Commission on Appeals and Petitions and three letters issued by the MES) that proved that the requested information was in the possession of the MES, in which it could be seen clearly that according to the minister himself, the letters had been issued as exceptions. The lawyer also pointed out that the lawfulness of the letters was beyond the purpose of the current proceedings, since the claimant did not contest the legality of the particular method of accepting students, but only wanted access to the information. The court accepted the evidence and the case was scheduled for judgment.

Judgment:
SAC Decision No. 9130 of November 8, 2004, rejected the minister's tacit refusal to provide the information and referred the file back to him for an information access decision based on merit, in compliance with the instructions given by the court. In its motivation for the decision, the court pointed out that the requested information was public, per the APIA. The evidence presented proved that the information existed at the defendant's disposal. Consequently, the minister was obliged to provide access to it.

The Judgment was not appealed by the MES and came into effect.

12. Hristo Hristov vs. the Ministry of Interior

1st Instance Court – Administrative Case No. 1524/2003, SAC 5th Division
2nd Instance Court – Administrative Case No. 8355/2003, SAC Five-Member Panel

Request:
Hristo Hristov, a journalist from *Dnevnik* newspaper, submitted an application in writing to the interior minister, for access to public information kept at in archives of the Ministry of Internal Affairs (MIA). Mr. Hristov wanted to study the *letter* case files on the BBC, Deutsche Welle and Radio Free Europe during the period from 1970 to 1978, when the Bulgarian writer Georgi Markov, who had been assassinated in

London, worked for the three Western radio networks.

Refusal:
No response was received from the minister within the legally stipulated deadline.

Complaint:
The tacit refusal was attacked on grounds that it constituted a substantive violation of the law, since the requested information was public and failure to fulfill the requirement that the refusal be issued in writing constituted a material breach of the procedural rules.

Having received the complaint, the minister did not forward it to the court along with the full relevant documentation, instead sending the applicant a written decision refusing access, stating that an inquiry conducted had led to the conclusion that the MIA archives did not contain any information on the topic specified by the applicant.

The claimant filed an application with the SAC, along with a copy of the complaint, and the court demanded that the MIA remand the full documentation to it *ex officio*.

Developments at the 1st Instance Court:
In the courtroom, the claimant's representative requested that the court proceed in accordance with Art. 14 of the Administrative Procedures Act, and rule on both the minister's initial tacit refusal and the subsequent explicit refusal. The arguments were that the minister had not complied with the Instructions on the Procedure for Providing Access to Information Contained in the MIA Archives, Reg. No. I-113/24 of June 2002, which the minister himself had signed in order to provide access to the archive for the purposes of studies and research. The minister should have provided access to the letter files on the three radio stations, in order to enable the applicant to do his research and determine for himself whether or not they contained information of interest to him.

Judgment:
SAC Decision No. 7476 of July 16, 2003 rejected the complaint as unjustified. In its motivations of the court held that, in fact, the claimant wanted uncontrolled access to the MIA archive, while neither the APIA nor the MIA Instructions provide for such unrestricted access to information.

Developments in the Court of the Second Instance:
With the support of AIP, Mr. Hristov appealed the judgment of the three-member panel. His arguments were that the court was wrong in its assessment and thus it had violated the substance of the law, because Art. 26 of the APIA explicitly provides for the in-house review of information as a possible form of access.

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

Judgment:
A five-member panel of the SAC issued Decision No. 4046 of May 4, 2004, which overturned the judgment of the first-instance court rejecting Mr. Hristov's complaint.

The second-instance court found that the tacit refusal, as well as the subsequent

explicit refusal conveyed in a letter dated December 4, 2002, by the interior minister to provide access to public information from the MIA archives to Mr. Hristov was unjustified. The journalist had the right to to review the letter files on BBC, Deutsche Welle and Radio Free Europe over the period from 1970 to 1978 for information contained therein on the activities at those radio stations of Georgi Markov, who was being surveilled by the State Security Services, was unjustified. The SAC referred the case back to the interior minister, instructing him to provide the access to the MIA archives.

In its judgment, the court ascertained that Mr. Hristov's application was in compliance with the requirements under Art. 25, Para. 1 and Art. 7, Para. 1 of the Instructions on the Procedure for Providing Access to Information Contained in the MIA Archives, Reg. No. I-113/24 of June 2002, and contained all of the requisite components, including a sufficient description of the nature of the information being requested and the subject and purpose of his journalistic research. In this regard, the court presumed that the evidence in the case had already proven that the requested information existed in the MIA archive and that the journalist had already read documents of the former State Security Services on the same topic. The Ministry of Internal Affairs was obliged, pursuant to the Access to Public Information Act, to indicate to the requestor the location where the information was stored, even though part of the files had not been available. (The court judgment set a precedent, by obliging an administrative body to provide unconditional access to the requested publicly-held information.)

The decision of the SAC was final.