

## Implementation of the Access to Public Information Act based on the data published in the government reports “The State of the Administration” 2001 - 2020<sup>1</sup>

**Gergana Jouleva**

The Access to Public Information Act (APIA) was adopted by the National Assembly in June 2000 and promulgated in the State Gazette, issue 55 as of July 7, 2000.

The publication of summarized information about the implementation of the APIA by the Council of Ministers is an obligation under Art. 16 of the law since its adoption. It is published as part of the annual government report on the state of the administration. These reports have been prepared and published annually since 2001.

The analysis of the data on the APIA implementation gives the picture of the APIA implementation within the executive power and shows the improvement of the process of accountability, its digitalization (2005), and the role of the body responsible for the publication of the summarized data.

Pursuant to the requirements provided by the APIA (Art. 15, Para. 2), the reports on the implementation, which the heads of executive bodies should prepare, submit and publish, should contain data on the number of filed requests, refusals to provide access and the grounds for the refusals. During the years, however, besides the legally required data, more and more detailed information has been published about the administrative capacity for implementing the law, the implementation of the obligations for proactive publication of information, the maintaining of registers of received requests, the trainings of public officials, the appeals against decisions under the APIA and the delivered court decisions. The content of the annual reports has been changing with the change of the governments, although the information system for collecting the data was established and operating since 2004, as stated in the 2006 government report, and the data should be available in the data bases of the Council of Ministers.<sup>2</sup>

---

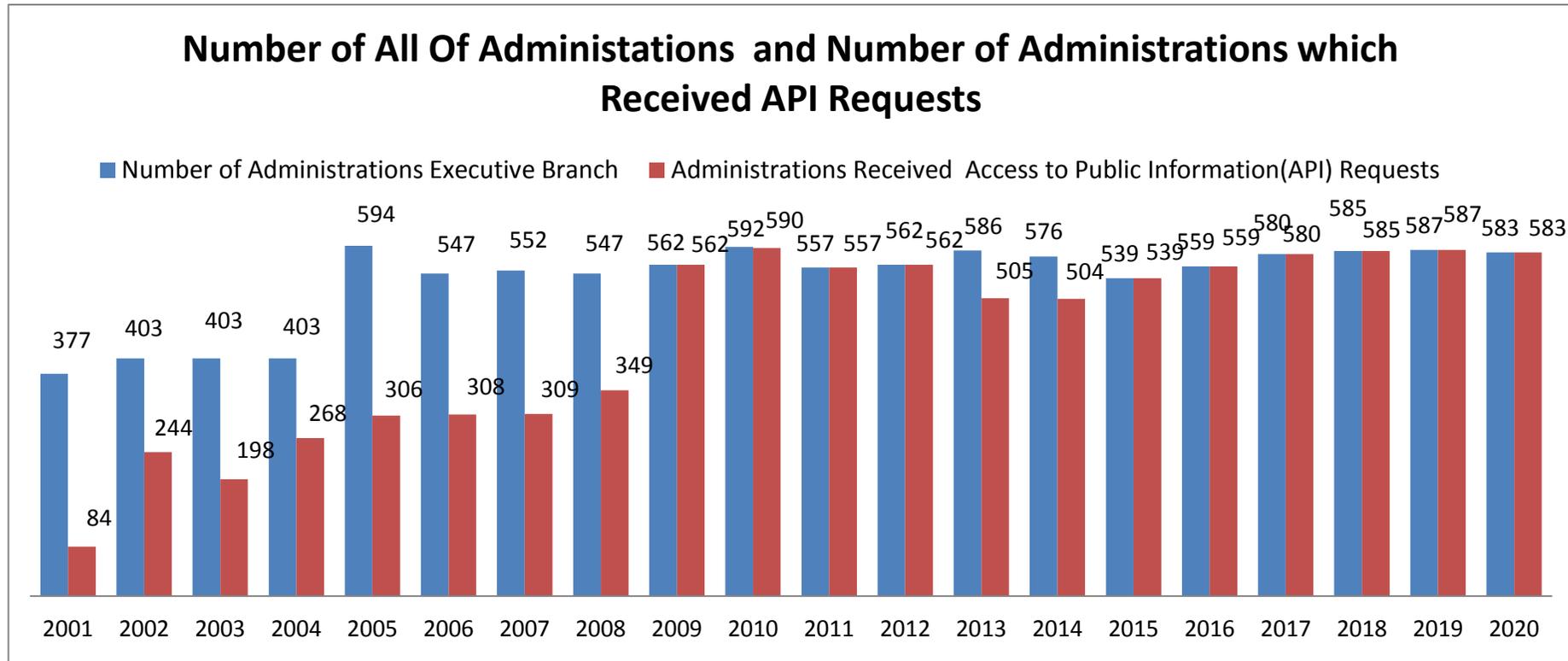
<sup>1</sup> [http://iisda.government.bg/annual\\_reports](http://iisda.government.bg/annual_reports) (in Bulgarian)

<sup>2</sup> “The State of the Administration 2005”: „The report on the state of the administration is prepared for the sixth time. For a second successive year, the heads of the administrative structures within the executive power system submit information electronically via an Internet based system ([www.sareport.government.bg](http://www.sareport.government.bg)). After the adoption of the report by the Council of Ministers, it will be referred for information to the National Assembly.”

# 1. Administrative capacity to implement the Access to Public Information Act (APIA)<sup>3</sup>

## Administrations, which have received access to public information (API) requests during the specific year

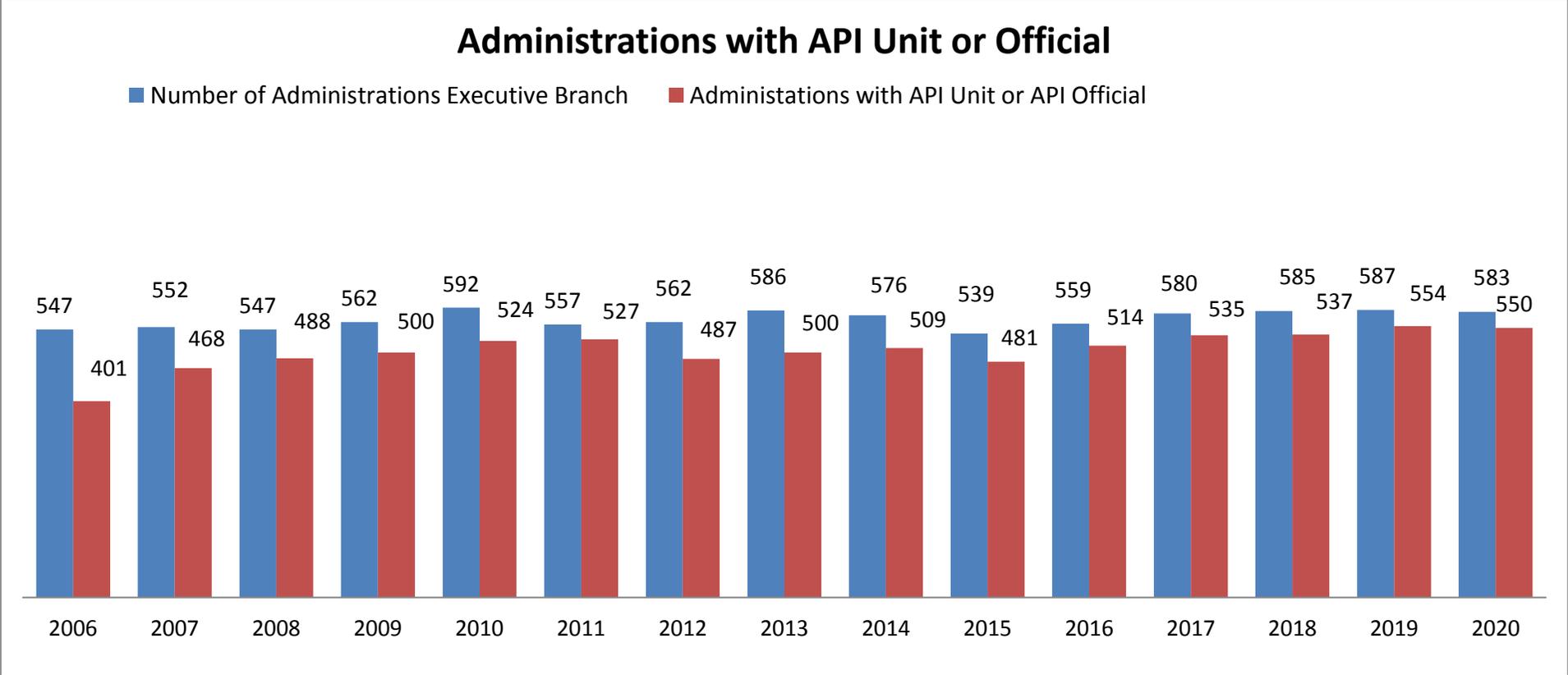
The chart below shows clearly that since 2009 there is a tendency of closing the gap in the number of administrations, which submit Annual Reports in the Integrated Information System of the State Administration and those reporting their work on the APIA. During the past years, their number is the same.



<sup>3</sup> The charts are prepared by the AIP on the base of data published in the annual reports "The State of the Administration" 2001-2021. [http://iisda.government.bg/annual\\_reports](http://iisda.government.bg/annual_reports) (in Bulgarian)

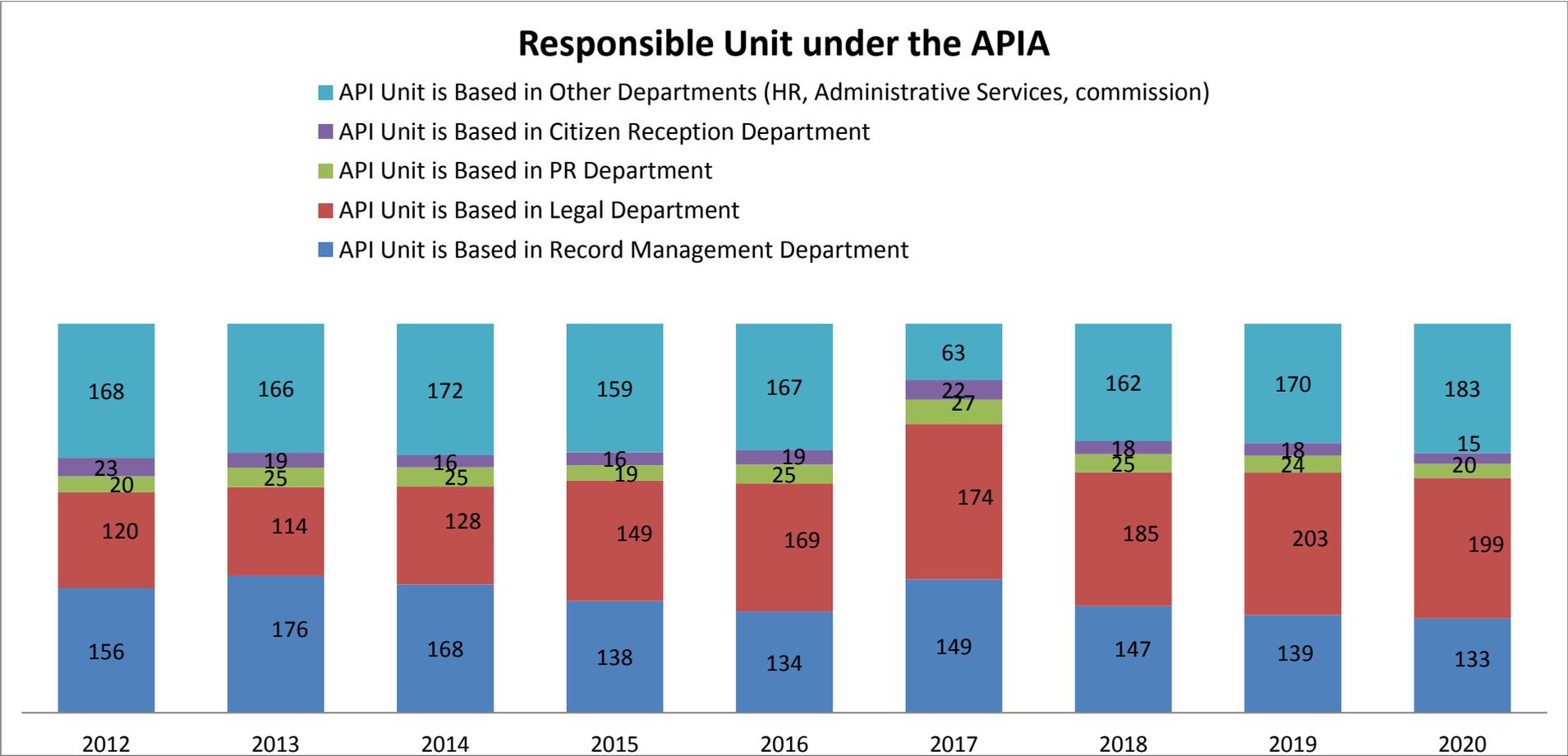
**Administrations with assigned unit or official under the APIA**

Pursuant to the 2007 APIA amendments, the heads of the administrative structures in the executive power system should assign officials to be directly responsible for the provision of public information (Final Provisions to the Law on Amendments to the APIA, State Gazette issue 49/ 2007, §18). Information about such units/ official can be found in the government reports since 2006. In 2018, 48 administrative structures still do not have such a unit/official.



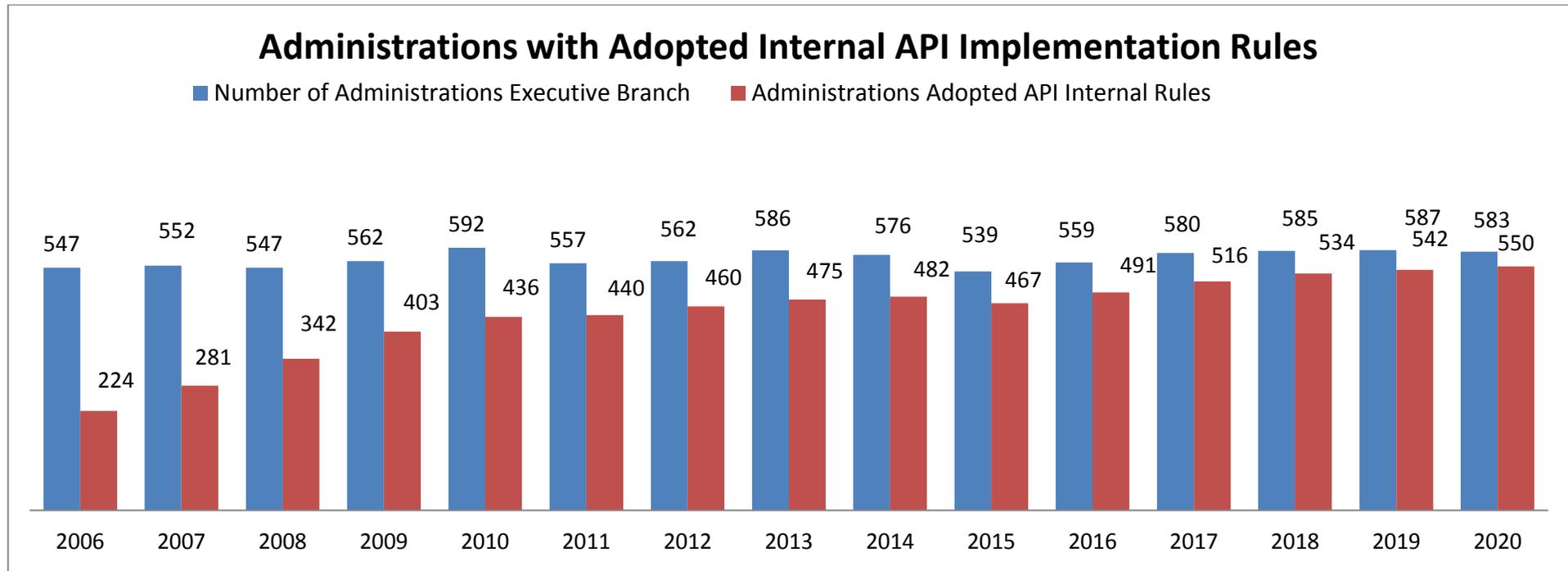
**Administrative units responsible under the APIA**

Data about the types of the administrative unit responsible under the APIA appear for the first time in the report “State of the Administration 2013.” Those data clearly outline the tendency of assigning the responsibility to the Legal Departments or another specialized unit.



## Administrations with Adopted Internal APIA Implementation Rules

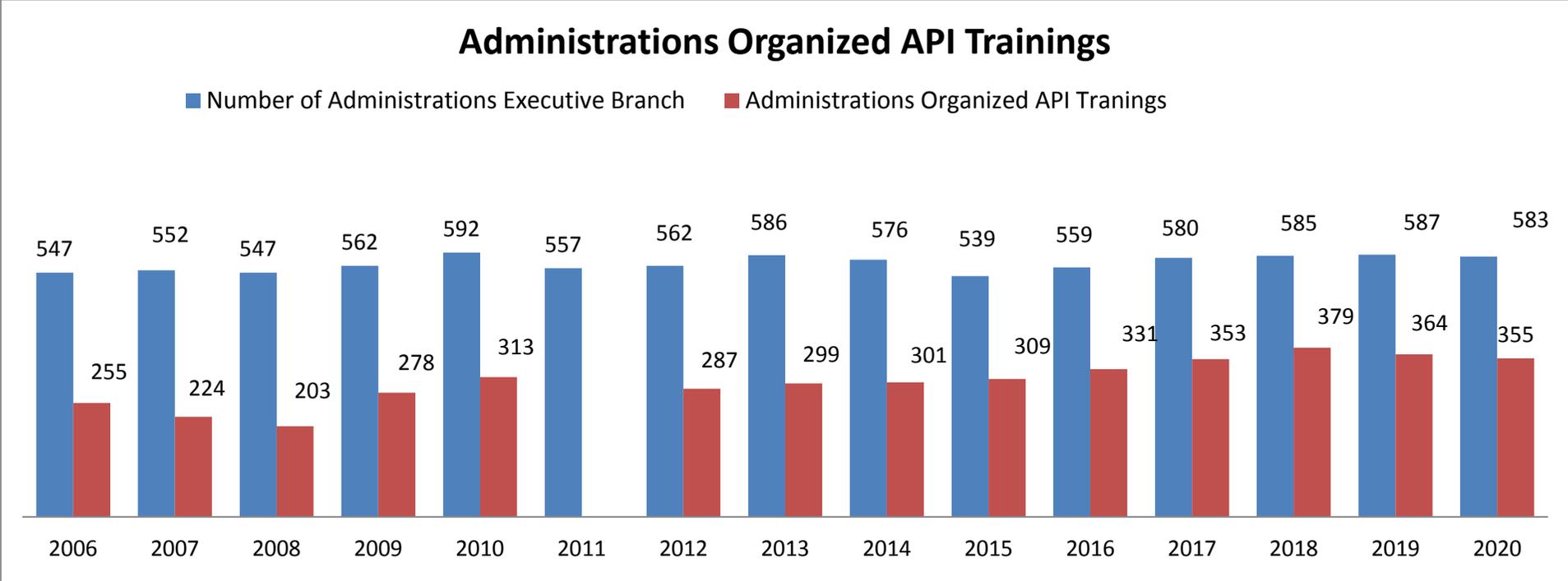
The organization, the responsibilities, and the oversight of the implementation of the obligations under the APIA, including the proactive publication of information, requires the adoption of internal APIA implementation rules by the administrative structures. These rules should be published in the *Access to Information* section of the institutional website. The data from the 2020 Government' report show that 33 administrative structures still have not adopted APIA Internal Rules, 482 administrations published them on the websites and 364 updated them in the line of the amendments to APIA from 2015.<sup>4</sup>



<sup>4</sup> The data from AIP Active Transparency Index 2020, indicators B.7, B.7.1, B.7.2: <https://data.aip-bg.org/en/surveys/FQWA23/stats-indicators?q=FJ8R25>

**Administrations, which have organized and held trainings for API officials<sup>5</sup>**

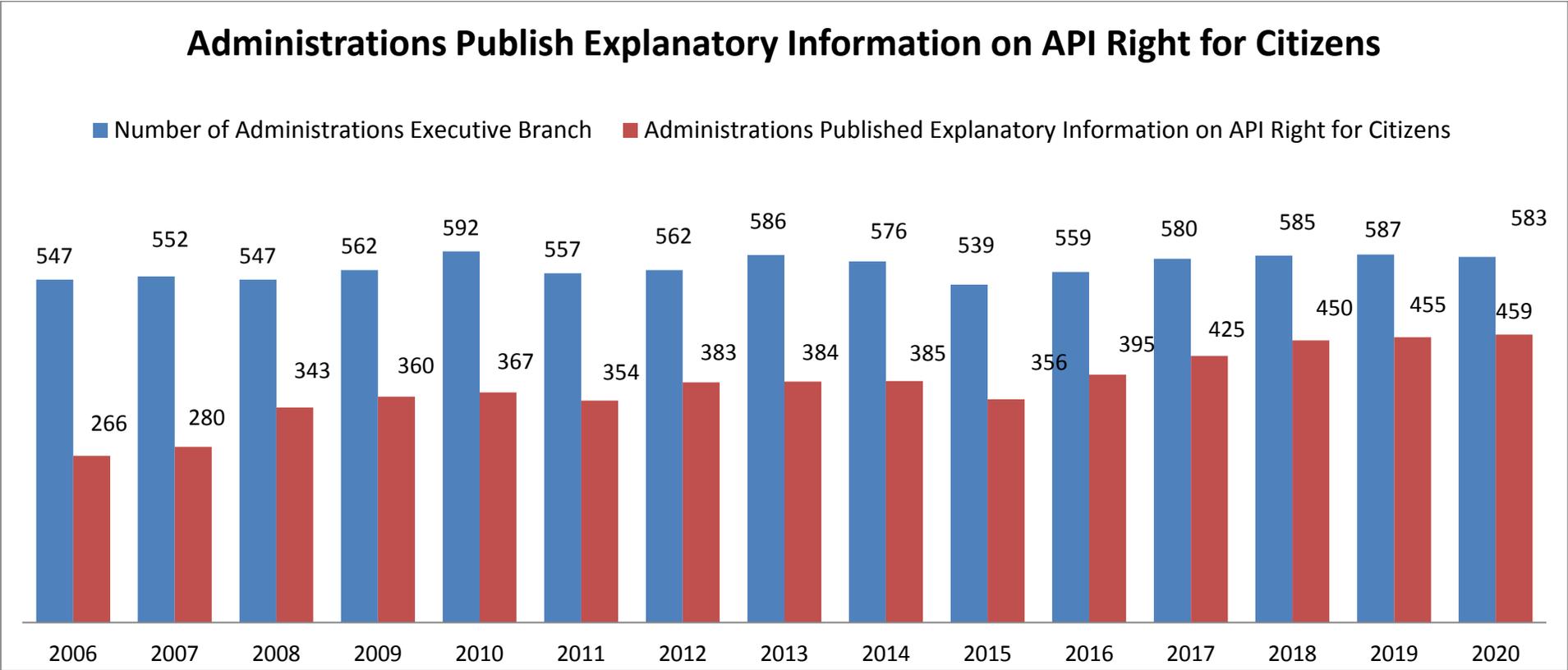
The obligation for the heads of the administrative structures to financially secure trainings under the APIA was introduced in the Final Provisions of the Law on Amendments to the APIA (State Gazette, issue 104/ 2008, §9). The number of administrations organizing trainings is almost the same during the years. Just recently, it passed over 64 % for 2018, 62% for 2019 and 61% for 2020.



<sup>5</sup> The 2011 Government’ report lacks information about the administrations, which held trainings.

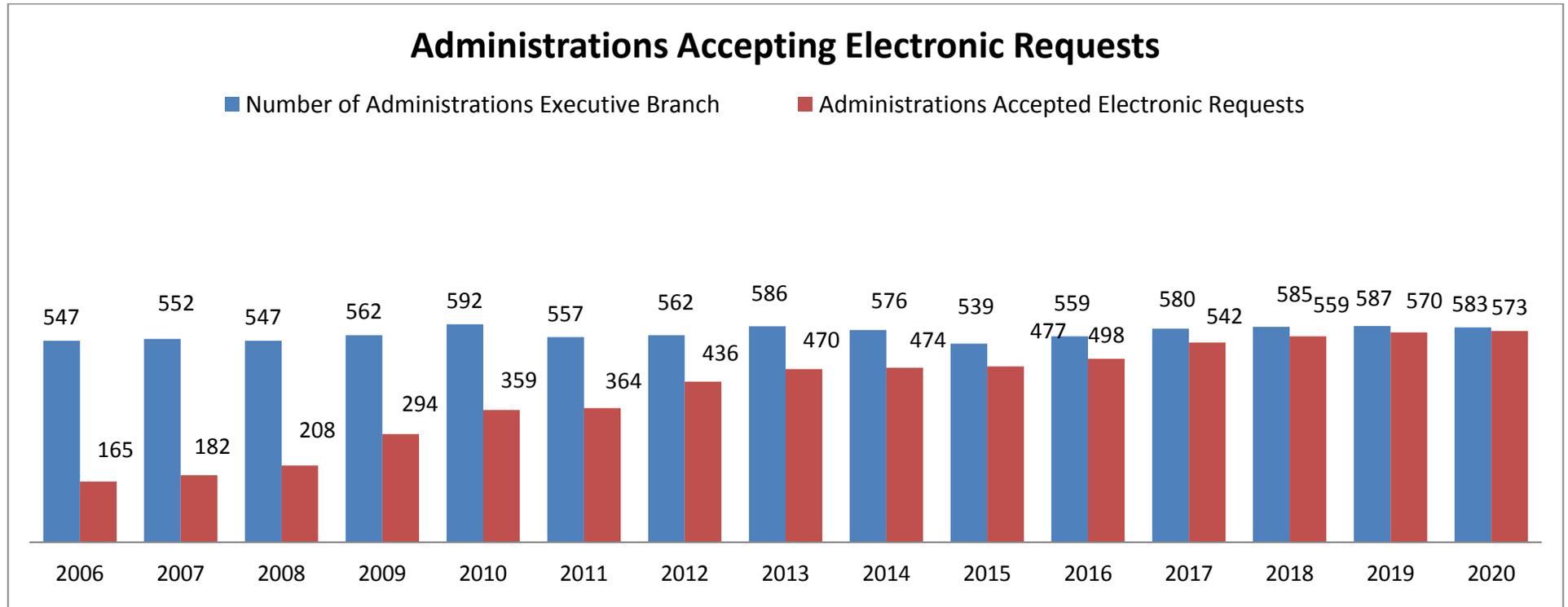
**Administrations which publish explanatory information on how citizens to exercise their right of access to information**

The obligation for the publication of explanatory information for citizens on how to exercise their right of access to information was introduced in the law with the 2015 amendments (State Gazette, issue 97/ 2015, Art. 15, Para.1, Item 11). Data about administrations, which have published explanatory information, is first found in the report “The State of the Administration 2006.”



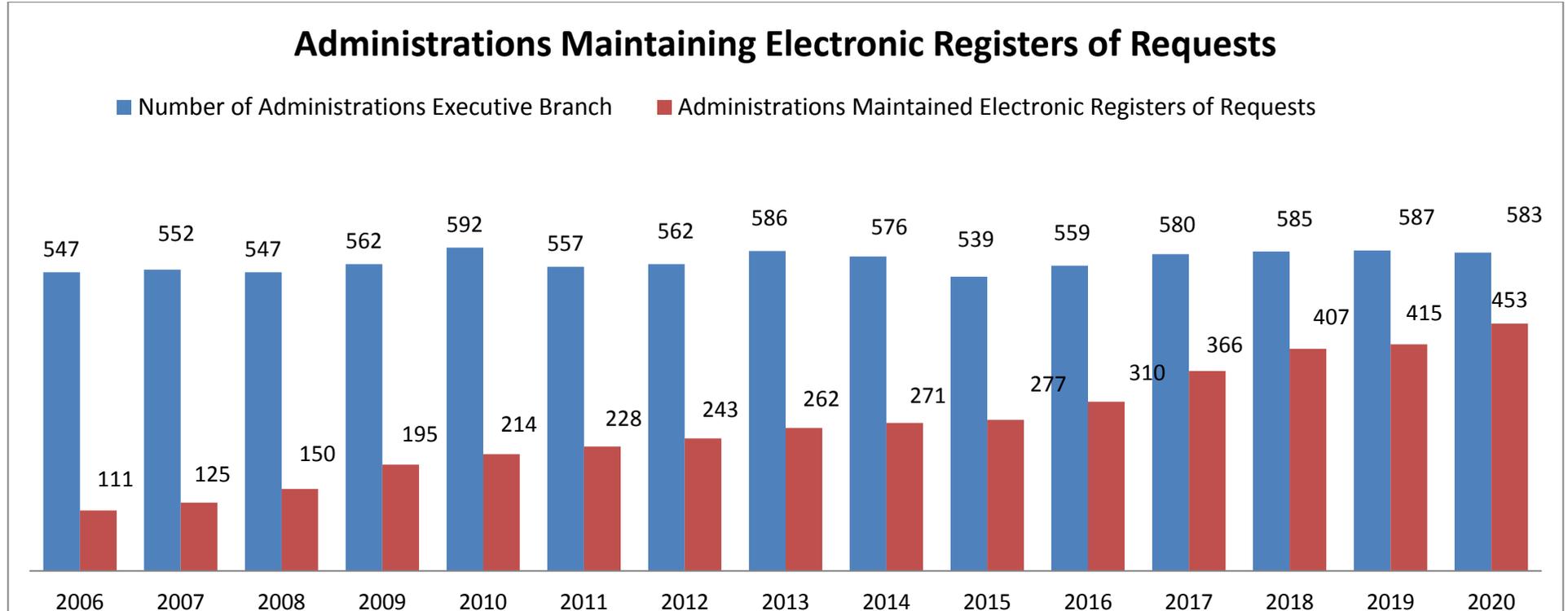
### Administrations which accept electronic access to information request

The electronic requests were equaled to the written requests under the APIA as early as 2000 when the law was adopted (State Gazette, issue 55/ July 7, 2000). The rules for registering and accepting the e-requests had to be adopted by every public body. The Amendments to the APIA as of 2015 introduced the legal framework of these rules. That is why it is not clear why 17 administrative structures still do not accept e-request, based on the government report data.



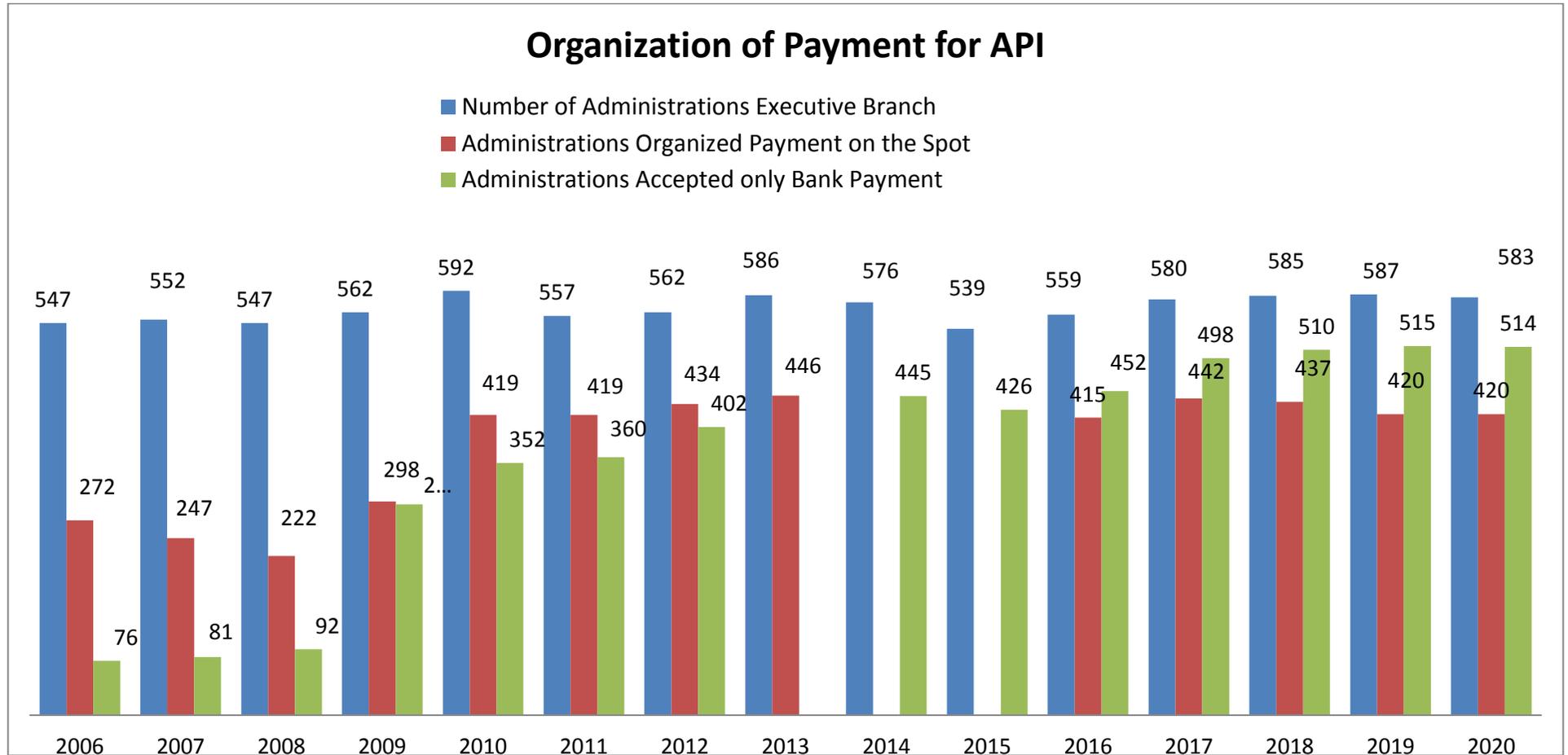
### Administrations maintaining electronic registers of access to information requests

The registration of access to information requests is mandatory pursuant to Art. 25, Para. 3 of the APIA. It is still unclear if the registration is done on paper by 172 administrative structures when they do not maintain electronic registers of the requests.



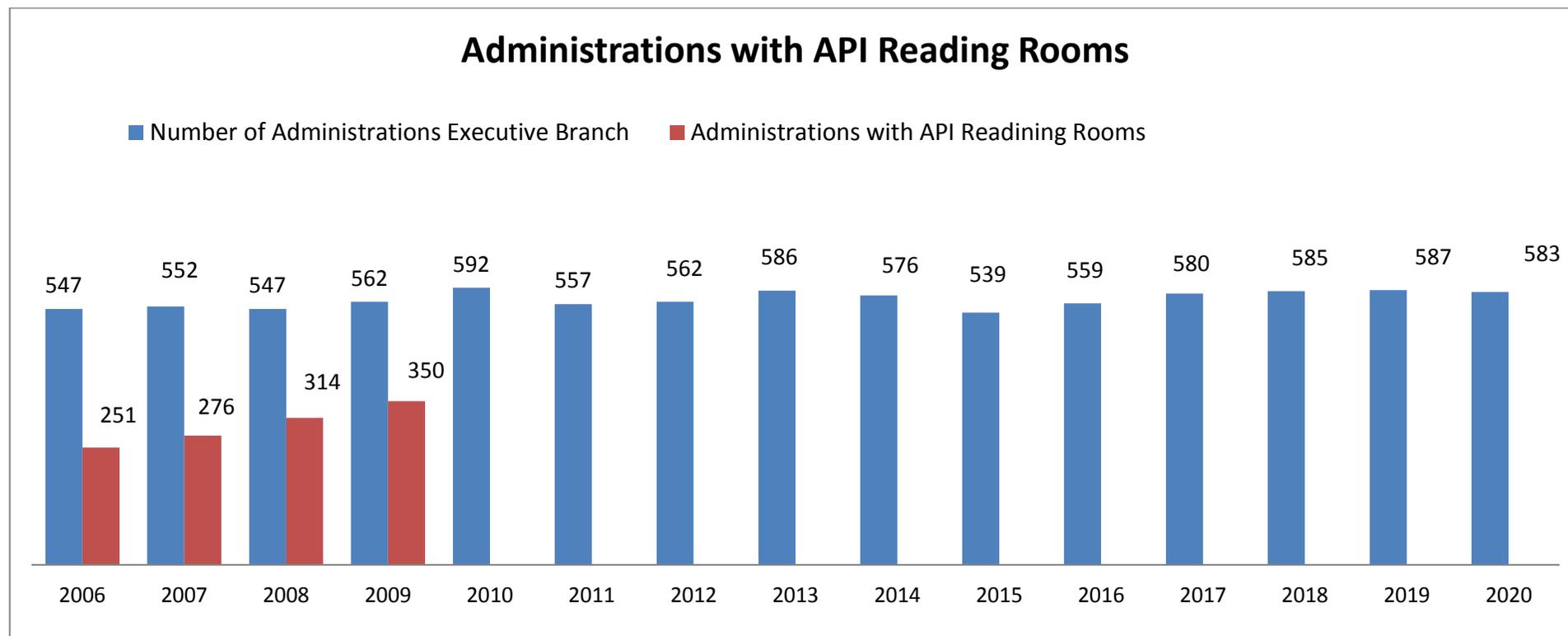
## Organization of the payment of fees for the provision of access to information

The data from the government reports “The State of the Administration” show that the number of administrations which accept payment of access to information fees by bank transfer, as well as on the spot, is increasing.



### Administrations with established reading rooms for review of the information access to which is provided *on the spot*<sup>6</sup>

The APIA amendments in 2007 introduced an obligation for the heads of the administrative structures to establish an appropriate place for review/reading of provided information (State Gazette, issue 49/ 2007, §18). Data about reading rooms can be found in the government reports until 2009. According to the data from the AIP audit on institutional web sites from March 2021, only 140 out of 563 public bodies published information about reading rooms in the *Access to Information* section.<sup>7</sup>

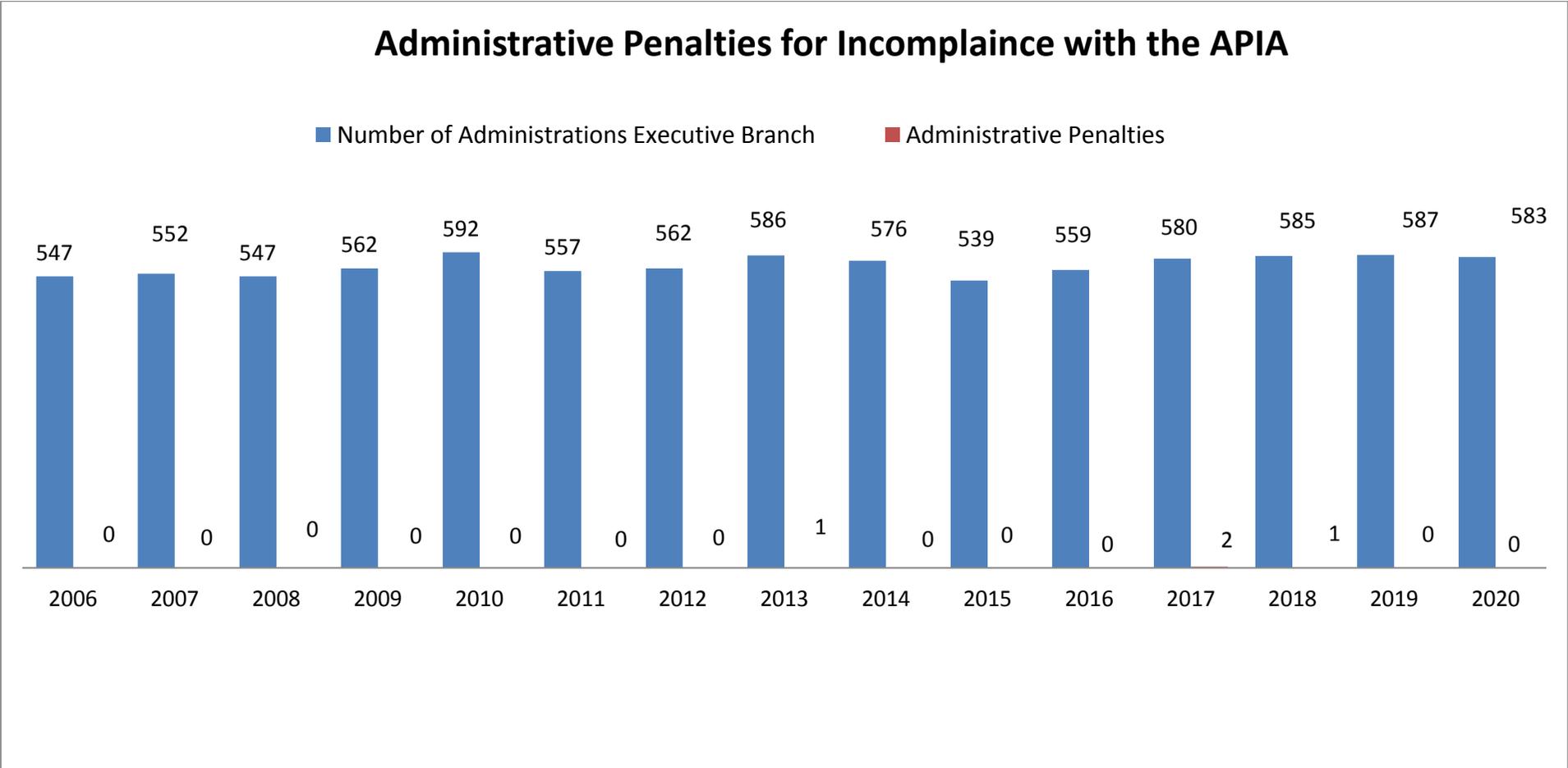


<sup>6</sup> There are no data about administrations with established reading rooms in the government reports after 2009

<sup>7</sup> Results from the AIP audit 2021 on institutional web sites by indicators. See Indicator B.15 <https://data.aip-bg.org/en/surveys/FQWA23/stats-indicators?q=SZ2738>

**Imposed administrative penalties to officials who violate the Access to Public Information Act (APIA)**

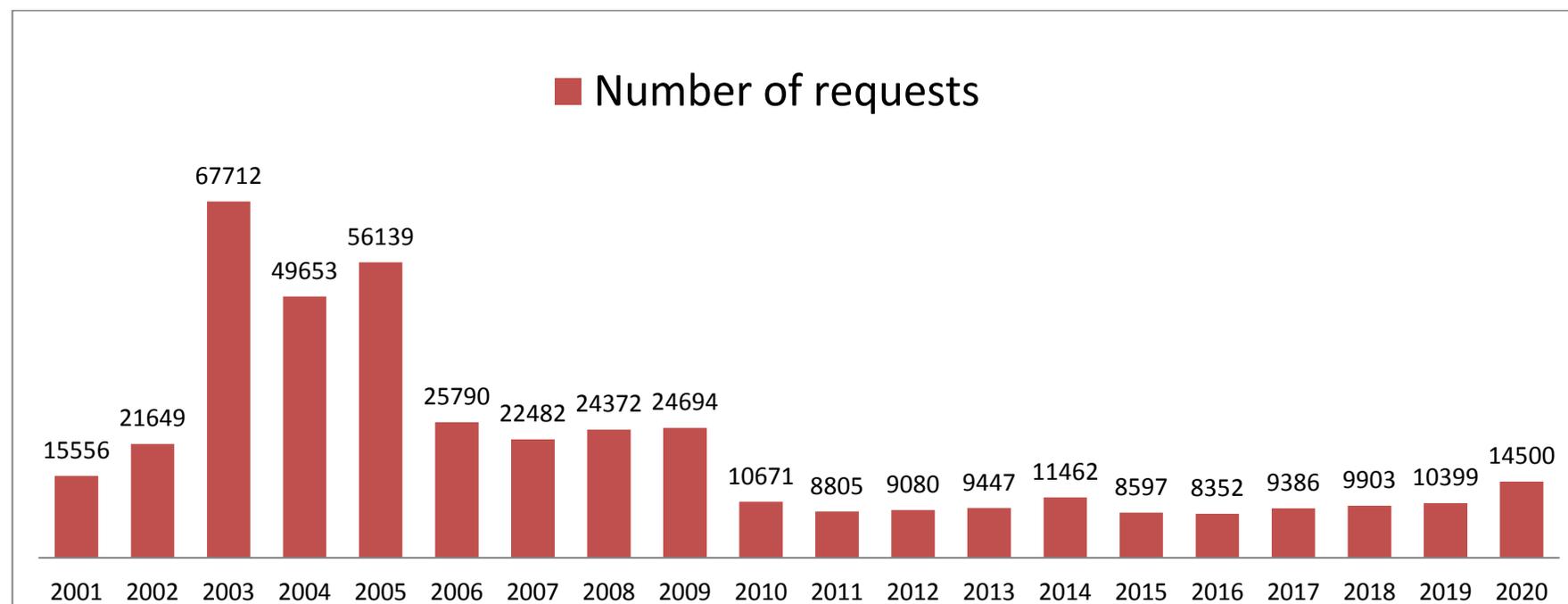
For 20 years of APIA implementation and hundreds of court cases ending with court decisions in favor of the access to information requestors, only one penalty has been imposed for administrative violation of the APIA in 2013, in 2017 – two penalties have been reported and in 2018 – one.



## 2. Processing access to information requests

### Number of received requests

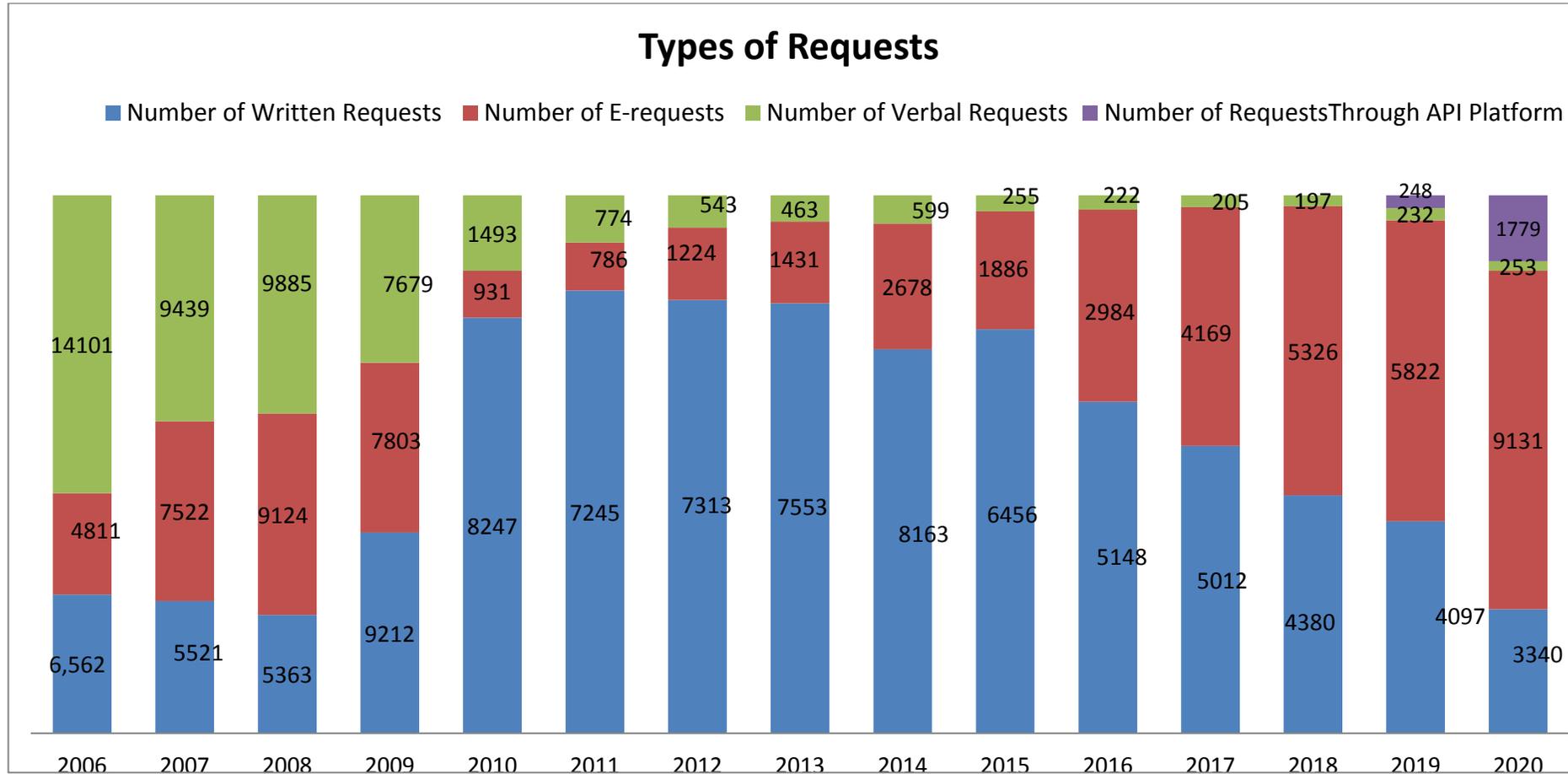
The total number of requests received by the institutions has been decreasing. The tendency finds its explanation in the proactive publication on the websites of the obliged bodies of specific categories of information, which should have been requested during the first years of the APIA implementation. On the other hand, the decrease in the number of the written requests and the e-requests that have been equaled to them is not so high. During the past two years, there is a tendency of increase in the number of electronic requests.



**How the access to public information requests are filed?**

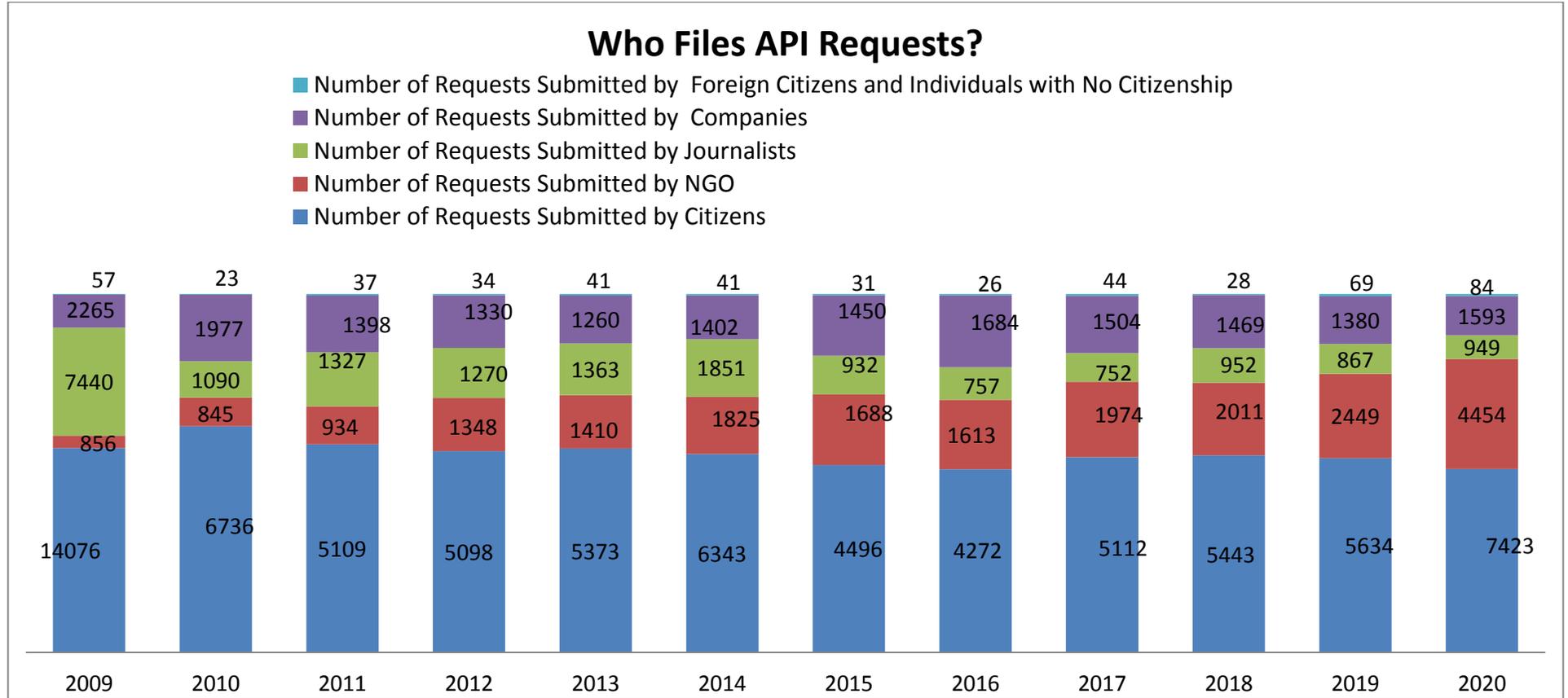
The tendency observed until 2009 for a large number of oral requests reported by the administrative structures and the remark in the 2009 report that there were no mechanisms for registering the oral requests, shifts sharply during the next years and in 2020, 253 oral requests were reported. Administrative decisions on access to information requests are by rule issued only on written requests, the electronic requests being equaled to written. 248 e-requests filed through the Platform of Access to Public Information in 2019, for 2020, 1779 e-requests are reported :

<https://pitay.government.bg/PDoiExt/>



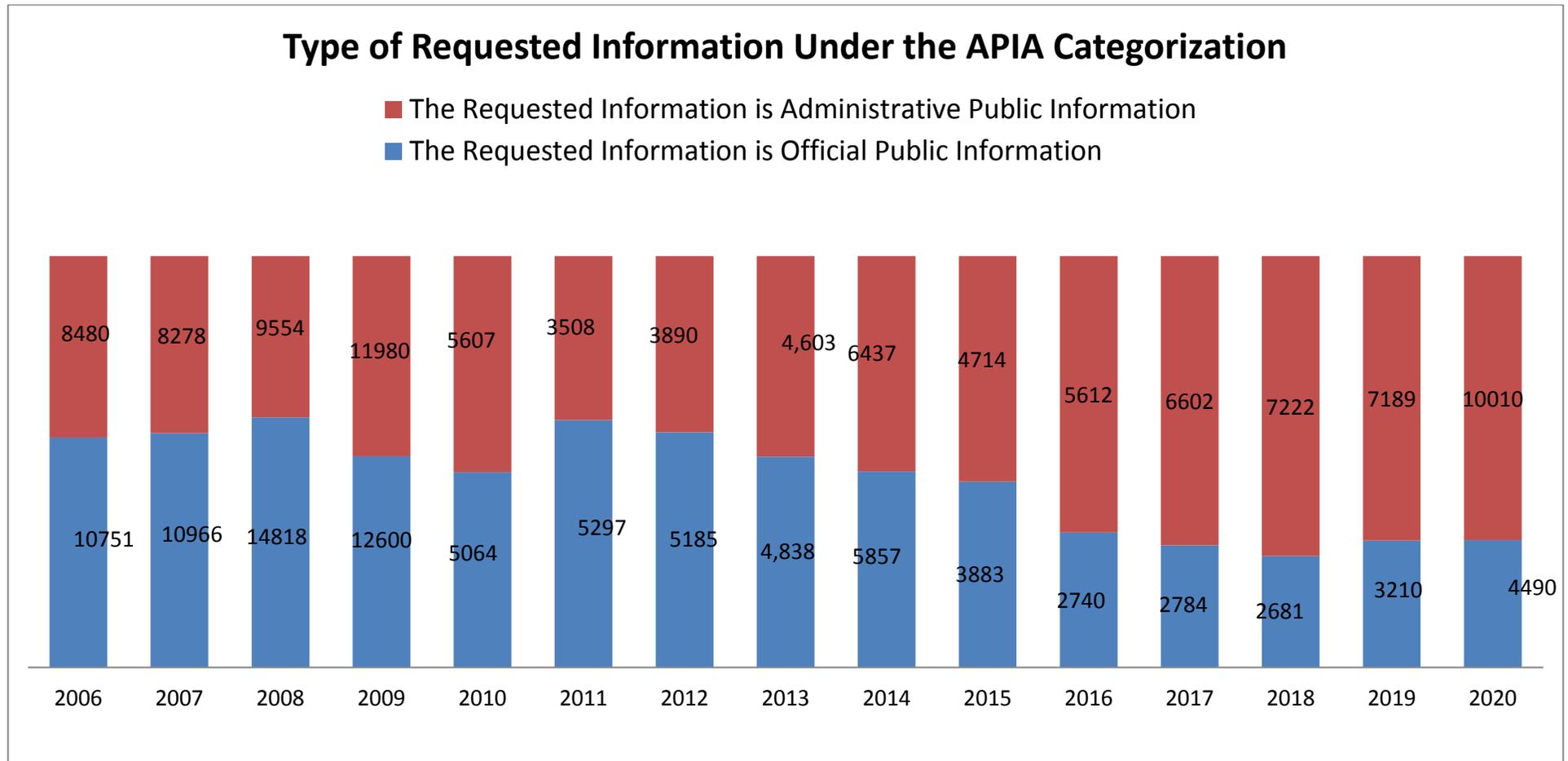
### Who files access to public information requests?

The statistics on the different groups of requestors appears in 2004. It is understandable that the highest number of requests are filed by citizens, since the requestors are not obliged to signify their profession, affiliation to a company, NGO, or media. Those who have filed requests on behalf of a media, company, or NGO fall into the statistics. During 2021, the number of requests has increased with 4,101.



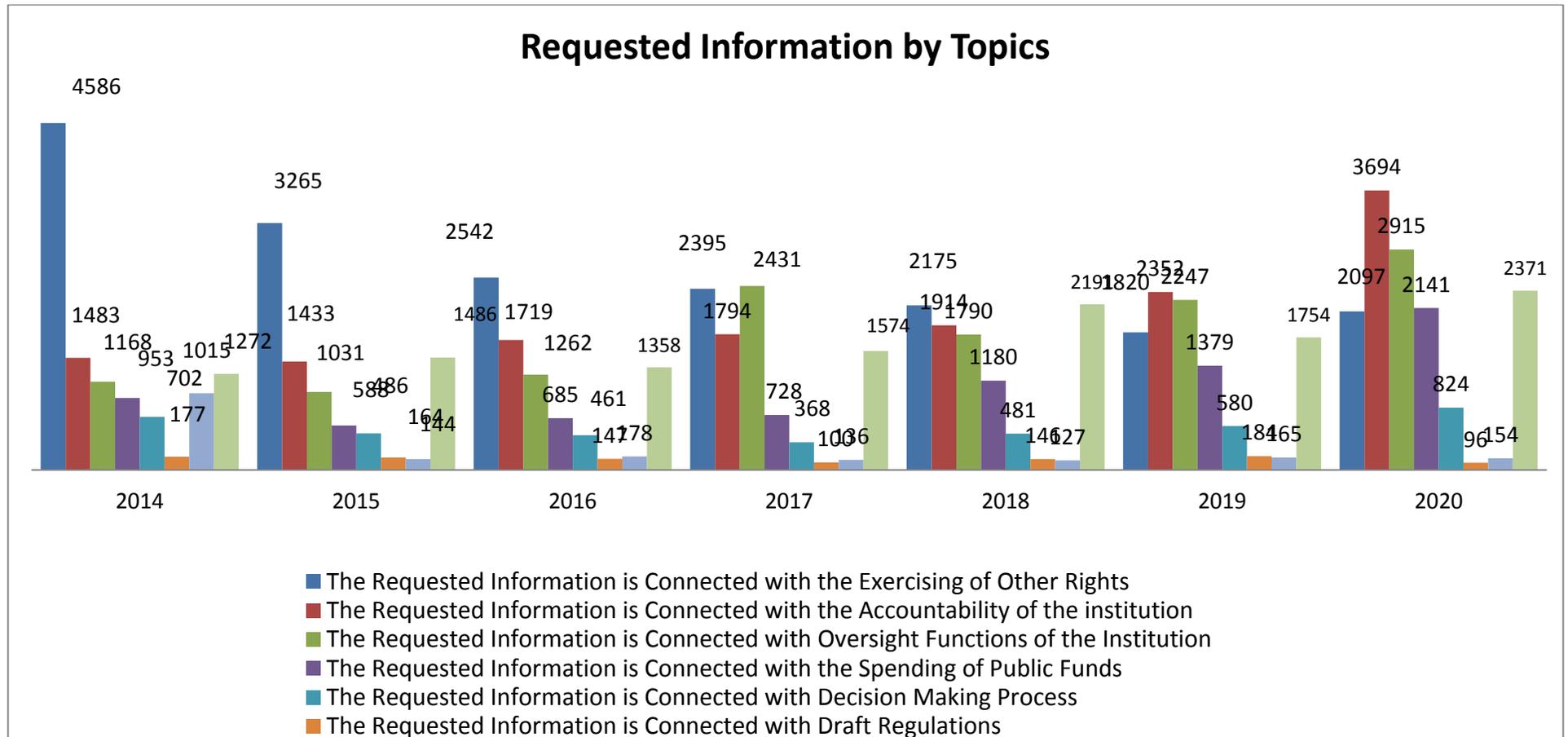
### What type of information is mostly sought under the categorization of the APIA?

Pursuant to the categorization in the APIA, the public information falls under two categories: *official* - contained in the acts of the public bodies, and *administrative* – related to the preparation of the acts (Art. 10 and Art. 11 of the APIA). The chart below illustrates the fact that the enhanced active transparency – under the explicit obligations for proactive publication of the acts of the authorities, shifts the tendency of seeking access to official public information and since 2014 the requests focus on administrative public information, i.e. documents related to the preparation of the acts, which are not proactively published.

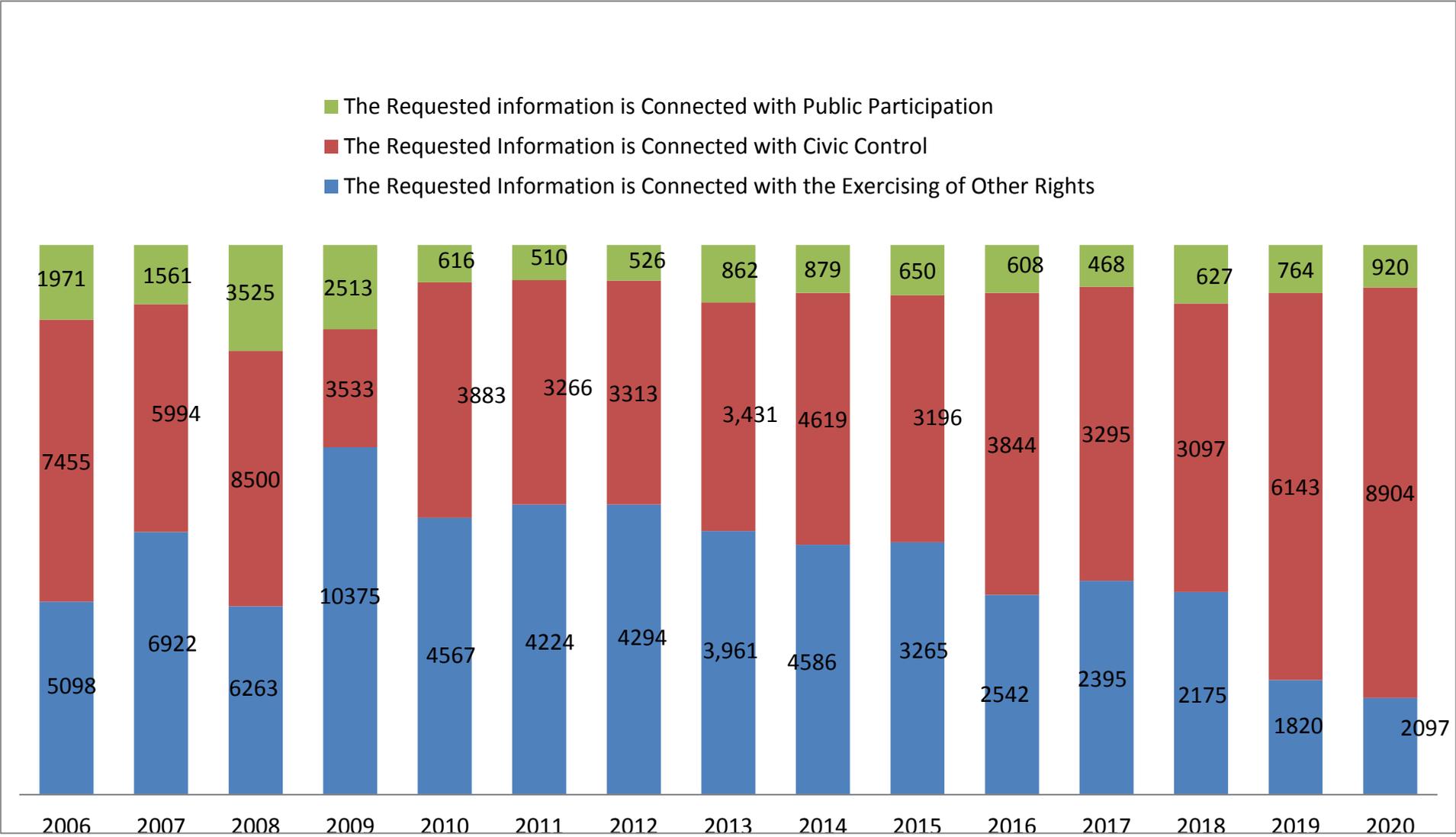


## What are the topics on which information is sought?

The topics on which information is sought reflect the main elements of the right of access to information. It is necessary for the exercise of other rights, it is fundamental for the civil participation in the public debate for policies, and allows citizens to exercise control over the work of the institutions. The next chart gives more detailed picture of the topics on which information is mostly sought. What is of concern is that requests are still filed for draft normative acts and corresponding documentation, while that type of information should be published on the Internet sites of the institutions pursuant to the obligations given by the Law on Normative Acts (LNA).

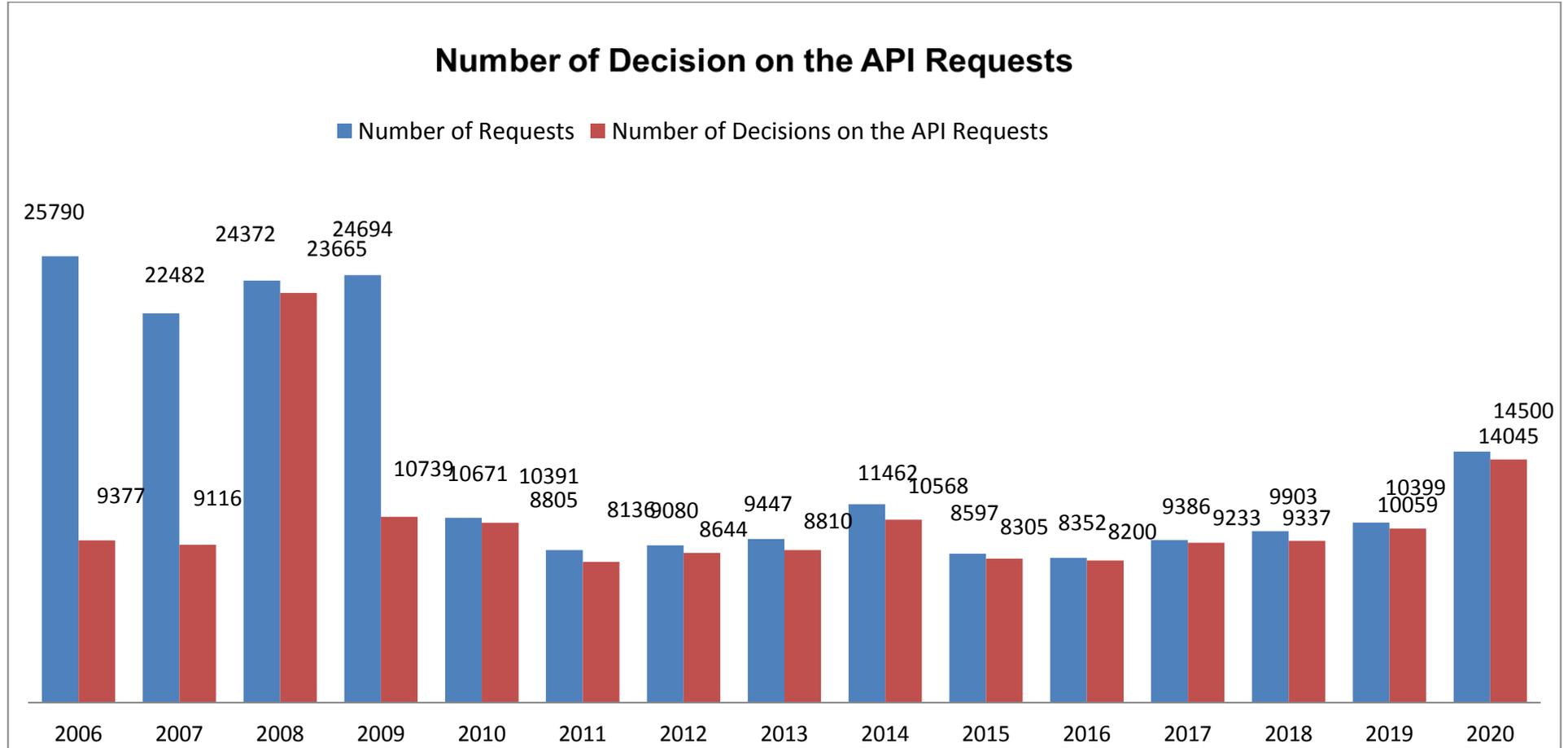


The tendency in recent years is that there is more seeking of information related to the exercise of civic control over the work of the institutions.



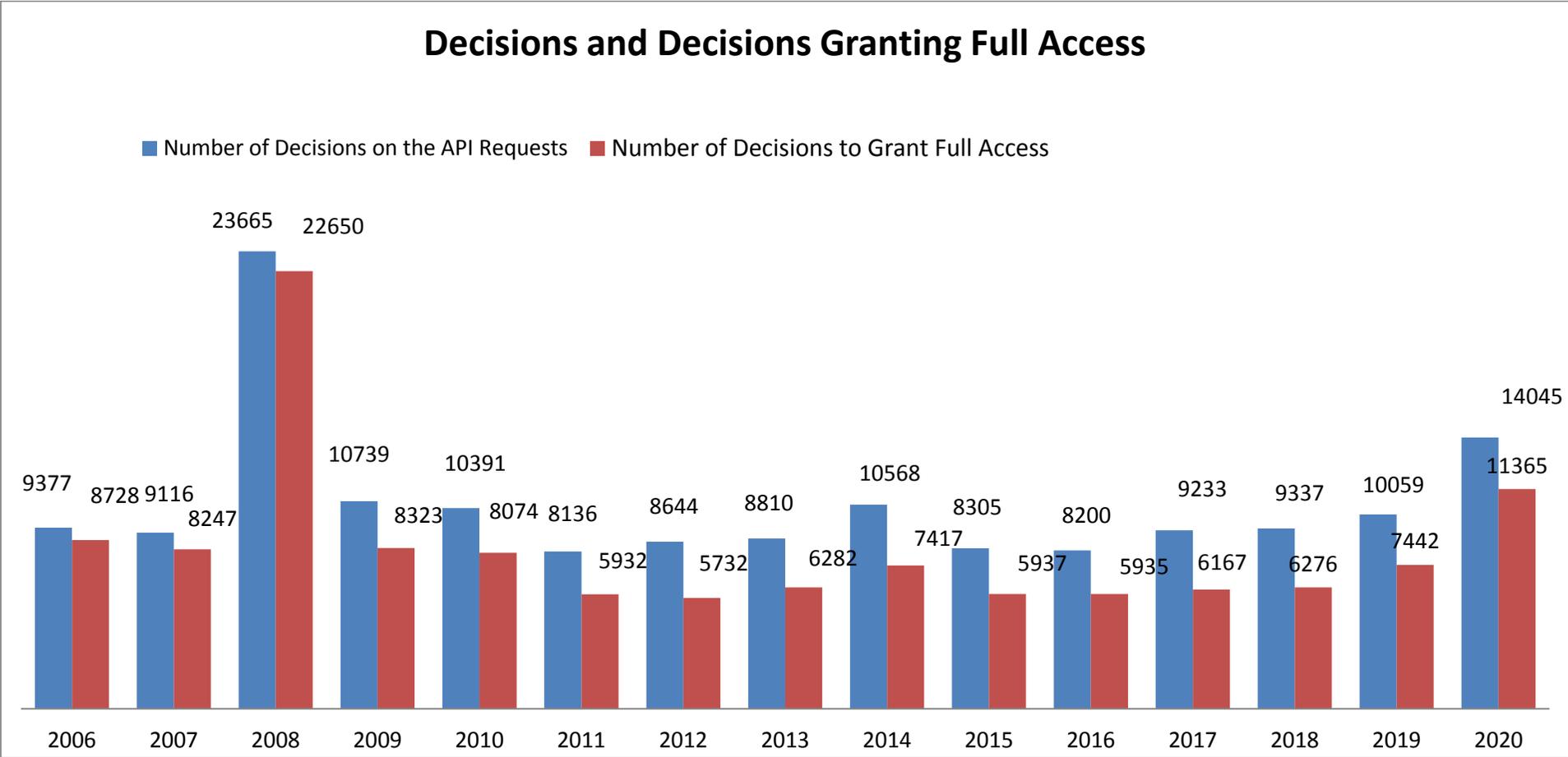
## Requests and decisions on access to information requests

The reports on the number of requests and the administrative decisions issued on them show the development of ARIA implementation during the years. The chart below shows the big difference between the reported requests and the decisions issued on them till 2010. Only since 2010, the number of requests and the number of administrative decisions on them start to get closer.

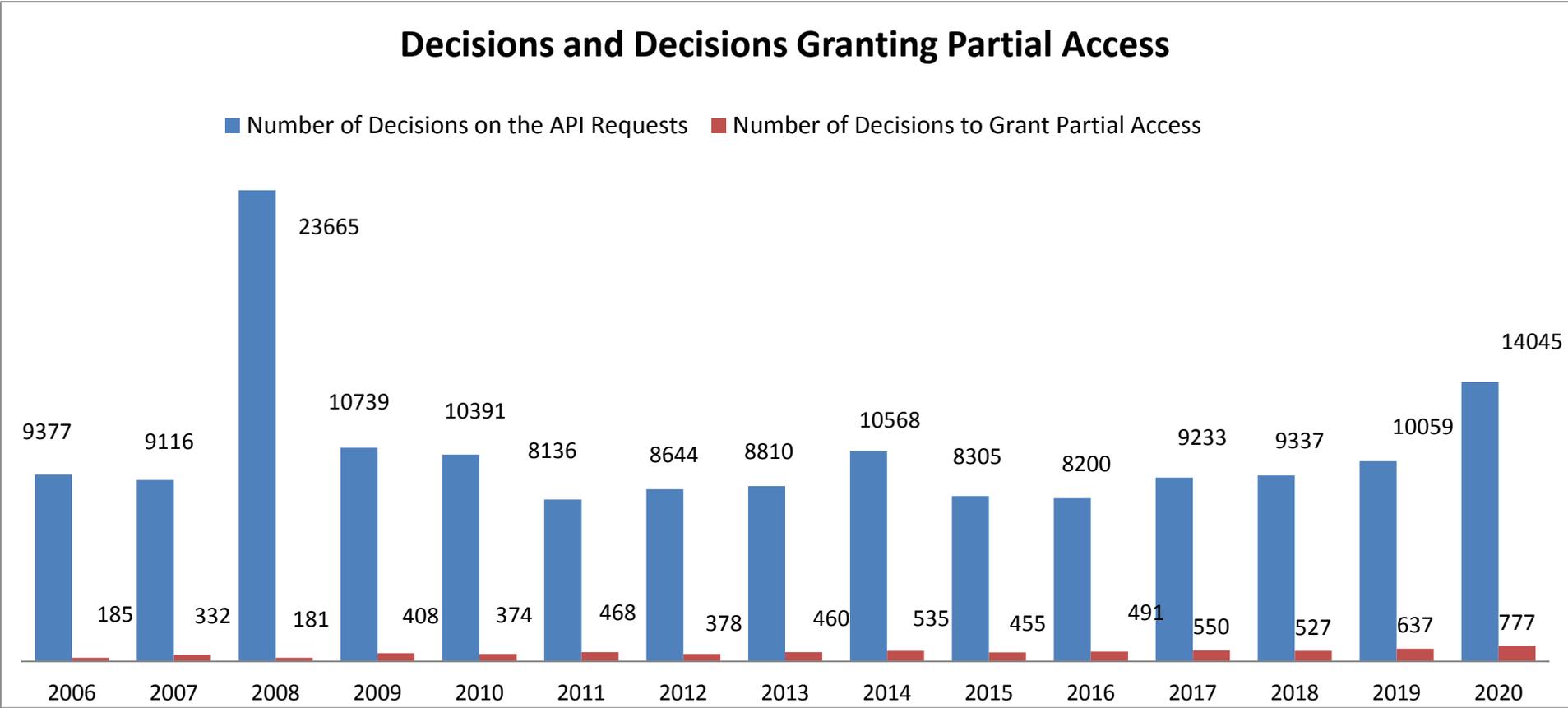


### Decisions granting full access to the requested information

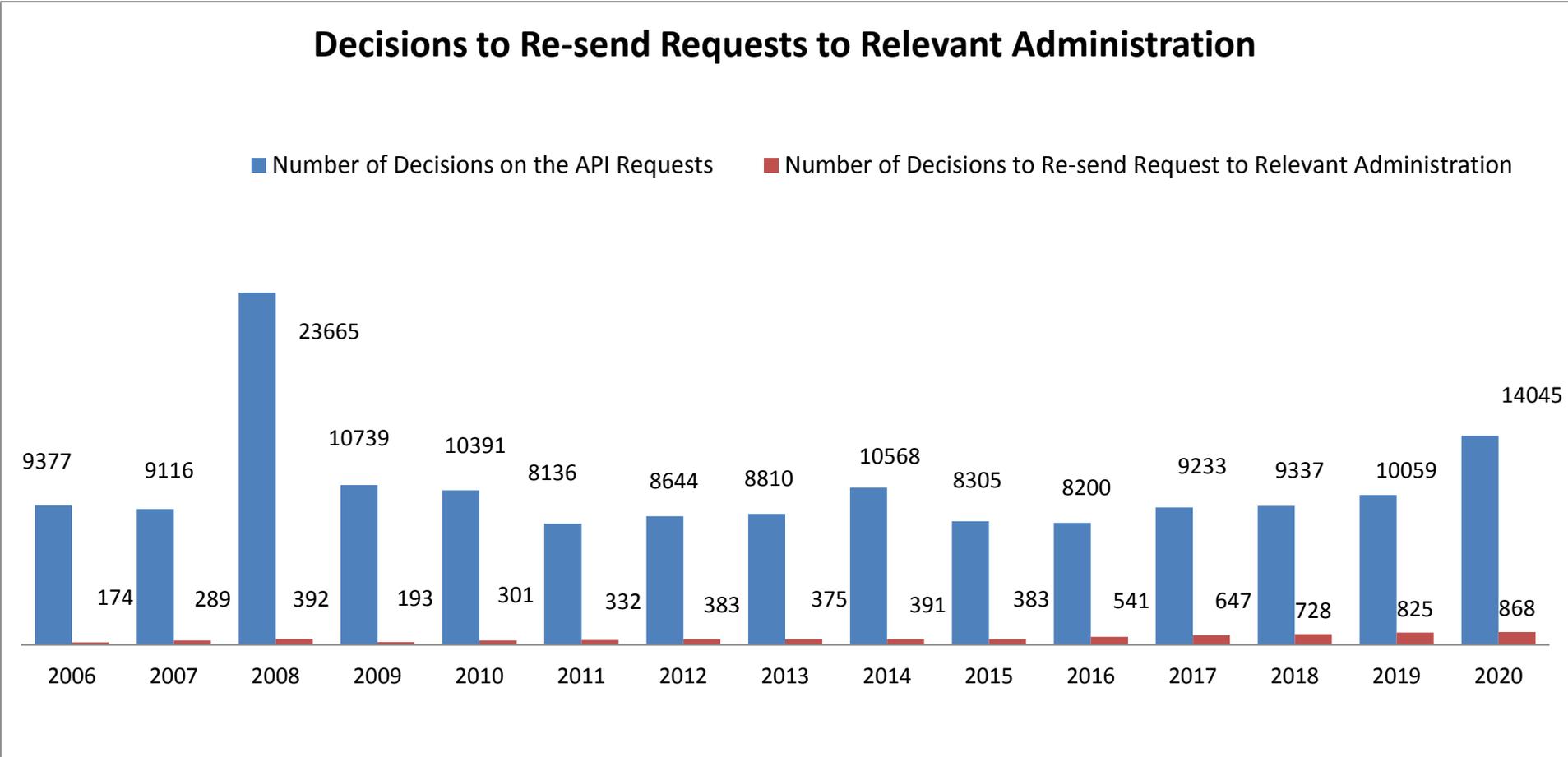
The majority of the decisions on access to information requests are those granting full access to the requested information, according to the data published in the government reports.



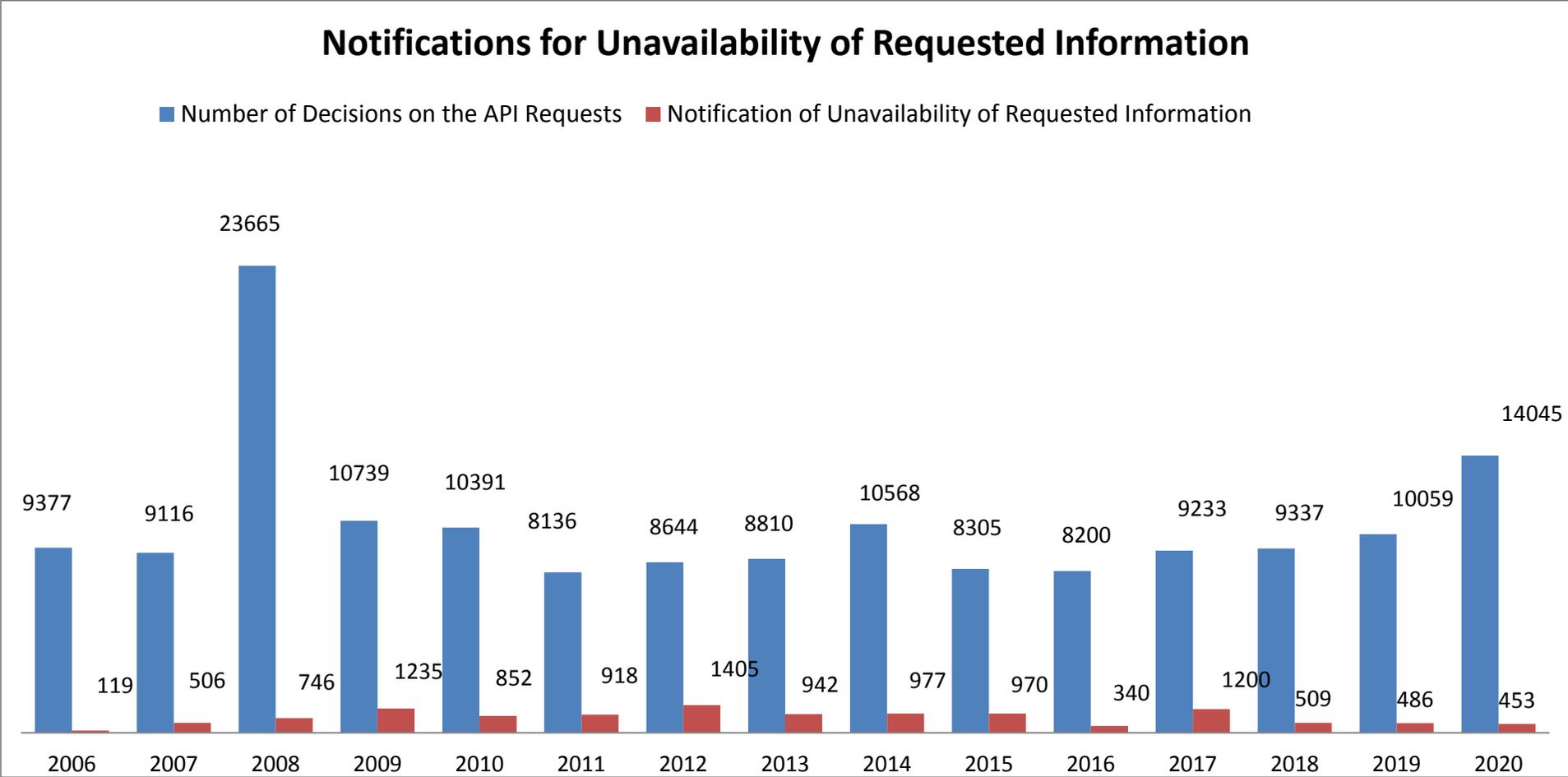
Decisions granting partial access to the requested information



Decisions to re-send the requests to the relevant administration



Notifications for unavailability of requested information



### Requests left without consideration according to the data from the government reports

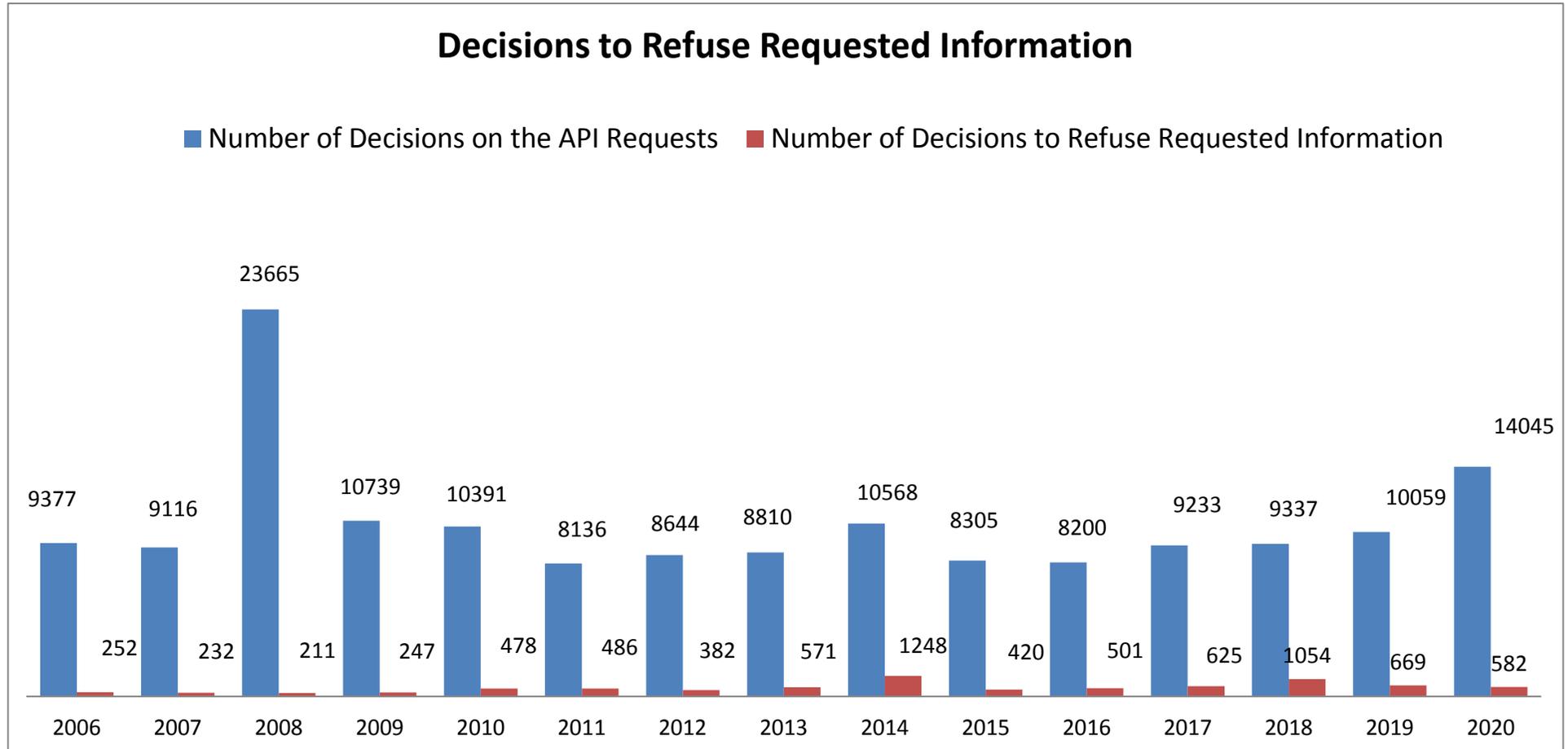
The chart below shows the discrepancy between the reported number of requests, the issued decisions, and the requests left without consideration till 2009. Taking into consideration the number of requests in 2020 – 14,500 and the reported number of requests left without consideration due to administrative incompliance – 217, as well as the decision issued – 14,045, there is a left over of 238 requests on which no decisions were issued. This makes them silent refusals.



### Decisions to refuse access to requested information

The number of decisions to refuse access to requested information for 2019 is 6,6%, comparable to 2017- 6.7%, and in 2016 - 6.1%.

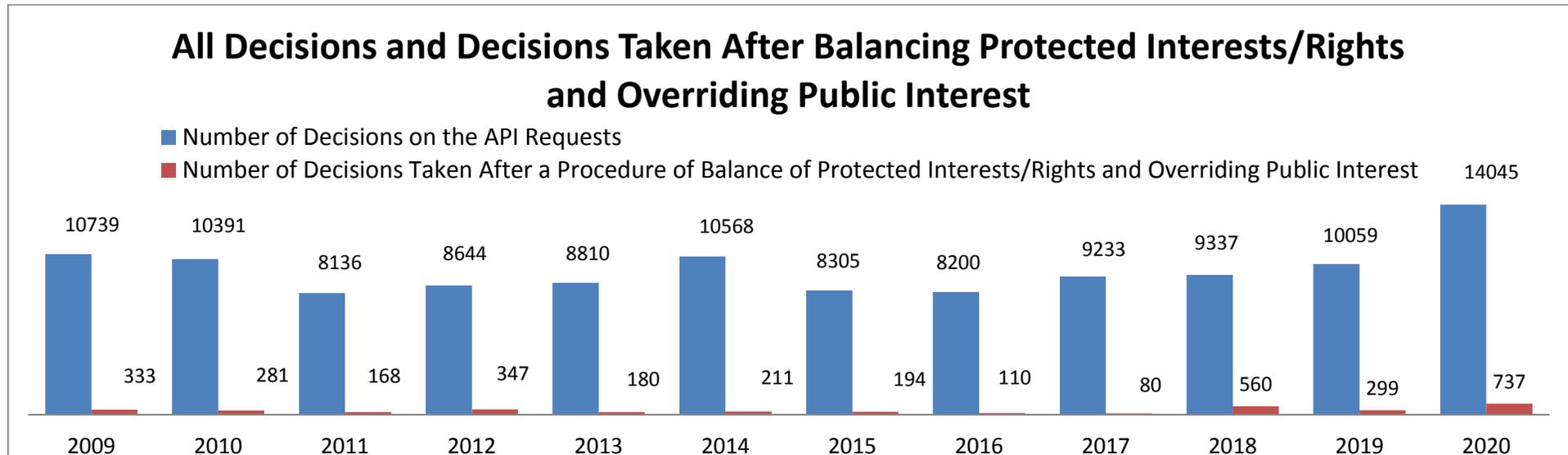
The number of refusal has steeply increased to 11,3% in 2018.



## Decisions taken after balancing protected rights and interests and the overriding public interest

After the obligation for balancing protected rights and interests and the overriding public interest was introduced with the APIA amendments (State Gazette, issue 104/2008), data about decisions taken after such a balance appear in the reports since 2009. In order to comprehend these data, we should take into consideration the data about the number of decisions to refuse access and the grounds for these refusals.

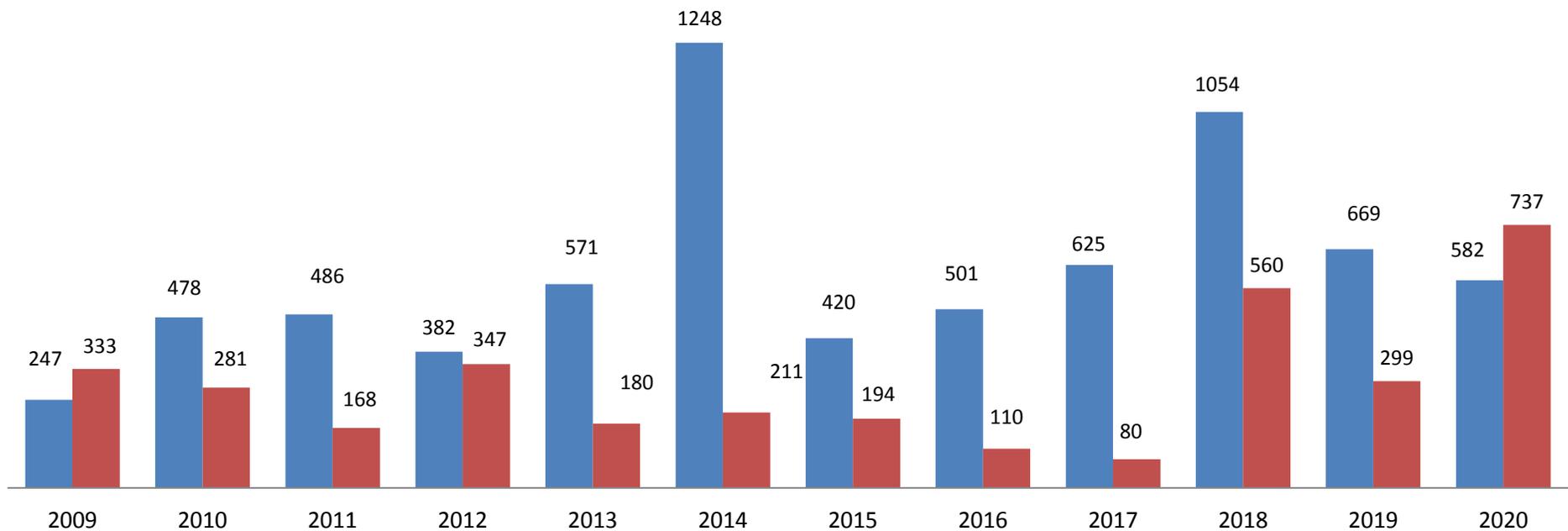
Out of the legitimate grounds for refusals, provided by the law, only those stipulated by Art. 37, Para. 1, Item 1 – the requested information is classified or other protected secret, are not subject to balance against the overriding public interest, as the balance of interest has been done by the legislator. The restriction provided by Art. 37, Para. 1, Item 3 of the APIA, is not subject to the public interest balance either, namely, “the requested information has been provided to the requestor during the previous 6 months,” which is a restriction which does not protect rights and interests. If we look at the data about the decisions to refuse access and the decisions after a balance of interests, as well as those subject to the overriding public interest assessment, i.e. third party’s interests, trade secret, preparatory documents (Art. 13, Para. 1. Item 1) and the negotiation process (Art. 13, Para. 1, Item 2), it remains unclear what interests were balanced in 2018 and 2019. In 2016 and 2017, we observed the reverse tendency, raising the issue of why the cases when balance of interests was made were so few. In 2020, 737 decisions issued after balancing protected interests were reported.



## Decisions of Refusals and Decisions Taken After Balancing Protected Interests/Rights and Overriding Public Interest

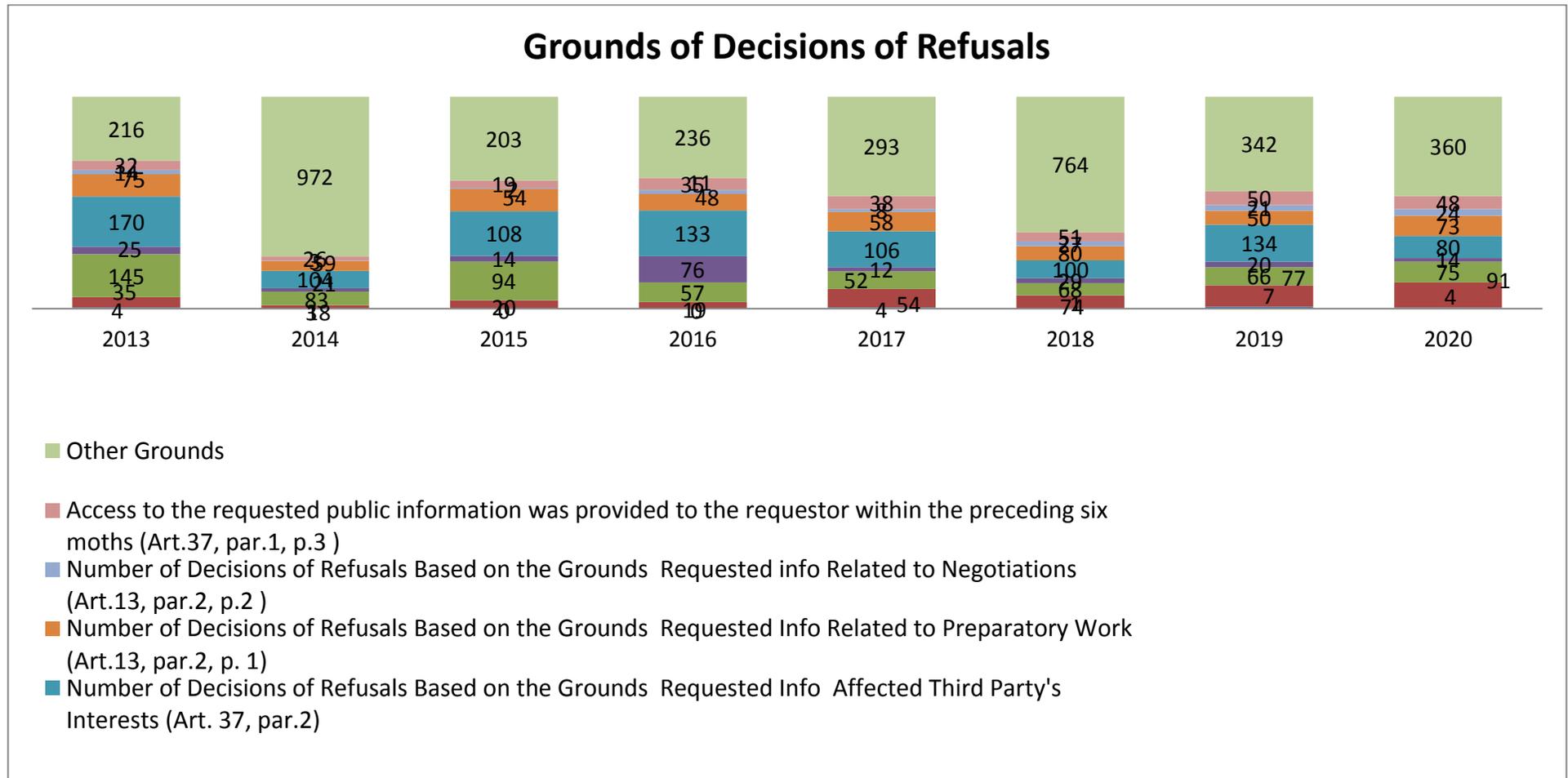
■ Number of Decisions to Refuse Requested Information

■ Number of Decisions Taken After a Procedure of Balance of Protected Interests/Rights and Overriding Public Interest



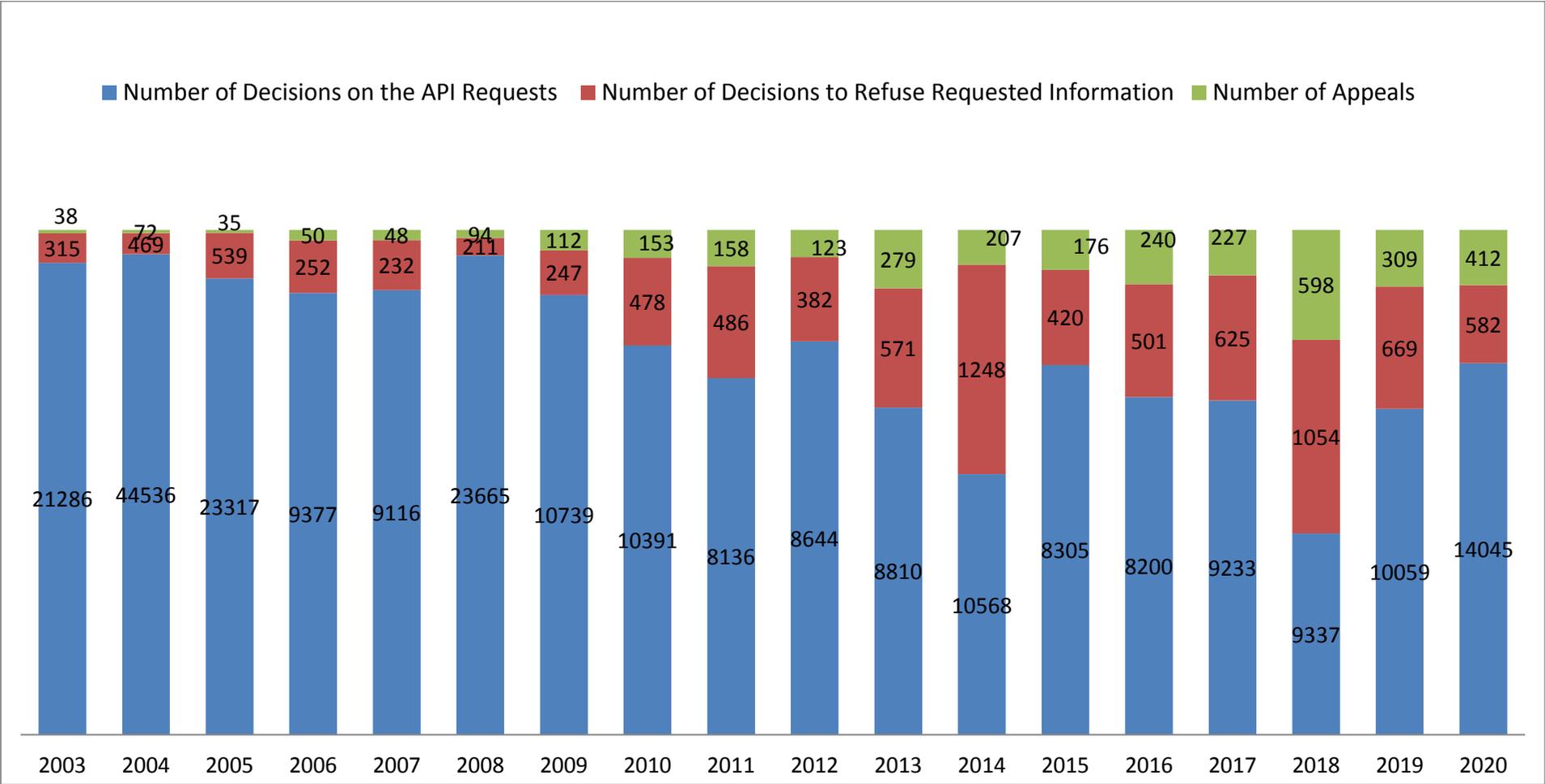
## Grounds for refusal

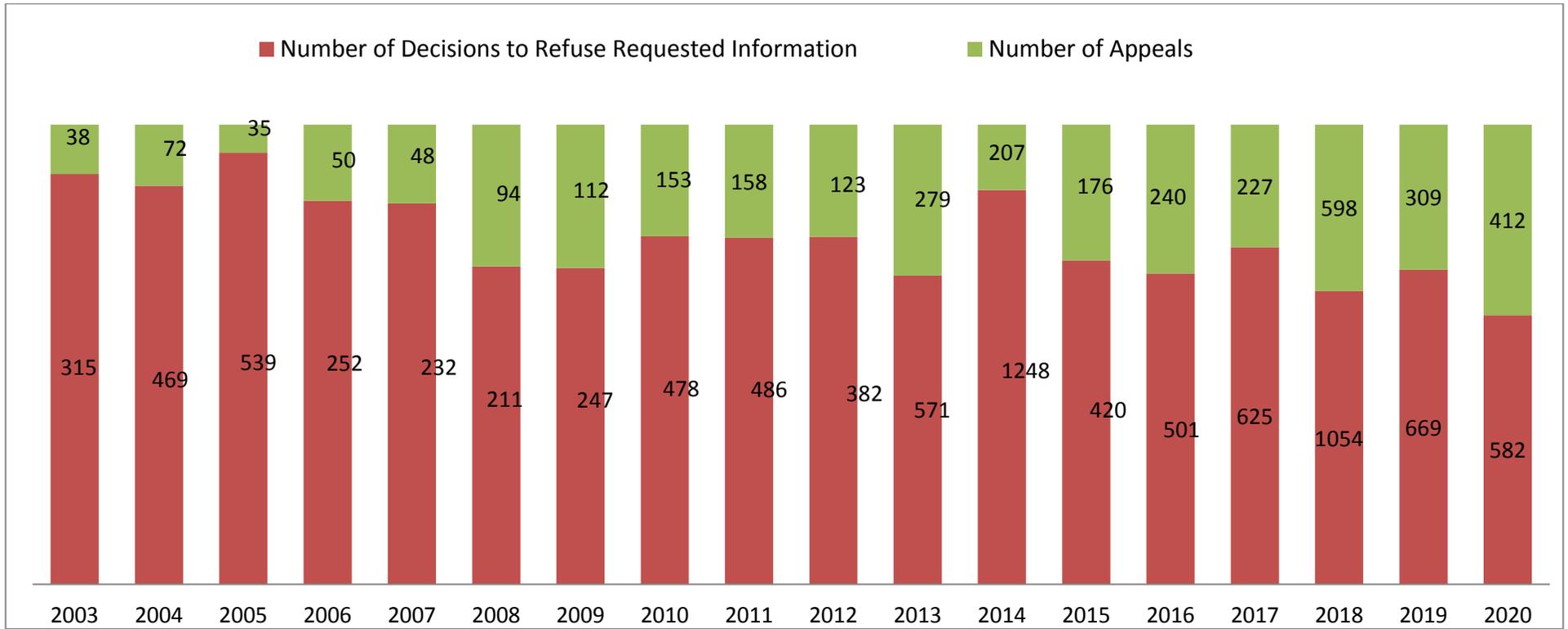
The most common grounds for refusal in 2020, as it is visible from the chart below, is the category “Other”, traditionally followed by “the information affects the interest of a third party which has explicitly refused disclosure...”, except in cases of overriding public interest (Art. 37, para. 1, Item 2). In the reports “The State of the Administration,” we used to find an explanation of what the category “Other” contains: absence of the requested information; the requested information is not public; the requested information is *official secret* under the meaning of §1, Item 24 of the Supplementary Provisions of the Customs Law; the request lacks the necessary requisites, etc.



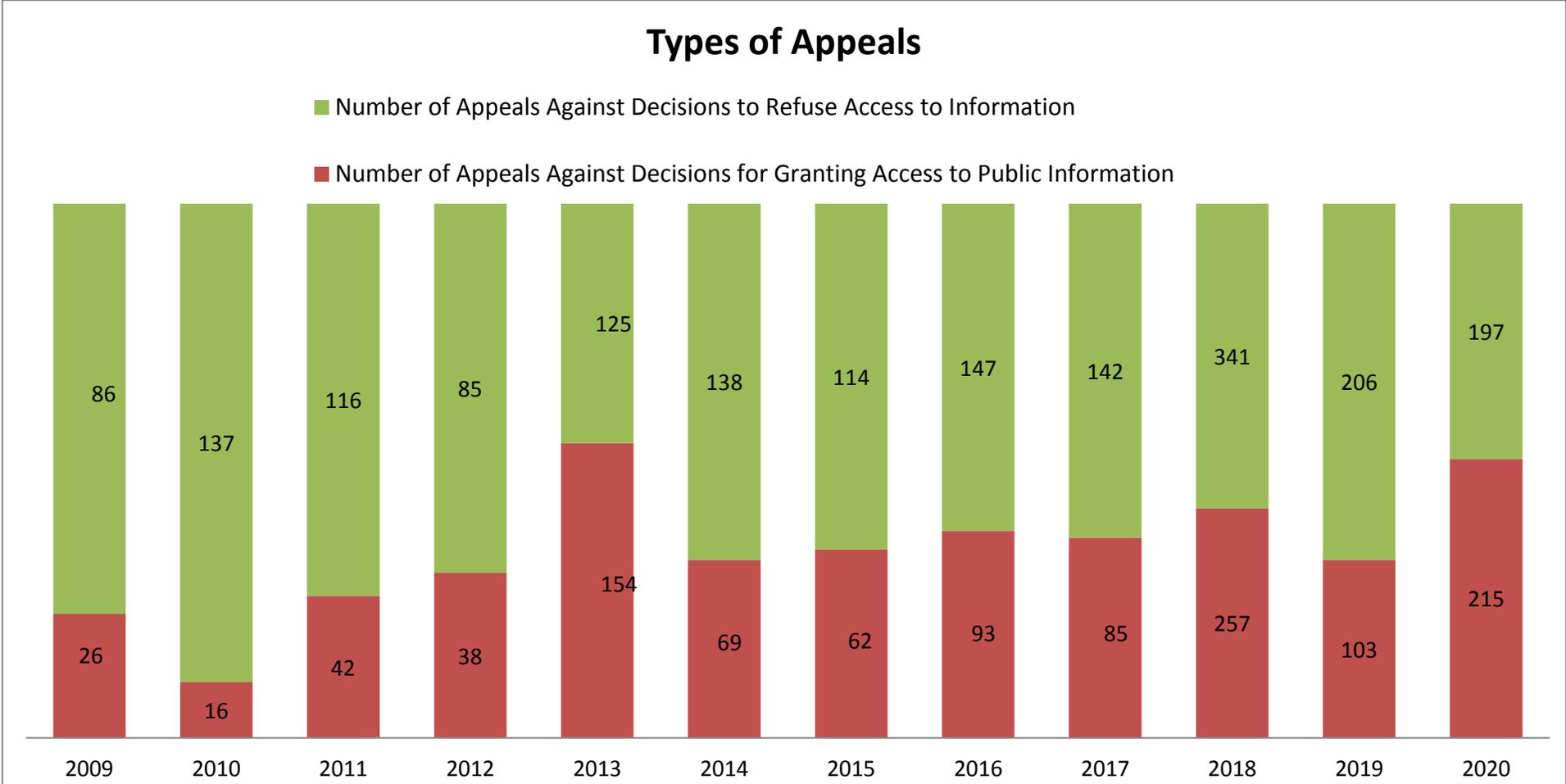
**Appealing decisions and refusals of access to information**

Pursuant to the provisions of the APIA, the requestors have the right to appeal the decisions or the refusals of access to public information before the administrative courts through the public body which have delivered the decision. The reports on the state of administration contain data on the appeals and the court decisions during the years.

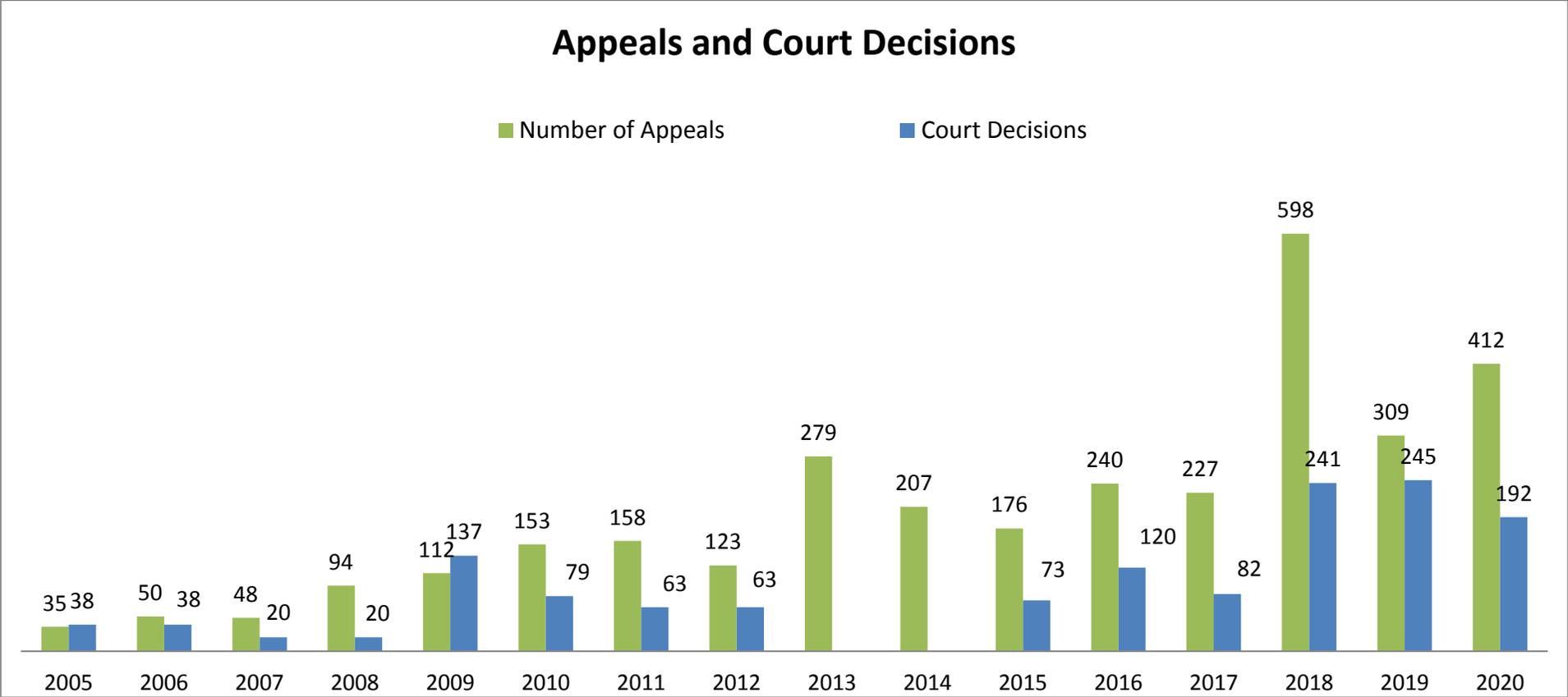




Types of appeals



Court decisions<sup>8</sup>



<sup>8</sup> The Government's reports for 2013 and 2014 lack data on court decisions on appeals under the APIA.

As it is apparent from the chart below summarizing the data from the Government’ reports, the highest number of court decisions is of those which repeal completely the decision of the public body which has delivered the decision granting or refusing access.

