The Current Situation of the Access to Public Information in Bulgaria

R E P O R T

Authors: Alexander Kashamov, Anton Andonov, Dr. Gergana Jouleva, Fanny Davidova

Editors: Konstantin Palikarsky, Valya Miteva

Translator: Vera Georgieva

Access to Information Programme

ISBN 954-9953-11-4

Table of contents:

Introduction

The Access to Information Programme Foundation is presenting its first Report on the status of access to information in Bulgaria. The goal of the report is to outline the developments in the right to information field and its exercising in connection to the most important event in this sphere which took place last year, i.e. the adoption of the Access to Public Information Act.

This Report covers also the time prior to the adoption of the law when citizens, journalists and NGOs exercised their right to information in accordance with the provisions of Art. 41 of the Constitution and the existing legal regulations. We have included that period not only to outline the context, but also because of our conviction that it is very important for the adoption of the law itself and the preparations for its enforcement. We believe that legal norms are translated into life only in the course of their application and that their successful enforcement depends on all parties concerned: citizens, legal entities and public administration.

The Access to Information Act ushered a new stage in the exercise of the right to information at least for the simple reason that it provides for judicial review.

We tried to describe the current condition of the right to access information by applying our experience in drawing up the Concept Paper on Access to Information Legislation in Bulgaria and by using the outcomes of our participation in the public debate on the access to public information bill[1].

As to the summary of the practices related to the exercising of the right to information, the AIP used the cases, which have been brought to us for legal consultation since 1997. These cases are presented systematically in a special database. Although they are not exhaustive, they are quite representative of the way in which the right of access to information is exercised. People refer to us cases of refusal to provide information when they understand that their right has been violated and they are prepared to seek remedy. A special section is dedicated to the litigation in which the AIP provided legal assistance since the adoption of APIA.

The study is based on the findings of various surveys we have conducted for the last few years, such as *Fundamental Principles and Concepts of a Future Law on the Access to Information – Survey of the Opinion of Lawyers and Journalists* (1998)[2], *Public Registers Situation* (1999)[3], and *Fulfilment of the Obligations under APIA by the Bodies of the Executive Power – a Pilot Survey*[4].

Special importance is attached to the training and discussions held over the years with various groups – public administration, journalists, NGOs, lawyers – on the standards of the right to information, the bill and the Act. These

---

[1] See www.aip-bg.org/socia_bg.htm for the public debate on the access to public information bill in Bulgaria.

[2] See *Access to Information – Survey Research Report within the Framework of the Project on the Development of a Concept of an Access to Information Law*, AIP and ASA, July – September 1998, www.aip-br.org.

[3] See *Public Registers Situation (Survey Research Report)*, Sofia, February 2000, www.aip-bg.org.

[4] See the Schedules to this Report on the findings of the survey.

meetings, held all over the country helped us learn the practices of seeking and providing information in various public institutions.

The support to the effective application of the Access to Public Information Act is and will continue to be the goal AIP will pursue in the next years to come.

Although only implied in the Act, the purpose of this legislation is to create the general rules for government transparency and opportunities for informed participation of citizens through access to information, held by central government authorities, local governments and other public institutions. Part of this information relates to the everyday life of the citizens – their health, the environment, or the public order in their communities. Citizens need timely access to this information either through the media or on individual basis to make their day-to-day choices. In this sense, information is a utility, a precondition for human action. When central or local government authorities impede the access to the information they hold, they actually hamper human activities and make them more costly. When information is kept for internal use only, the public administration arouses justified suspicion that the ultimate goal is to manipulate human actions. When they disclose the information collected and held (including information about their own intentions), central and local government bodies reduce their operational costs and offer additional opportunities for choice, freedom and responsibility of the citizens. The laws on the access to information aims at actively informing the general public and ensuring free access to information.

The disclosure of the information public authorities have collected, are collecting or will collect is only one aspect of its use. There should also exist somebody seeking this information in order to match it with already familiar facts and to utilise it.

The countries that are currently in the process of drafting legislation setting the rules of democratic societies (including the freedom of information laws) suffer of natural or artificial scarcity of information for citizens. The natural scarcity of information relates to the fact that information is missing, is scattered or belongs to someone else. The artificial scarcity relates to “the culture of secrecy”, or the use of information for private purposes. Insofar as the government collects information from the citizenry in the name of the common good, this information does not belong to the government. The government is only the projection of the sovereign power of the people or the voters who need information in order to shape their opinion and make an informed choice.

Often we fail to overcome in a reasonable and definitive manner our respect for the “secrecy”. We tend to believe that there is no sense of filing applications, follow procedures or seek remedy in courts.

Bulgaria is no exception to the other transition countries in Central and Eastern Europe in terms of its track record in adopting freedom of information laws.

The old regime was all too secretive with regard to secrets themselves and the access to them. Researchers could get access to documents and records only to a certain level and with a special authorization.

The list of the categories of information, protected as state secrets was published only after the changes of 1989. We gradually learned about the manner and procedures of classifying information.

In 1998, the Access to Information Programme (AIP) conducted a survey to examine the attitudes of lawyers and journalists to the fundamental legal principles underlying the freedom of information. The findings revealed that even those expert groups believed that legitimate interest should exist when seeking information. There is similar wording of the provisions of Art. 41, para 2 of the Constitution. The cases that the AIP was receiving in the last four years now come to show that it will take long time to overcome these attitudes among both the public administration and the public at large.

The right of the citizens to information has been enshrined for the first time in the new Constitution (July 1991).

In the initial phase of the changes, citizens' groups and movements were most interested in the free access to environmental information.. Citizens were not informed about the dangerous effects in the wake of the Chernobyl disaster. The 1991 Environmental Protection Act included a special chapter on the access to information. That was definitely a step on the right track. The law introduced the principle of access to information without the need for justifying special legitimate interest. It also provided for judicial review in the cases of refusal to disclose information.

In 1992, a group of legal experts started drafting the first Access to Information bill. The initiative did not develop any further beyond the working group level. No programme existed to adopt this kind of legislation - to set the rules and procedures for disclosure of documents on the operations of the government apparatus and the secret services of the old regime. There was no strong public pressure either.

The Access to Documentary Information of the Former State Security Service Act has a long history that was finalised this year. The Archives Bill, although pending in the legislative programme of several parliaments, has not been passed yet.

The Constitutional Court issued a series of rulings referring to Art. 41 of the Constitution of the Republic of Bulgaria but mainly in conjunction with other "information rights", e.g. the freedom of speech and the freedom of expression.

It was not until 1996 that the provisions of Art. 41 were given detailed interpretation in a Constitutional Court ruling. But here again Bulgaria is not unique. In most countries, the common provisions on the citizens' right to information are associated with the enactment of new legislation on the freedom of mass media or telecommunications laws.

Only afterwards the need arises to regulate the right of each individual citizen to access public information. Thus in Bulgaria the historical development of this right is reproduced within short time limits.

The Programme of the ADF (Allied Democratic Forces) Government (1997 – 2001) regarded the Access to Public Information Act as an administrative reform process law.

The Access to Information Programme (AIP), a unique organisation in Central and Eastern Europe, was established in 1996.

The AIP maintained the public debate on the importance of the freedom of information ever since its foundation.

The AIP has always based its activities, comments and reviews of the existing laws, on specific actual cases. This makes the debate more detailed; existing legal regulations are put into a system for seeking information and continuous training in these legal standards is facilitated.

The systematic presentation of the existing legislation and the comparative studies of the laws of other countries contributed to the development of the Concept Paper on Access to Information Legislation in Bulgaria. The several public discussions of the concept paper brought the specific features of this legislation and its application to the knowledge of the general public. Thus the AIP carried out extensive advocacy campaign to promote the access to information legislation in Bulgaria, participating in each stage of the legislative process.

Therefore our Report starts with recommendations to the institutions envisioned in APIA.

Recommendations

1. Legislation

1.1. To adopt legislation regulating the access to bills prior to their approval by the Council of Ministers

The recent practices of involving interest groups and organisations in the discussion of bills should continue and build on regulatory basis. The public debate on various bills produces at least two positive effects. Firstly, the general public becomes aware of the future legal norms; and, secondly, the opinion of wider sections of the population is taken into account, which contributes to the future more successful application of the respective law.

1.2. To adopt the Personal Data Protection Act

The 38th National Assembly has passed the personal data protection bill at first reading. It is very important for the PDPA to be adopted with a view to the successful application of APIA by using the same definition of the term “personal data” in both the PDPA and APIA. Proper funding of the enforcement process should be provided.

1.3. To adopt the Classified Information Act

The bill on the protection of information classified as state or official (service) secret has been submitted for approval to the Council of Ministers. The submission of this bill to the next National Assembly and its adoption are very important for the successful application of APIA. Proper funding of the enforcement process should be provided.

1.4. To adopt the Archives Act

The idea of adopting a law on archives (the State Archives Office) stood on the agenda of several successive convocations of the National Assembly. The adoption of such legislation is important for the harmonisation with the standards of modern democracies. It is important for these standards to be taken into consideration in the sphere of the access to information and the restrictions of this right by law, although the information kept with the State Archives Office of the Republic of Bulgaria is excluded from the scope of application of APIA. A public debate should be conducted on the bill in

accordance with recent practices. The suggestions raised in the course of the public debate should be taken into account in the finalisation of the provisions of this law.

2. To facilitate the Application of the Law

2.1. To establish administrative structures to facilitate the citizens' access to public information – reading rooms, authorised officials to collect and examine applications

2.2. To set up public registers of all documents kept and generated by central and local government authorities, including those holding information classified as state or official secret. These registers should feature at least the name/number of the document, its classification (if any), its date and the generating authority

2.3. To set the internal official documents (internal rules, orders, etc.) in compliance with the requirements of APIA

The successful application of APIA largely depends on the compliance of the norms regulating the day-to-day communication between citizens and the administration with the principles and standards underlying this legislation. Therefore the internal rules of public institutions should be reviewed in the light of APIA and the fundamental principle of openness and transparency in the operations of the public administration.

2.4. To train the public administration in the implementation of the law, i.e. strengthening of the administrative capacity

The experience of the AIP in the explanations of APIA comes to show that the public administration takes keen interest in training when the laws introduce new obligations of civil servants. The AIP and other non-governmental organisations can provide effective assistance and services to central and local government bodies in the training related to APIA.

2.5. To develop and disseminate information materials explaining the right to information and the procedures prescribed by the law

In 2000, after the adoption of APIA, the AIP prepared two handbooks outlining the specific steps to be undertaken in the exercise of the rights and the fulfilment of the obligations envisioned in APIA for the various parties involved in the process. As more practical experience is gained, these handbooks should be updated and published again. This is a sphere in which non-governmental organisations and the public institutions envisioned in APIA can co-operate successfully.

2.6. To provide proper financing to the public bodies envisioned in APIA for the fulfilment of their obligations

Financial resources are needed for the successful practical implementation of the Access to Public Information Act and especially the fulfilment of the obligations of the bodies envisioned in APIA. The planning and allocation of these resources should be included in the adoption of the budgets of the individual institutions and the consolidated state budget.

Legislation

Comparative Analysis of the Bulgarian Law

The citizens' right to access information from public institutions is a fundamental right, which is part and parcel of the freedom of expression and the freedom of information.

To the freedom of expression and the right to seek, obtain and disseminate information responds the obligation of the government to refrain from actions inhibiting them[5]. To ensure the right to access information held by public institutions, the Government is obliged to provide information upon request, while observing the terms and conditions set out in the law. This right is enshrined in internal legal instruments and also in the national legislation of individual countries.

International Legal Instruments

A number of international legal instruments to which Bulgaria is a party provide for the obligation to protect the right of access to information. Article 19 of **the Universal Declaration of Human Rights** reads that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". This right is envisaged also in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child of 1989. The same spirit prevails in the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the practice of the European Court on Human Rights. It is important to mention in this connection Recommendation R (81) 19 of the Committee of Ministers of the Council of Europe dated 25 November 1981 regulating the principles that underpin the right of access to information.

"Freedom of Information" and "Right of Access to Information"[6]

At its first session held in 1946, the United Nations' General Assembly unanimously adopted a Resolution on the freedom of information[7], which reads "freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated". Various international documents define the term "freedom of information" in a broader or narrower sense. The definition ranges from the broad meaning of the freedom of expression and the freedom of information in general[8], through the freedom to seek, receive and impart information[9] to the more specific meaning of the freedom to seek and receive information[10]. The narrowest definition of the term "freedom of information" states that it is the right of each

---

[5] Therefore many countries, especially more developed countries in political and economic terms, have no law on the press. Its absence is unanimously assessed as willingness of the state not to interfere in the freedom of expression and the freedom of information and hence as a democratic achievement.

[6] See Council of Europe, Consultant Study o the Access to Official Information by Ton Beers, Strasbourg, 1996.

[7] Resolution 59 (I).

[8] Chapter 4, 1947 Report of the Subcommission on Freedom of Information and the Press at the United Nations, addressed to the Commission of Human Rights.

[9] Article 19 of the International Covenant on Civil and Political Rights.

[10] Article 5 of the Basic German Law (Grundgesetz), Article 1, para 2 of Chapter Two of the Document of the Government of Sweden (Regeringsform).

individual to inspect or copy documents held by government bodies[11]. The Bulgarian lawmakers chose the term "right of access to information"[12].

Comparative Analysis

A number of European countries (Austria, Belgium, Estonia, Finland, Hungary, the Netherlands, Portugal, Romania, Spain, Sweden) have constitutional provisions similar to those set out in Article 41, para 2 of the Bulgarian Constitution.

Although rather new to the Bulgarian legal tradition, the Access to Public Information Act is not alien to the legal systems of other countries. Similar legislation exists in almost all EU Member States, some countries in Central and Eastern Europe[13], the United States, Canada, Australia, New Zealand, etc. These issues are regulated either in a special law on the freedom of/access to information or in the general legislation governing the obligations of the public administration and administrative procedures[14].

Although the right of access to government documents was regulated for the first time in Sweden in 1766, the U.S. Congress passed the first law on the freedom of information in 1966. It provides for the transparency of the government as a precondition for a democratic society.

As far as the scope is concerned, the Bulgarian law regulates only the right of access to information. The Hungarian or the Canadian federal law have broader scope because they regulate also the right of personal data protection, including the right of every person to his or her own personal data held by public institutions and private companies[15]. This approach can be assessed as more modern since it reaches the maximum level of synchronisation of these closely related legal issues[16]. The scope of APIA excludes also the access to information held in the State Archives Office, similar to the approach of the French or Australian legislation.

The traditional wording used in this type of legislation is "access to documents or records"[17]. The Bulgarian law uses the words "access to information" irrespective of its carrier (Article 2, para 2), which is quite a felicitous choice because it is the information rather than its carrier that will be free or restricted. Hence the law says that in the cases of partial access, where the same carrier (document or another record) contains both free and restricted information, access should be provided to the former (Article 7, para 2; Article 31, para 4; Article 37, para 2).

The generally accessible information is typically defined as "administrative/government documents" or "documents generated or kept by public institutions". APIA uses the term "public information", introducing two criteria to define it, which is quite unusual for the legislation of other countries. The Bulgarian law does not narrow the scope of the accessible information by

---

[11] The term is used with this meaning in the legislation of the United States, Australia and other countries. See also Partick Birkinshaw, *Freedom of Information. The Law, the Practice and the Ideal*, London, 1988.

[12] The full name of the Bulgarian law is Access to Public Information Act.

[13] Albania, the Czech Republic, Hungary, Latvia, Moldova, Slovakia.

[14] For example, in Belgium, Spain and others.

[15] APIA explicitly excludes personal data from its scope (Article 2, para 3).

[16] The regulation of each right in a special piece of legislation creates the risk of terminological or legal discrepancies. A relevant example is the use of the different terms "personal information" (APIA) and "personal data"(personal data protection bill) to denote the same thing.

[17] Belgium, Denmark, France, Ireland, etc.

specifying categories of information, bodies or activities that are absolutely exempted from the right to access[18].

APIA provides for the right of access to information to all Bulgarian and foreign legal entities and natural persons, which is the broadest possible scope in this type of legislation.

The approach to the bodies obliged to disclose information varies from country to country. Still, all countries accept the standard of including the bodies of the executive power into the list of those obliged to disclose information[19]. Different traditions offer different solutions to the issue whether the law should encompass both the central and the local administration or to have the obligations of the latter specified in separate laws[20]. The national legislation of some countries envisions only the bodies of the executive power and the judicial administration[21]. The modern approach is to encompass all the three Powers in the State, as well as functional units in which justified public interest is displayed with a view to the monitoring of public spending[22]. APIA builds on the same approach, obligating public law subjects other than government bodies and individuals and legal entities financed from the consolidated state budget to disclose information (Article 3, para 2, subparas 1 and 2). As to the obligation of the media to disclose information under APIA, it has no analogue in any foreign legislation[23].

The approach to the restrictions of the right of access to information is to treat them as exceptions to the rule and hence to subject them to close interpretation. As is seen in Article 7, para 1 of APIA, its approach is the same, introducing the principle of maximum disclosure and openness. This principle is specified in the obligation to provide partial access, to give reasons for any refusal to disclose information, and to ensure judicial review of the process of classifying information.

Another common approach is to give an exhaustive list of the interests, the protection of which may allow restriction of the right of access to information. These interests are enumerated in Article 5 of APIA[24]. However, the reasons for refusal under Article 37, para 1 of APIA include state secrets or other secrets protected by law, third parties' interests and the cases under Article

---

[18] The Danish law, for example, excludes the minutes taken at meetings of collective bodies, the letters exchanged between ministries in connection with the legislative process and other documents or records from the scope of the access to information. The Australian law enumerates the institutions which are totally exempted from the obligation to provide access to information in a list attached to the Freedom of Information Act.

[19] See Recommendation R(81) 19 of the Council of Europe.

[20] An important distinction is whether the country has a federal system of government in which the obligations of the executive branch at the federal level are regulated in the federal law, while those at the state level are tackled in the state legislation (the United States, Australia, Canada).

[21] For example, the Australian federal law on the freedom of information.

[22] Such units are state-owned companies working in some specific spheres, companies with dominant position, companies involved in public procurement or privatised monopolies in the utilities, etc. These are the legislative solutions of Denmark, Australia or the United Kingdom. The Slovak law includes the legal entities established in pursuance of special laws and those established by central or local government bodies, as well as legal entities established by other entities envisioned in the law, which operate with public resources or are state-owned or municipal.

[23] The Moldova bill on the access to information provided for such obligation of the media but the law was passed without such provision in 2000.

[24] The list is fully identical with the enumeration in Article 41, para 2, the second sentence of the Constitution.

13, para 3 of APIA. The law fails to clarify the relationship between protected rights and interests on one hand and the reasons for refusal on the other[25].

The conventional legislative approach is to provide for two types of obligation to disclose information, i.e. at the initiative of the body obliged to disclose information under the law and at the initiative of the citizen or legal entity seeking information. Another common feature is the principle not to require justification of legitimate interest or evidence thereof from the person seeking information[26]. These standards are observed in APIA.

Very important for the procedure of disclosing information upon request are the form of the application, the time limits and the costs. In accordance with APIA, the information may be requested in written or verbal form, which conforms to the modern legislative approach[27]. The time limit for the government body to issue a decision is 14 days – minimum duration compared to the time limits provided by other laws. With regard to the payment for access, the law introduces the generally recognised principle that the access is free of charge (Article 20, para 1). The only costs to be covered are the material costs, (Article 20, para 2) which may not exceed the rates set out by the Minister of Finance[28].

Related Legislation

Constitutional Regulation in Bulgaria

The Constitution of the Republic of Bulgaria (*promulgated in The State Gazette, No. 56 of 13 July 1991; effective date 13 July 1991*).

In Article 41, the Bulgarian Constitution regulates the right of freedom of information, while specifying the limits of this right. Article 41, para 2 regulates the right of access to information. It is a right granted to all citizens and it is also general in the sense that it covers all the information held by all bodies, except for the information explicitly restricted by law. The constitutional provisions show that the constitutional lawmakers safeguarded the right to information and also protected the rights and reputation of other citizens, as well as national security, public order, public health and morals.

The Constitutional Court issued a number of interpretations of these constitutional provisions, among which special importance is attached to Judgement No. 7/1996 of the Constitutional Court.

The Constitutional Court stated that the obligation of the government to regulate the access to information is directly derived from the constitutional provisions. This obligation may be graded by differentiating the obligation of government bodies to publish official information ("active transparency") from

---

[25] The workshop organised by the AIP in February 2001 with the participation of representatives of the legal profession (judges, prosecutors, legal counsels, academics and practising lawyers) revealed that there was no unanimous opinion on this issue.

[26] This principle is included in Recommendation R (81) 19 of the Council of Europe. Any converse regulation gives grounds to believe that the respective country lacks legislation on the general right of every citizen to any information. This is the case with Italy, where the right of access is not regulated in a special law or in a law governing the public administration and administrative procedures. It is regulated by specific norms that govern the administrative activities of individual branches of government. At the same time, the person seeking information is required to justify his or her interest.

[27] This is also the approach of the Slovak law.

[28] These costs are specified in Order No. 10/2001 of the Minister of Finance. In the context of the above principle, the rate of payment for consultation given in writing or orally sounds rather dubious.

the obligation to ensure access to sources of information ("passive transparency").

The other rulings of the Constitutional Court relate to the freedom of expression.

At present, several laws regulate the access to information in Bulgaria. First and foremost, there is the Access to Public Information Act, enacted in July 2000.

Bulgaria has also special laws regulating the access to information. The international treaties to which Bulgaria is a party in accordance with Article 5, para 4 of the Constitution are also directly applicable..

Secondary Legislation Related to APIA:

Order No. B-36 of the Prime Minister and Minister of Public Administration Dated 29 December 2000

The Prime Minister and Minister of Public Administration addressed this Order to the Director of the Information and Public Relations Department. According to the Order the Director shall decide whether or not to grant access to public information, sought from the administration of the Council of Ministers. The Director shall also advise the applicant in writing within the time limits prescribed by law.

Order No. 10 of the Minister of Finance dated 10 January 2001 on the fees under the Access to Public Information Act, depending on the type of carrier (*promulgated in The State Gazette, No. 7 of 23 January 2001*).

The Order specifies the costs to be paid by citizens when they receive information. The payment covers only the costs of copying or printing the documents, i.e. "the costs of materials" used in the disclosure of information. Therefore the requirement to charge BGN 1.50 per 15 minutes of verbal communication with the administration sounds rather perplexing.

Special Laws Regulating the Right of Access to Information

1. **The Environmental Protection Act** (*promulgated in The State Gazette, No. 86 of 18 October 1991; emended, No. 90 of 1 November 1991; latest amendment, No. 26 of 20 March 2001)*

The EPA is the first law enacted in the wake of the democratic changes in Bulgaria which gives explicit regulation of the access to certain categories of data. This can be seen in Chapter Two, Information on the Condition of the Environment. It was for the first time that a law regulated the right of access of all persons to environmental information, the active obligation of government bodies to disclose information and the opportunities for administrative and judicial appeal of any refusal to disclose environmental information.

2. **The Access to Documentary Information of the Former State Security and the Former Intelligence Service of the General Staff Act** (*amendment to the tile, The State Gazette, No. 24 of 2001; promulgated in The State Gazette, No. 63 of 6 August 1997; Judgement No. 10 dated 22 September 1997 of the Constitutional Court, No. 89 of 7 October 1997; latest amendment, No. 13 March 2001*)

This law regulates the access to, disclosure and use of information held in the documents of the former security services, including their legal predecessors or successors over the period from 9 September 1944 to 25 February 1991.

The existence of this law is an important fact for several reasons:

It is the first of its kind to provide access of Bulgarian citizens to the information gathered about them by the former state security services.

The legislature has defined the range of persons to be considered public figures due to the positions they occupy. It is with respect to them and also to applicants for these positions that it must be verified whether they belonged to the former state security services or not.

The amendments adopted in 2001 introduce some new obligations and clarify a number of important procedures.

The permanent report on the application of this law will be published on the Internet.

3. **The Information about Non-performing Debts Act** (*promulgated in The State Gazette, No. 95 of 21 October 1997*)

The law was passed because of the great number of non-performing loans extended by commercial banks in 1992/95, leading to the bankruptcy of many banks. The law does not provide for public access to the lists of banks' debtors. Lists are published in a special bulletin of the Bulgarian National Bank with respected access. The special bulletin is sent to the General Prosecutor's Office, the Ministry of the Interior, the tax administration, the customs authorities and the National Assembly.

There are special provisions of the law to state that the information of the General Prosecutor does not constitute a case of official secret.

However, there exists no legal procedure for citizens or journalists to request access to such information.

4. **The Public Register of the Property of Senior Government Officials Act** (*promulgated in The State Gazette, No. 38 of 9 May 2000*)

This law regulates the procedure applied to senior government officials for declaring their property upon taking their position and after leaving it. A general register of the property of senior government officials has been established and kept by the Chairperson of the National Accounts Office.

The access to the information contained in this register (called "public" only formally) is limited to the bodies authorised to receive information under other laws, the heads of the institutions where incumbents hold a position, and the mass media through their management.

Laws Related to the Administrative Reform Process

The Public Administration Act (*promulgated in The State Gazette, No. 130 of 5 November 1998; effective date 6 December 1998; Judgement No. 2 of the Constitutional Court of the Republic of Bulgaria dated 21 January 1999, No. 8 of 29 January 1999; latest amendment, No. 81 of 6 October 2000, effective date 1 January 2001*)

This law regulates the structure of the public administration, the underlying principles of its organisation and operations, the administrative positions and the powers of the bodies of the executive.

A general obligation of the public administration is to be guided by the principles of the rule of law, openness and accessibility and to provide information to individual citizens, legal entities and government bodies.

The Civil Servants Act *(promulgated in The State Gazette, No. 67 of 27 July 1999; effective date 28 August 1999; amended, No. 1 of 4 January 2000; amended, No. 25 of 16 March 2001, effective date 1 September 2000)*

Although this law does not contain any provisions governing the disclosure of information by civil servants, Article 25 makes reference to the protection of "official secrets". Civil servants have the obligation to protect official secrets and refrain from disclosing facts and information which have become known to them in the course of or in connection with the discharge of their duties. The range of facts and information included in the term "official secret" and the procedures of operating with them are prescribed by law. These provisions were adopted after the President's suspensive veto.

The Code of Conduct of Civil Servants

It was adopted with an Ordinance of the Council of Ministers and approved in accordance with the provisions of Article 28 of the Civil Servants Act. It has been in force since the beginning of 2001. The Code of Conduct has not been promulgated in The State Gazette. It contains the rules of conduct for civil servants in the discharge of their duties.

The Code of Conduct introduces some restrictions on the disclosure of information by civil servants. Some of its provisions contravene provisions of the Public Administration Act and the Access to Public Information Act.

The Administrative Serving of Individuals and Legal Entities Act (*promulgated in The State Gazette, No. 95 of 2 November 1999*)

This law governs the organisation of administrative services provided to individuals and legal entities, as well as the procedures for provision of services and attack of refusals to provide administrative services, insofar as no special rules are laid down in other laws. This act covers a rather specific case of access of individuals and legal entities to information. It is the case of persons requesting access to documents on the basis of existing legitimate interest.

Secondary Legislation Related to the Administrative Reform Process

Regulations on the Terms and Conditions for Keeping the Register of Administrative Structures and Instruments Issued by Bodies of the Executive Power (*adopted with Ordinance No. 89 dated 26 May 2000 of the Council of Ministers; promulgated in The State Gazette, No. 44 of 30 May 2000*)

These regulations define the contents of the Register of administrative structures and instruments issued by bodies of the executive power, the terms and conditions for making entries and keeping the Register, as well as the access to the information therein. They contain data on all bodies of the executive power and administrative structures, as well as on the statutory and general administrative instruments and the individual (private) administrative instruments within the meaning of Article 2 of the Administrative Procedures Act. The Register is public and it is accessible on the Internet – www.government.bg/ras.

Legislation related to the Restrictions on the Freedom of Information

At present, there exist over 25 legal instruments regulating the official secret[29] and one regulating the state secret in Bulgaria.

List of Facts, Information and Objects Constituting State Secrets in the Republic of Bulgaria (*issued by the President of the National Assembly; promulgated in The State Gazette, No. 31 of 17 April 1990; amended, Nos. 90 of 6 November 1992, 99 of 8 December 1992, 108 of 10 December 1999 and 55 of 7 July 2000*)

The list is divided into categories of information related to various protected interests. At present, they are as follows:

- Information related to the national defence;
- Information related to foreign policy and internal security;
- Information of economic nature;
- Information related to aviation safety.

The Regulations on the Enforcement of the Ministry of the Interior Act set out the information classifying procedures and classifying agencies.

Legislation Regulating Official Secrets

The review of the existing legislation with respect to the official secret comes to show that the provisions are scattered in the legislation and the term meaning varies from one piece of legislation to another. There exist three approaches which law-makers have used in defining the object and scope of official secrets:

1. The term "official secret" is simply mentioned without introducing any clarity of its scope and meaning;
2. The specific legal instrument enumerates the facts and information constituting official secrets within its meaning;
3. The specific legal instrument empowers a competent authority to define the scope and meaning of official secrets.

Draft Legislation

The Personal Data Protection Bill

The enactment of this bill is a necessary stage in the process of regulating the freedom of information. It covers one of the restrictions on the access to information, i.e. the protection of personal data.

In July 2000, the Council of Ministers launched the public debate on the personal data protection bill. Having studied it in detail, the AIP team prepared its opinion.

On 18 September 2000, AIP held a working meeting and invited legal experts of the Foundation and representatives of government institutions operating with personal data to participate. There was in-depth discussion of the bill, pointing to its major weaknesses. As a result of the meeting, the opinion was supplemented and submitted to the Council of Ministers.

---

[29] For a detailed list of the instruments containing the term "official secret", see *How to Apply the Access to Public Information Act – Local Administration Handbook*, LGRF publication prepared by team of the AIP, January 2001.

A debate on the bill was organised on 25 and 26 September 2000. It was attended by international experts, NGO representatives and representatives of ministries and administrative structures. Access to Information Programme presented once again its considerations and comments.

At the end of 2000, the Council of Ministers submitted the final draft of the personal data protection bill to the National Assembly. Most of the comments and remarks made during the public debate had been accepted and reflected in the final version.

Currently, the second reading of the bill is pending at the National Assembly.

The Protection of Information Classified as State or Official Secret Bill

The bill was drafted by a working group at the National Security Service and submitted for discussion to the Council of Ministers on 9 April 2001.

The objectives are to provide integrated and consistent regulation of state and official secrets to give new definitions of the basic concepts, to identify the competent authorities and to specify their powers, to regulate the principles and procedures of protecting classified information in accordance with the standards of the NATO Member States.

This legislation is needed to complete the regulation of the right to information and its restrictions. It has to comply with the Access to Public Information Act and the personal data protection bill.

Prior to the submission of the draft to the Council of Ministers, the working group launched an initiative to conduct a discussion with the participation of AIP experts who presented their opinion at the working meeting.

Practices of Seeking and Disclosing Information

Cases Prior to the Adoption of APIA

From the beginning of the activities of AIP in 1997 to August 2000, 746 cases were referred to AIP, in which journalists (674), individual citizens (52), NGOs (10) and civil servants (8) believed that their right to seek, receive and impart information was violated.

The most typical reasons for the administration and the other institutions requested to provide information to refuse disclosure were as follows:

- **Refusals without any specific reasons cited**
- **Judgement of the civil servant**
- **Judgement or order of the head/supervisor/ higher-standing institution**
- **The information sought is not available with us.**

The most numerous group was that of **refusals without any** s**pecific reasons cited**, which was indicative of arbitrariness on part of the public administration and officials with regard to persons seeking information.

The second most typical reason for refusal to disclose information was **the judgement of the civil servant**. Judgements were accompanied by various explanations, e.g. making reference to non-existing legislation, fear of critical media coverage, negative attitude to the media or a particular medium, etc.

Quite similar were **the judgements of superiors**, although very often the reference to a higher-standing authority or to a mysterious order of the boss

disguised the unwillingness or fear of the respective civil servant to take responsibility and disclose the requested information.

The statement, **"This information is not available with us"** was a very common reason. During the first two years, the percentage of those explanations was steady (14 %). In 1999, it rose substantially to 19 % and became the most typical reason cited by government bodies. In 2000, its share diminished drastically.

The reference to this reason revealed the confusion of citizens and journalists who did not know where to seek the specific information and also the lack of clarity in the legal framework regulating the collection and storage of information by various government bodies. Those cases, as well as the survey conducted by the AIP and the Agency for Socio-economic Analyses on the practices of seeking information from public registers showed that often the public administration viewed the applicants as subordinates or petitioners rather than customers.

Another typical reason invoked in the refusals to disclose information was the reference to the lack of an obligation to disclose information or **the lack of a procedure**.

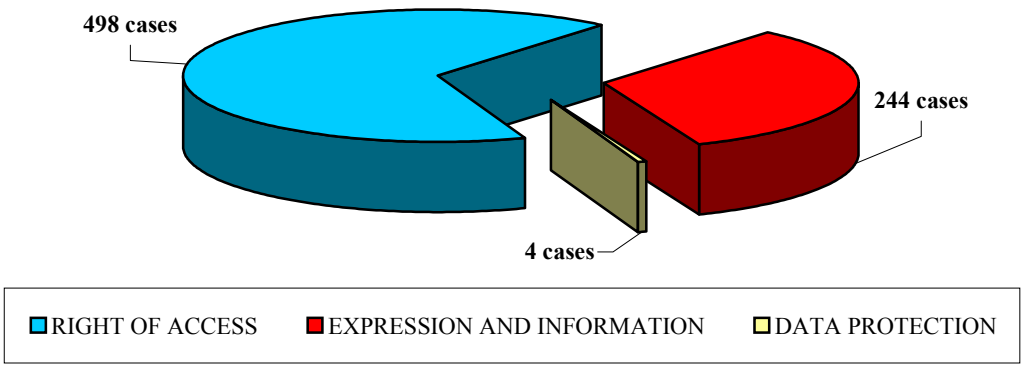
Many cases referred to AIP were actually cases of refusals to journalists seeking information from business companies that did not and would not have the obligation to disclose information. In their comments on such cases, our legal experts explained why business companies had no obligation to disclose information and usually referred the person seeking information to a competent government body, which could provide such information. There was substantial demand for information from state-owned monopolies or public service providers.

APIA will not solve this problem. Obviously, the rules of openness need continuous strengthening.

In the course of the public debate on the legislation concerning the freedom of information, institutions providing information and services to individual citizens gradually took shape and consolidated[30].

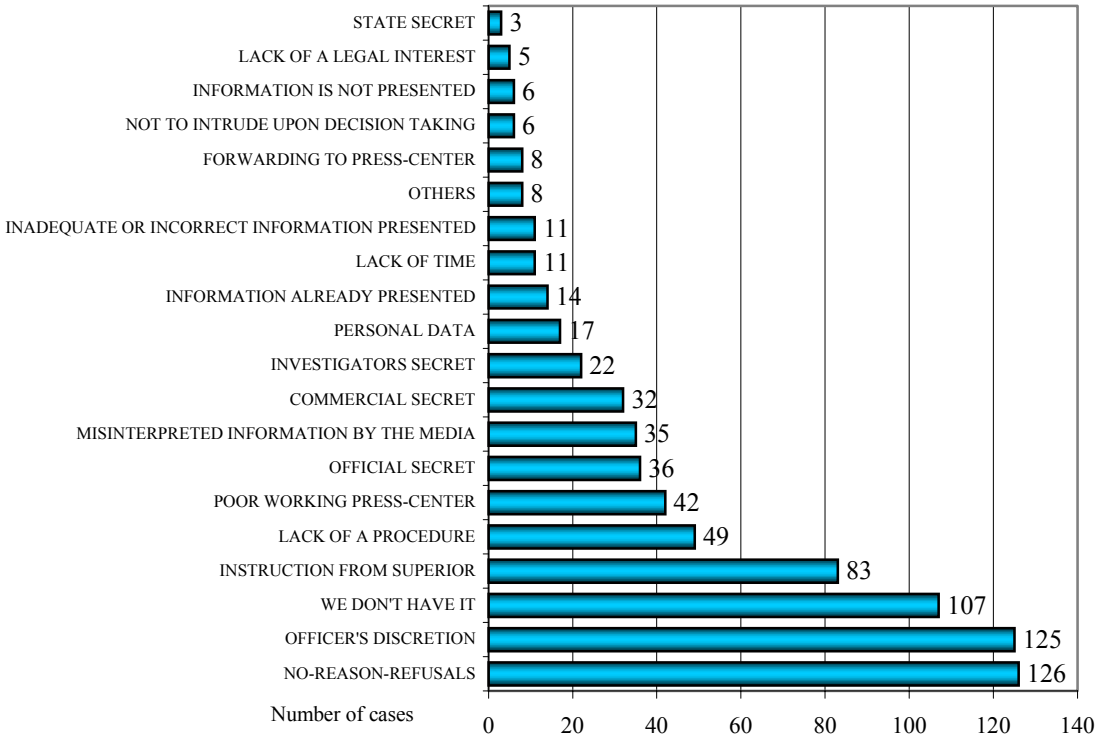
[30] A relevant example is the establishment of Information and Administrative Service Centres in a number of municipalities and the press and PR offices of central and local government authorities.

Legal Qualification - cases prior to the adoption of APIA

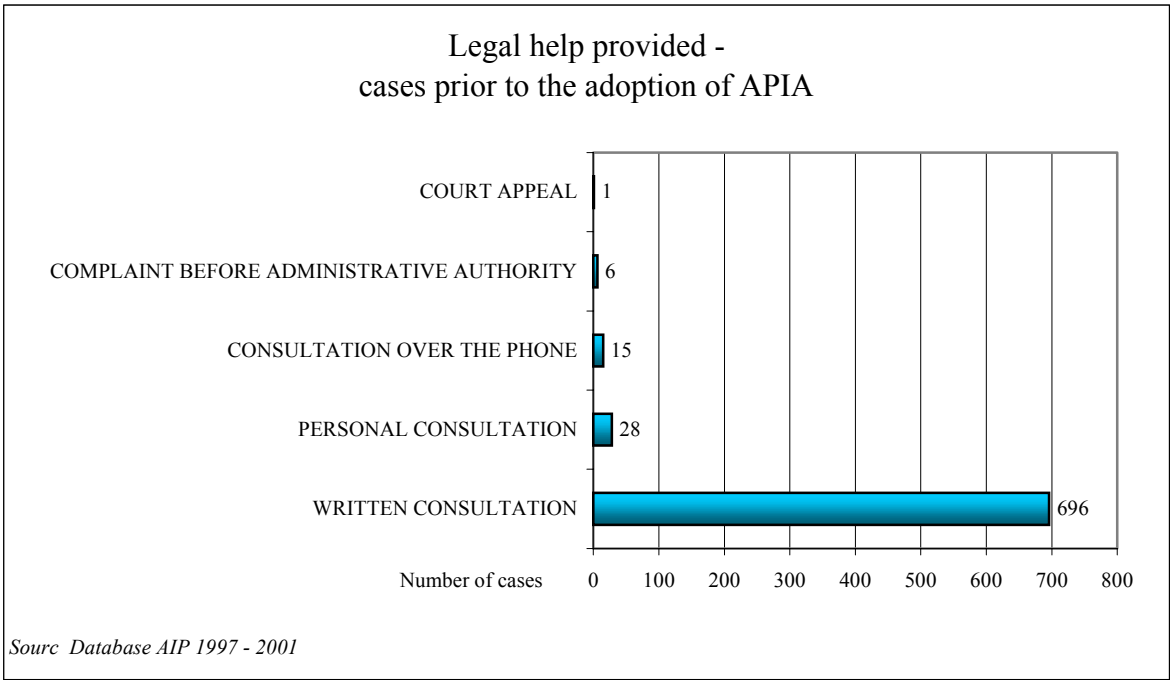


Source: Database AIP 1997 - 2001

Grounds for refusals of information - cases prior to the adoption of APIA



Source: Database AIP 1997 - 2001



Sourc Database AIP 1997 - 2001

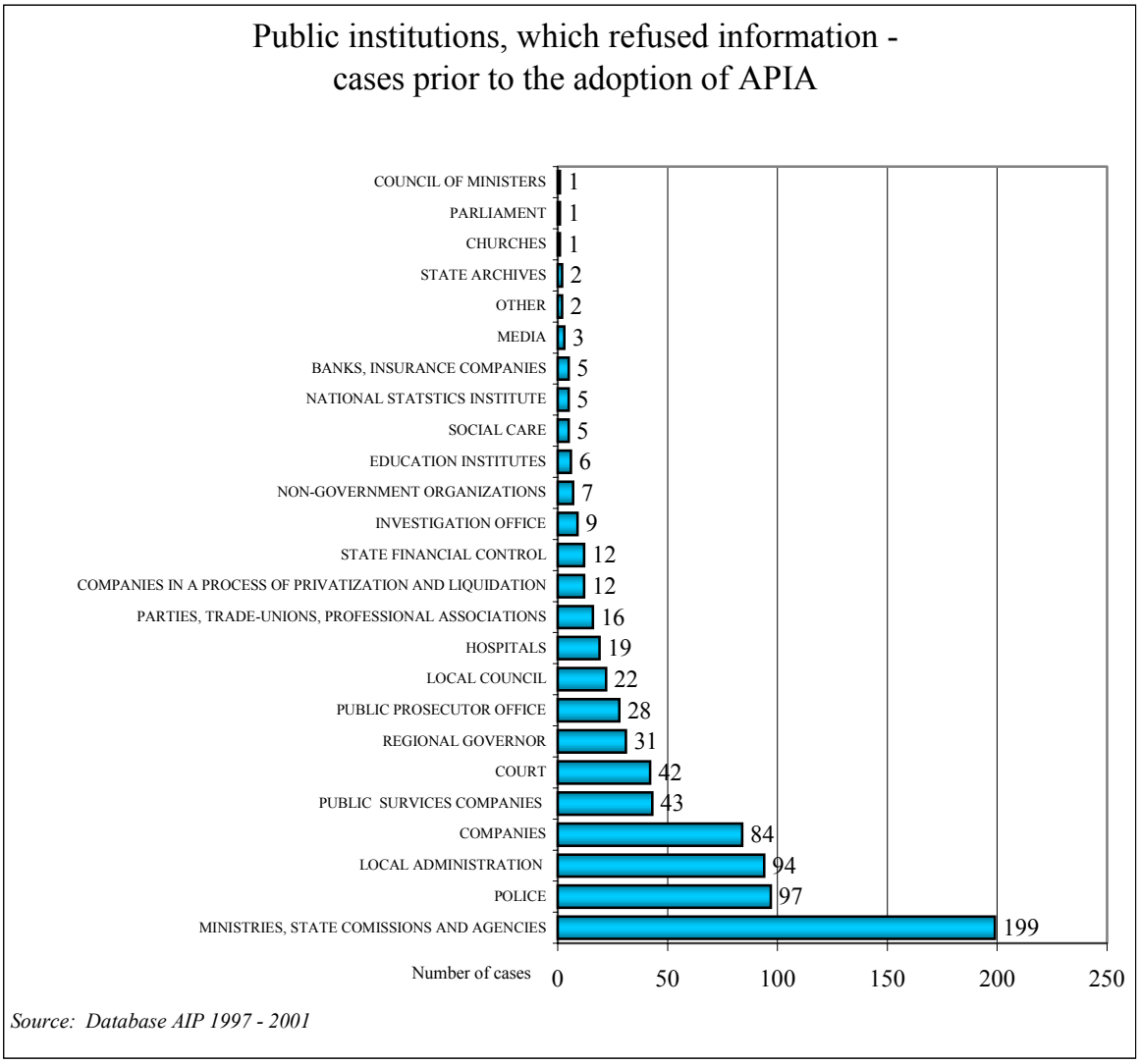
Court Practice Prior to the Adoption of APIA

As far as our information goes, even prior to the adoption of APIA, the Courts heard at least six cases of refusals by various institutions to disclose information. Unfortunately, none of that litigation ended up with a court judgement ensuring the access of the plaintiff to information. Five applications were rejected on grounds of inadmissibility and one was rejected on merit.

The first case was heard on 15 December 1998. The application was filed by the *Za Zemyata* (For the Earth) Environmental Association. It complained of the Chairman of the Energy Committee who failed to respond within the prescribed time (tacit refusal) and to make available the energy bill to the Association, as well as to conduct public debate on the bill.

The second case was heard on 19 April 1999. The application was filed by an individual citizen seeking information from the Bulgarian National Bank. The application was rejected because the court ruled that the BNB was not obligated to disclose information to citizens.

The third case was heard on 10 October 1999. The application was filed by an individual citizen. It referred to the mayor of Alfatar Municipality who failed to respond within the prescribed time about farmland within the boundaries of the local community. The court ruled that the mayor was not an administrative body obligated to disclose information and therefore the application was rejected.



Source: Database AIP 1997 - 2001

The fourth case was heard on 14 January 2000. The application was filed by St. Basil the Great Association seeking information from the Prime Minister. The citizen requested access to the government programme on the integration of the Roma population in society, the 2001 Government Programme and the Programme of the National Council for Ethnic and Demographic Issues. The court ruled that legal entities were not eligible to exercise the rights under Article 41 of the Constitution. Furthermore, the court ruled that the Prime Minister had no obligation to disclose information to citizens in pursuance of the Public Administration Act. The application was rejected on those grounds.

The fifth case heard by the Supreme Administrative Court prior to the adoption of APIA involved another application served by the *Za Zemyata* Environmental Association. The case was heard on 16 June 2000. The application was filed against the refusal by the Deputy Mayor of Sofia to disclose environmental information. The grounds for rejection of the application stated that the Deputy Mayor had no obligation to disclose information.

The sixth case dating back to the times prior to the adoption of APIA was heard on 24 February 2000. The application was filed by an individual citizen against the tacit denial by the Director of the Press Centre and PR Office of the Ministry of the Interior. The requested information concerned data included in the MoI information bulletin about seized drug shipments. The court rejected the application on grounds of the fact that the requested information was generated at another MoI subdivision and therefore the Press Centre and PR Office had no obligation to disclose it.

Cases after the Adoption of APIA

The attitudes of those seeking information and those disclosing information have changed since the adoption of APIA. Most journalists continue to seek information orally but they increasingly make reference to APIA. Individual citizens and NGOs started filing written requests for access to information. Similarly, the conduct of the public administration tends to reveal its awareness of the fact that disclosure is required by law and it is not a matter of good will on part of civil servants. The initial steps were made towards the fulfilment of the active obligation of the central and local government authorities throughout the country.

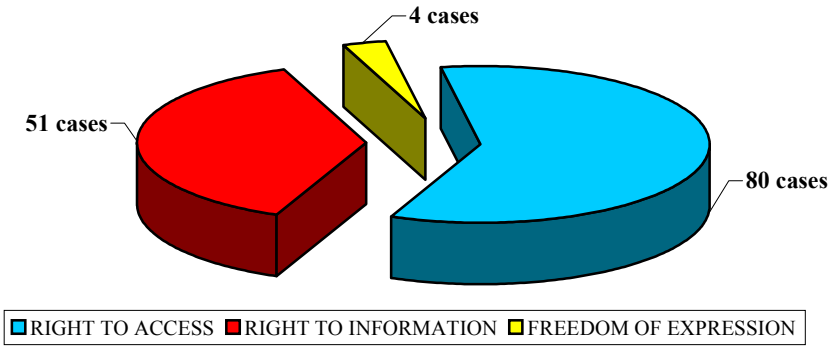
The AIP legal team, in its turn, started providing legal assistance (consultations, writing of requests, applications) with reference to the provisions of APIA. Some specific problems emerged in this enforcement process. It became imperative to develop best practices.

The AIP received 135 cases since the adoption of APIA. 80 out of them relate to violations of the right to access information. Only eight of them started with a written request. In 23 cases, the administration refused to disclose information without any specific reasons cited.

The procedure started with verbal requests in 73 cases. In 17 out of them the denial has not been accompanied by any specific reasons cited. In 23 cases, requests have been filed in writing in accordance with APIA with the assistance of the AIP. Citizens, journalists or representatives of non-governmental organisations seek the assistance of the AIP team for drawing up specific requests for information in the respective cases. Typically government authorities provide access to information after our intervention. Otherwise the case is brought to the court of law provided that the person seeking information is willing to do so.

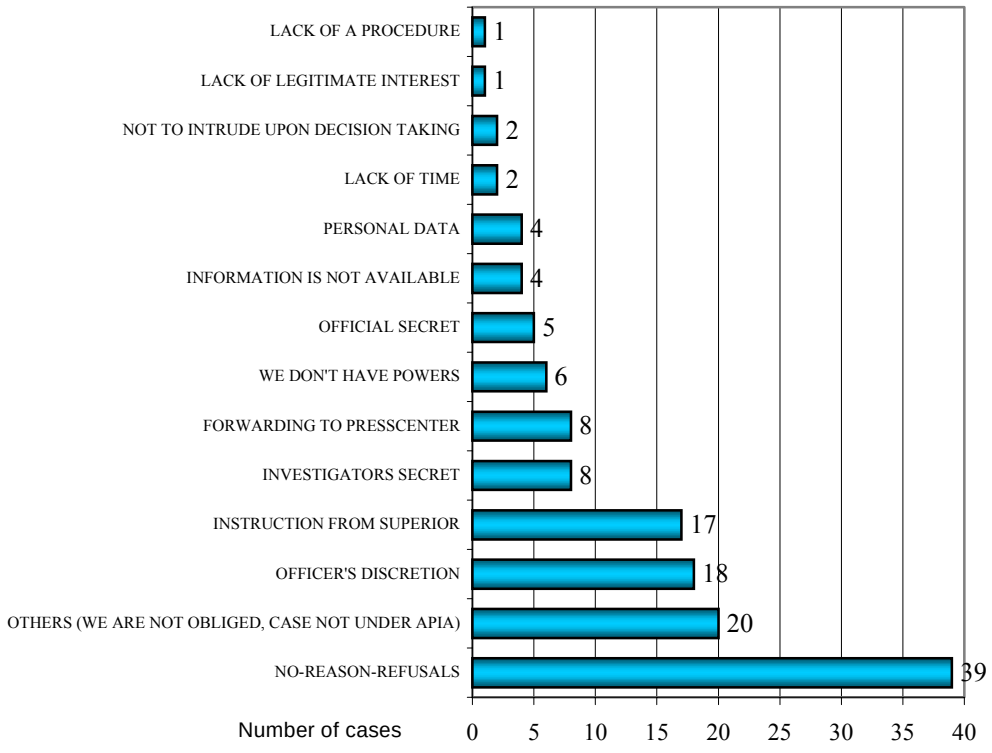
The cases of refusal to disclose information are based on the most common reasons for refusal from the earlier times – no specific reasons cited or judgements of the civil servant or the supervisor. When requests are served in writing, the bodies envisioned in APIA tend to be more committed and make greater efforts to fulfil their obligations prescribed by law.

Legal Qualification - cases after the adoption of APIA



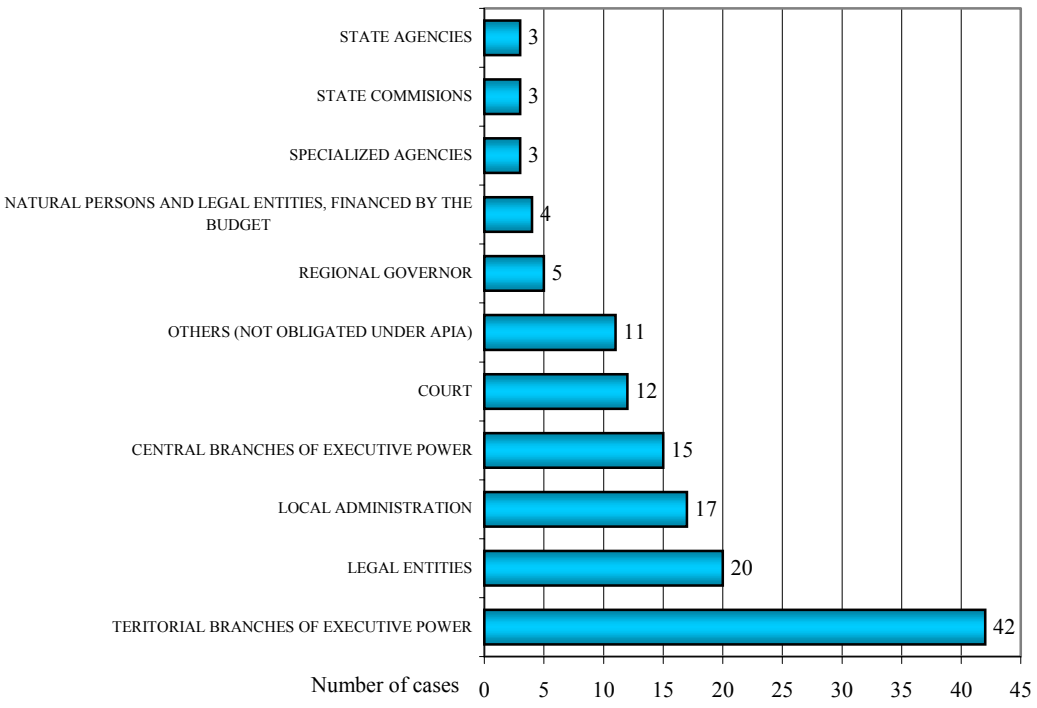
Source: Database AIP 1997 - 2001

Grounds for refusals of information - cases after the adoption of APIA



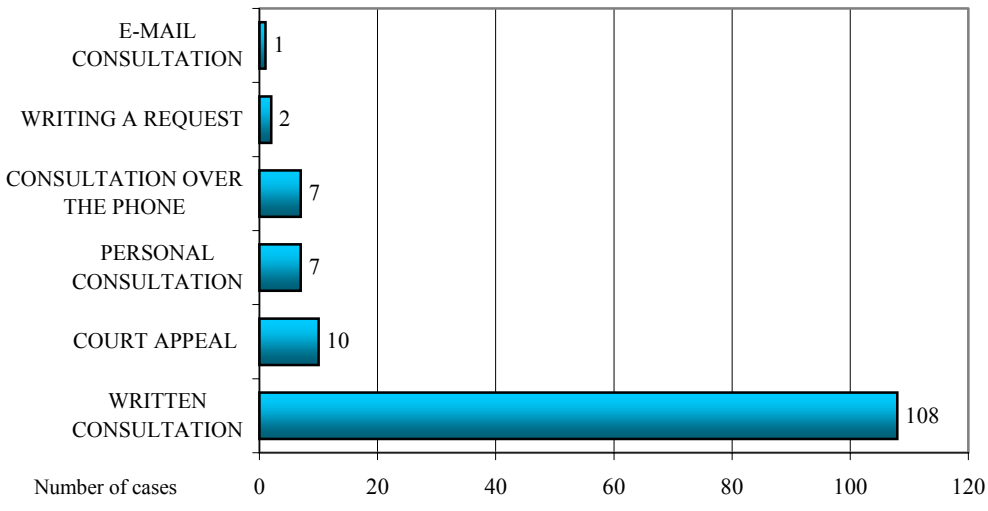
Source: Database AIP 1997 - 2001

Public institutions, which refused information - cases after the adoption of APIA



Source: Database AIP 1997 - 2001

Legal help provided - cases after the adoption of APIA



Source: Database AIP 1997 - 2001

Court Practice after the Adoption of APIA

The legal experts of the *Access to Information Programme* highlighted some problems as early as the time of the public debate prior to the adoption of APIA. After the adoption and entry into force of the law, practices put forward some problems to be referred to the judiciary. These problems are quite varied. For example, sometimes information is denied on grounds of more than one reason or no specific reasons are cited. Sometimes the relevant body fails to issue a decision within the prescribed time limits and waits for the refusal to disclose information to be brought to the court. There are cases when the relevant body tries to negotiate with the person seeking information after the application has already been served to the court. This line of conduct of public institutions comes to show, *inter alia*, that the judicial review is effective not only with a view to the final court judgement but also because of its preventive function.

Practices have revealed that in spite of the administrative penalty provided in APIA for culpable officials failing to issue a decision with the prescribed time limits, the actual imposition of this penalty is rare. The reasons lie largely in the lack of a specific unit responsible for receiving requests for access to information (Article 15, para 1, subpara 4) and specific persons to examine requests (argument referring to Article 28, para 2). Hence the problems related to administrative procedures and the judicial supervision under APIA include the cases of "tacit denial"[31] recognised in the Bulgarian legal system.

There are also other cases of tacit denial, i.e. when it is not the head of an administrative structure (i.e. the competent authority) but another official that issues the decision. That was seen in the cases where the decision to refuse access to information was signed by the Deputy Minister rather than the Minister of the Environment and Waters or the Director of the Liquidation and Insolvency Department at the Ministry of Economy rather than the Minister of Economy[32].

The question as to what information is to be deemed public was raised in the very first case after the adoption of APIA. The definition under Article 2, para 1 should be taken into consideration in each specific case. In that case, the question was whether a letter written by the government body on the interpretation of the tax legislation was related to public life and created opportunities for forming independent opinion.

The definition of the scope of the term "public information" is associated with the scope of the term "personal information" ("personal data"), the access to which is not regulated by APIA in accordance with the provisions of Article 2, para 3. Various bodies offer different interpretations in their decisions. For example, the Ministry of Education and Science claimed that the names of persons who signed statements of findings or penalty orders as issuers or witnesses constituted a case of personal data. No reference was made to the

[31] There has been no court practice yet but the judges from the Sofia City Court and the Supreme Administrative Court participating in the workshop in February 2001 were unanimous that the tacitsilent denial was also subject to appeal.

[32] The question here is whether this is a case of tacit or explicit denial. It seems that if there is no evidence to prove that the person giving the answer has been authorised to do so by the competent authority, the object of the appeal should be the tacit denial by the competent authority.

source of this conclusion included in the decision to refuse access to information but we could assume that the Minister considered names to be "data revealing public identity".

Those two cases have brought about one more question, i.e. is it lawful to refuse access to the whole information contained in a document (denial to give a copy of the whole document) in the context of the provisions of APIA envisioning partial access to information (Article 7, para 2, Article 31, para 4 and Article 37, para 2)? In both cases, no copy of the document was given. In the case of D.T. vs. the Chief Tax Officer, one of the reasons for the refusal was that the letter contained data of a third party, which constituted official secret within the meaning of paragraph 1 of the Code of Tax Procedure. Hence practices have revealed so far that the bodies envisioned in APIA are still insensitive to this important detail of the obligation to ensure access to information.

Of course, the major problems in the cases of refusal to disclose information relate to the restrictions of the right to access information. For the time being, the most common restrictions invoke the protection of personal information (personal data) and the provisions of Article 13, para 2 of APIA.

Institutions do not follow a uniform line of conduct in citing personal data protection as grounds for refusal. The Mayor of Montana made the greatest efforts to seek the consent of the persons affected by the request for information (Article 31, para 1). The Chief Tax Officer and the Ministry of Education and Science did not find it necessary to resort to such procedures and refused to disclose information without asking the affected persons about their opinion.

As to the information related to Article 13, para 2, practices are quite varied. The Minister of Finance presented the complete file on the drafting of his Order No. 10 of 2001. At the same time, the provisions of Article 13, para 2 were invoked in the cases of the refusals to provide copies of the minutes taken at a meeting of the Liquidation and Insolvency Commission at the Ministry of Economy, the minutes taken at a meeting of the Council of Ministers and the minutes taken at a meeting of the Higher Expert Board at the Ministry of Education and Science[33]. These refusals, as well as the order issued by the Prime Minister, item 4 of which states that materials, minutes and verbatim reports of the meetings of the Council of Ministers are restricted in pursuance of Article 13, para 2 of APIA, tend to reveal distorted interpretation of these provisions[34]. The final solution of the problem whether minutes and verbatim reports of meetings of collective bodies fall within the purview of Article 13, para 2, subpara 1 will be of decisive importance.

[33] The refusal by the Deputy Minister of Education and Science, although worded quite generally with reference to Article 37, para 1, subpara 1 covering state and official secrets and the information under Article 13, para 2, is most likely based only on the last of this series of restrictions.

[34] The law allows the relevant bodies to make judgements as to disclose information or not. None of the bodies of the executive power is authorised to further specify these provisions. Hence the existence of sufficient grounds for denial is to be judged on a case-by-case basis.

SCHEDULES

Litigation July 2000 – 12 April 2001

1. An individual citizen served a request in writing to the Chief Tax Officer (CTO) to receive a copy of a letter by the CTO containing interpretation of some provisions of the Code of Tax Procedure. A private company published such letters in the form of brochures. Within the prescribed 14 days, the CTO refused to grant access to the document, stating that the information sought did not constitute a case of public information within the meaning of Article 2, para 1 of APIA and it was an official secret within the meaning of # 1, subpara 1 of the Additional Provisions of the Code of Tax Procedure. Having received the denial, the citizen turned to the AIP team for help in drawing up and filing an application against the CTO decision with the Sofia City Court. The application asserted that the information was public because it concerned all citizens and clarified the application of laws by the tax administration. The information did not constitute any secret because the citizen requested the name of the recipient of the letter deleted prior to the submission of a copy. The case will be heard on 12 June 2001.

2. A non-governmental organisation served a request in writing prepared by the AIP legal experts to the Chief Prosecutor's Office (CPO) in order to receive information about the number of signals and complaints of ethnic discrimination filed with the Prosecutors' Offices for the last few years. The CPO referred the request to the Sofia Prosecutor of Appeal and no answer was sent back. Within the prescribed time limits, the AIP filed application in pursuance of the provisions of APIA. The application stated that decisions to refuse access had to be given in writing and reasons had to be attached thereof. Besides, we added that we saw no grounds for denial in that particular case. After the filing of the application, the CPO sent a letter to explain that it did not collect any information of that type. As a result of the talks between the NGO and representatives of the CPO, an out-of-court agreement was reached and the application was withdrawn.

3. A non-governmental organisation requested a copy of the minutes taken at a meeting of the Higher Environmental Expert Board at the Ministry of the Environment and Waters. The Board included representatives of environmental NGOs. After consultations with the AIP team, a written request was submitted to the Ministry in order to obtain a copy of the document. Within the prescribed time limits, access to information was denied on grounds of Article 37, para 1, subpara 1 of the APIA (the information constituted state or another secret protected by law and had no significance in itself). The legal experts of the AIP prepared the documentation and the refusal was appealed before the Supreme Administrative Court within the prescribed time limits. The application stated that the minutes contained a decision which was a case of public information because it affected the rights of many people and the activities of the Ministry on

those matters, while no grounds for denial existed because the meeting was held in public. The litigation is pending.

4. An individual citizen requested a copy of the minutes taken at a meeting of the Liquidation and Insolvency Commission at the Ministry of Economy and two other documents of the Ministry. Within the prescribed time limits, the Ministry replied and provided copies of the two documents but refused to disclose the minutes. The reasons invoked the provisions of Article 13, para 2. Having received the denial, the citizens sought assistance from the legal experts of the AIP. After the consultations, application was drawn up and filed with the Supreme Administrative Court against the refusal of the Ministry to provide access to information. The application indicated that the minutes contained a decision and that decisions were instruments constituting official public information within the meaning of APIA. Hence it could not be maintained that it had "no significance in itself". The litigation is pending.

5. An individual citizen requested copies of documents related to the use of farmland from the Mayor of Montana. The decision was to grant access to the information about one of the users and deny access to the information about the other users on grounds of Article 37, para 1, subpara 2 of APIA because their interests were affected. A application was filed with the Montana Regional Court, stating that third parties rights were subject to protection only when such protection is explicitly provided by law.

6. A non-governmental organisation requested the Minister of Labour and Social Policy to make available a copy of the Personal Social Worker Programme. After the time limits expired, a application was filed. The application stated that decisions to refuse access had to be given in writing and reasons had to be attached thereof. After the application had been filed, the Minister sent a letter with a brief outline of the Programme. However, the NGO was convinced that its right of access was not properly exercised and insisted on its protection. The litigation is pending with the Supreme Administrative Court.

7. A non-governmental organisation appealed the refusal of the Executive Director of the Roads Executive Agency to make available copies of the contracts with companies designing the Strouma highway and all related documents. The tacit denial was appealed before the Sofia City Court. The application stated that decisions to refuse access had to be given in writing and reasons had to be attached thereof.

8. A non-governmental organisation filed application against the refusal of the Director of the National Health Insurance Fund to disclose information about the 2000 budgets and reports of the Regional Health Insurance Funds (copies), the bank chosen by the NHIF to operate with its resources, the procedure applied to the selection of the bank and the amount of the resources deposited by the NHIF. The refusal to disclose information was given in writing and the following reasons were cited: an official secret within the meaning of # 1 of the Code of Tax Procedure (secret of tax liable persons) was involved; the NHIF report could be received after its promulgation in the State Gazette; and the information about the decision on the selection of banks to operate with the NHIF resources had to be sought from the Managing

Board of the NHIF. Application was filed with the Sofia City Court. The application indicated that facts had to be invoked as grounds for the denial. It remained unclear why a secret existed within the meaning of the Code of Tax Procedure. Paragraph 1 of the said Code made reference to different cases and a specific case had to be invoked in the denial. The body envisioned in APIA was the NHIF in its capacity of a public law entity and since it was represented by the Director, it was wrong to refer the request to the Managing Board.

9. The Access to Information Programme submitted a request to the Ministry of Education and Science to obtain copies of the instruments concerning the teaching of Islam and Christianity as optional subjects at school. The tacit refusal by the Ministry was appealed before the Supreme Administrative Court on grounds that decisions to refuse access had to be given in writing and reasons had to be attached thereof.

10. An individual citizen filed application against the refusal of the Ministry of the Environment and Waters to make available copies of statements of findings and penalty orders issued to sanction a municipal company in Dupnitsa within the framework of the relevant administrative procedure. Other documents were also requested. The decision given in writing refused access to information. There the Minister stated that the requested documents contained personal data of the persons who had signed the documents as issuers and witnesses. The refusal was attacked before the Supreme Administrative Court on the following grounds: (i) the requested information did not contain any personal data within the meaning of the law; and (ii) even if there had been any personal data, the Ministry had to grant partial access to that information.

Fulfilment of the Obligations under APIA by the Bodies of the Executive Power (findings of the pilot survey conducted by the AIP)

Methodology of the Survey

The objective of the survey conducted by the AIP team was to check whether the active obligations under APIA were fulfilled five months after the effective date of the law.

The survey was conducted from 1 December 2000 to 9 March 2001 in 26 regional centres across the country. Over the period from 1 to 15 December 2000, 22 AIP co-ordinators carried out the survey in the regional subdivisions of central government bodies and the local administration. In the beginning of February 2001, the new AIP co-ordinators continued the survey in Smolyan, Pernik and Kyustendil. A month later, in March 2001, the report on the Capital Municipality and the central government bodies (ministries and other institutions) was added to the already collected data.

The survey was based on a questionnaire. There were direct interviews of the heads of the relevant bodies or the heads of press centres and PR offices. Some questionnaires were sent by mail and the AIP received the answers in written form

Officials were asked the following questions:

1. Have you designated premises where documents disclosed under APIA can be read?
2. Have you designated the place where the requests under APIA can be submitted?
3. Have you appointed an official to be responsible for granting access to information under APIA (search for documents and making them available for reading, copying of documents, preparation of transcripts)?
4. If not, have you assigned these responsibilities to another official?
5. Have you made arrangements for the disclosure of the information under Article 15, para 1 of APIA:

(a) Description of powers;

(b) List of the instruments issued;

(c) Description of information arrays;

(d) Name, address, telephone number and working hours of the contact person?

The AIP co-ordinators conducted the interviews in all regional centres except for Silistra (the AIP has no co-ordinator there), the City of Sofia (except for the Greater Sofia Municipality) and the District of Sofia.

The survey covered **26 municipalities**. The information about **regional governments, Territorial Tax Offices (TTO), Regional Directorates of the Interior (RDI), Regional Health Insurance Funds (RHIF), Employment Offices (LO) and Hygiene and Epidemiological Inspectorates (HEI) covered 25 cities**. Since Regional Inspectorates for the Environment and Waters (RIEW) are established in pursuance of the Environmental Protection Act and the Regulations on the Structure and Activities of Regional

Inspectorates for the Environment and Waters and therefore they do not follow the administrative division of the country, the cities of Kyustendil, Gabrovo, Dobrich, Vidin, Yambol, Sliven, Kurdjali, Lovech and Razgrad do not have regional structures of this type. **The survey covered 15 RIEWs.**

Since there were broad discretionary powers given to interviews as to which institutions to interview, the AIP co-ordinators interviewed the heads of other six institutions. There exist specific administrative structures at some places. Such structures like the Sea Administration in Varna, for example, were interviewed as well. Other interviewers chose subdivisions of the State Financial Control, District Courts, Regional Building Supervision Inspectorates and Regional Social Security Offices. The AIP statistic covered the data received from: **Regional Government, Local Administration, HEI, Labour Office, Territorial Tax Office, Regional Directorate of the Interior, Regional Health Insurance Fund, and Regional Inspectorate for the Environment and Waters**.

A total of **15 ministries and 4 institutions, i.e. the Chief Tax Office (CTO), the National Health Insurance Fund (NHIF), the State and Internal Financial Control Agency and the National Accounts Office**, received requests for information under APIA. Registered letters were sent to them to request access to public information on 13 February 2001. No answers were received in the prescribed time limit under APIA, except from the CTO, the Ministry of Justice and the Ministry of Transport and Communications. The remaining 12 ministries, as well as the NHIF, the National Accounts Office and the State and Internal Financial Control Agency failed to fulfil their active obligation to disclose public information under APIA.

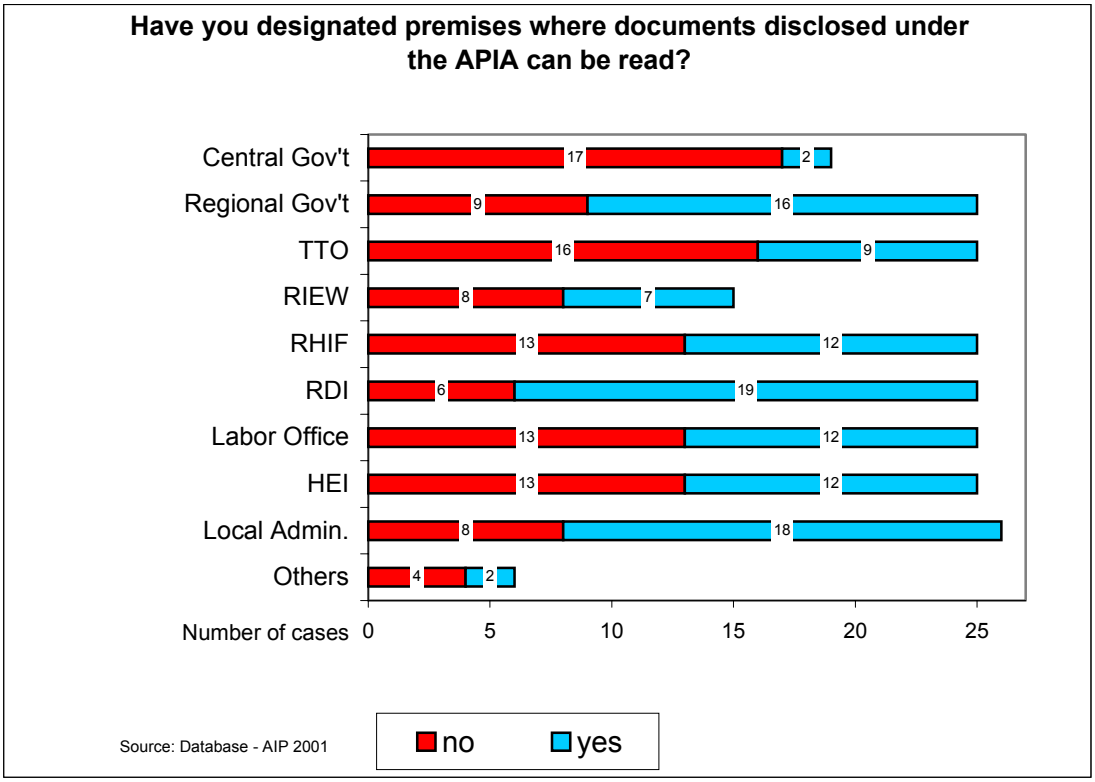
The total number of interviews was 216.

The summarised findings of the survey point to the following typical cases:

Designated premises to read documents under APIA (Question 1)

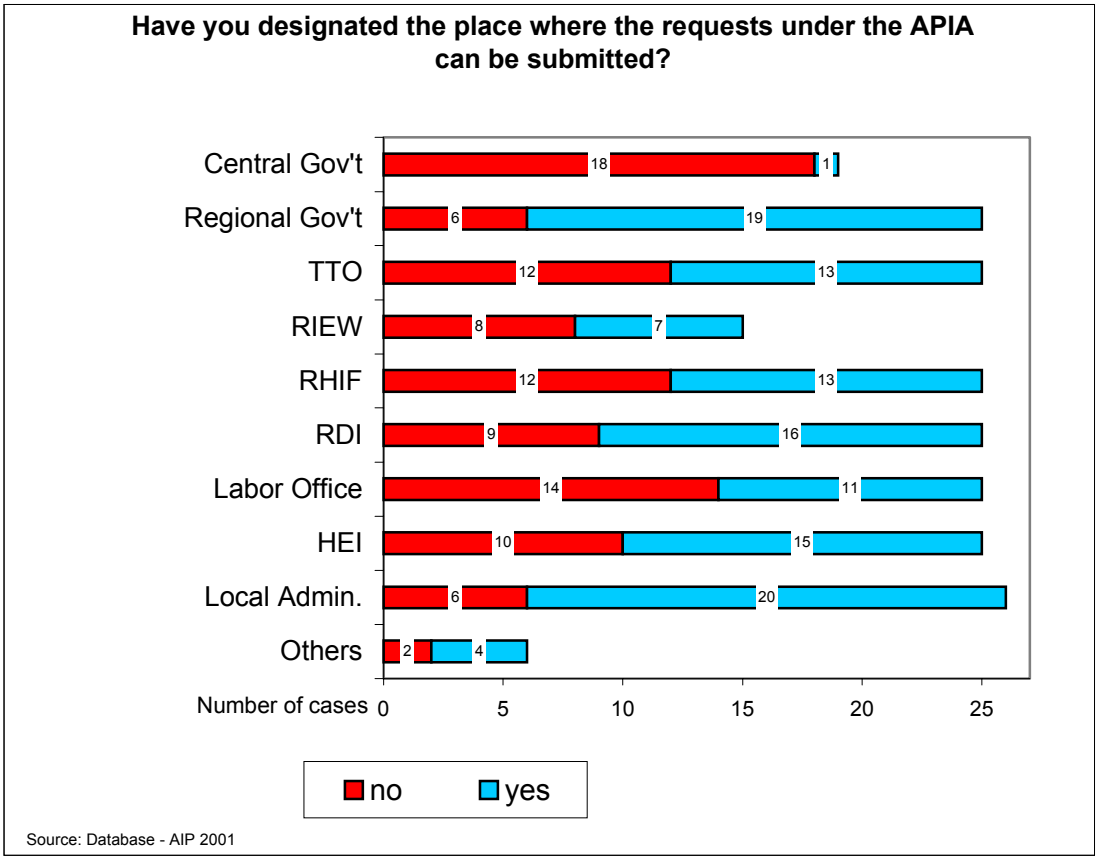
Over the period of the survey after the adoption of APIA, 107 central and local administrative structures had not designated premises to read requested documents yet. That was the situation at 16 TTOs. No premises were designated also at 13 employment offices and an equal number of RHIFs and HEIs in the surveyed 25 regional centres in the country. Local governments in 18 regional centres had designated premises for reading documents. 19 RDIs and 7 RIEWs (out of 15) has designated such premises.

The survey revealed that among central government bodies only the Chief Tax Office and the Ministry of Justice and European Legal Integration had designated premises for reading documents requested under APIA.



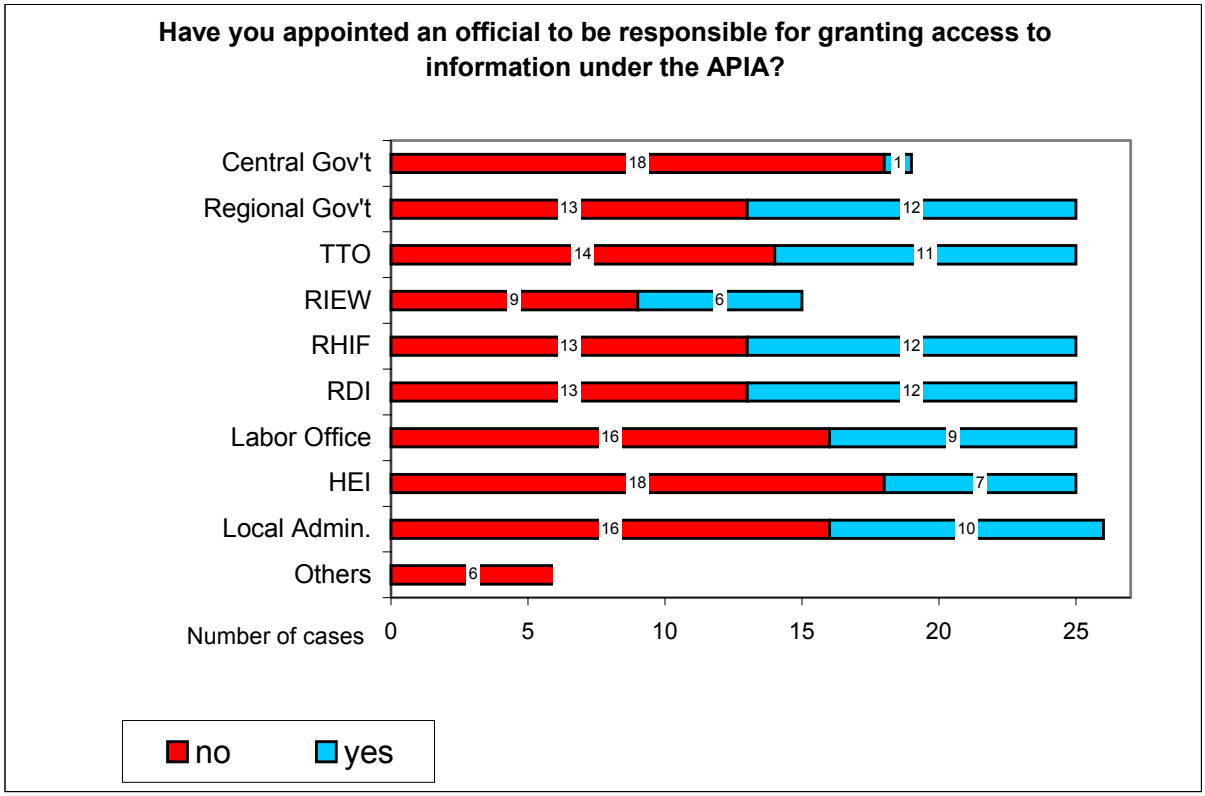
Designated place to submit requests under APIA (Question 2)

A total of 97 administrative structures had failed to designate a place where requests could be submitted under APIA. The active obligation under APIA was not fulfilled in 6 local administrations, 9 RDIs and 8 RIEWs (out of 15). The administrative reform aimed at ensuring "one-stop shop" for providing services to the population was probably the reason for only 6 regional governments to have failed to designate such a place. 14 Labour Offices, 12 TTOs and RHIFs, as well as 10 for HEIs had not designated a place to submit requests under APIA.



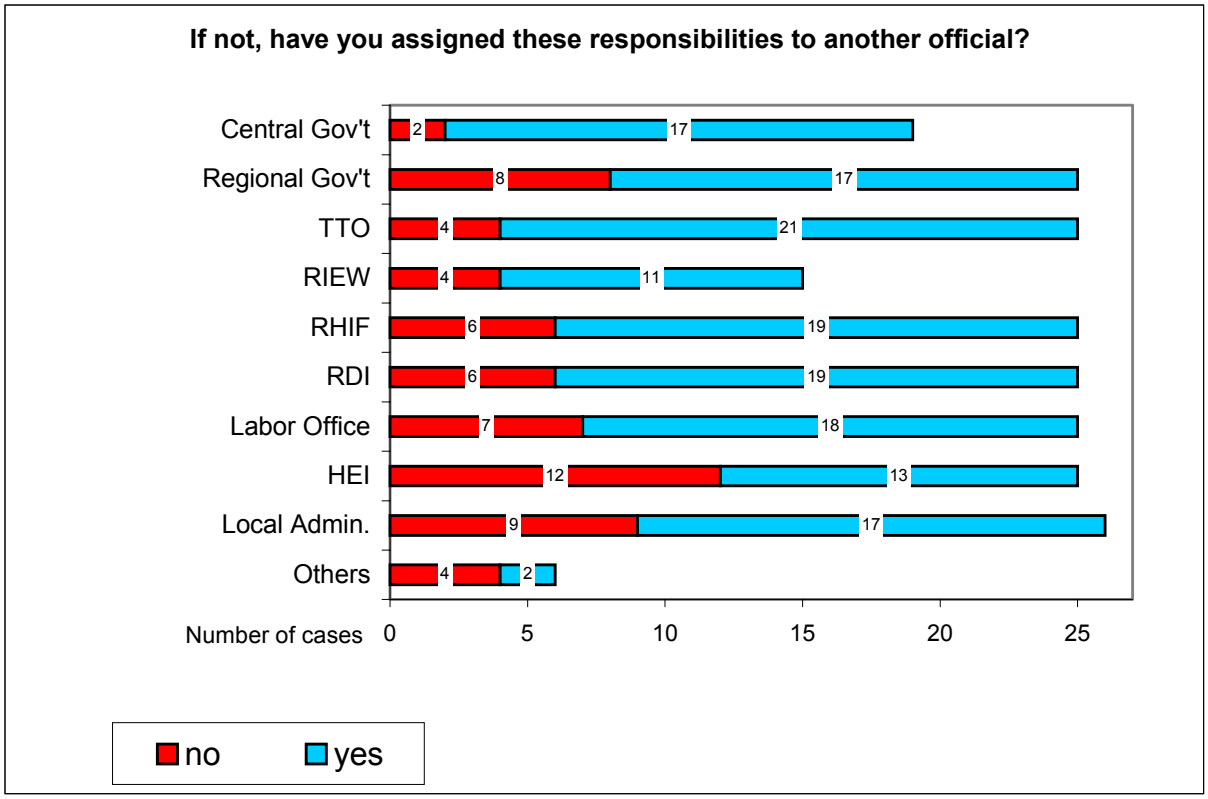
Appointment of an official responsible for disclosing information under APIA (Question 3)

136 central and local administrative structures had not appointed officials responsible for disclosing information under APIA. The greatest number of violations was observed in the case of HEIs. 18 regional centres with operational HEI structures had no officials appointed under APIA. 16 Labour Offices and local administrations also had no person specially appointed for that purpose. 14 TTOs had not appointed a person responsible under APIA. 13 RDIs and an equal number of RHIFs in the regional centres were in the same situation. The survey revealed that the regional governments which had not appointed a special person were also 13. The reason probably lies in the fact that many central, regional and local government structures have spokespersons who (perhaps) have been assigned with the active obligations under APIA.



Assignment of these responsibilities to another official (Question 4)

The survey indicated that 62 out of 216 central and local government bodies had not assigned the responsibilities under APIA to another official. 12 HEIs has not assigned such responsibilities to any official, 9, 8, 7 and 6 are reported data respectively from the local administrations, regional governments, labour offices and Regional Directorates of the Interior.

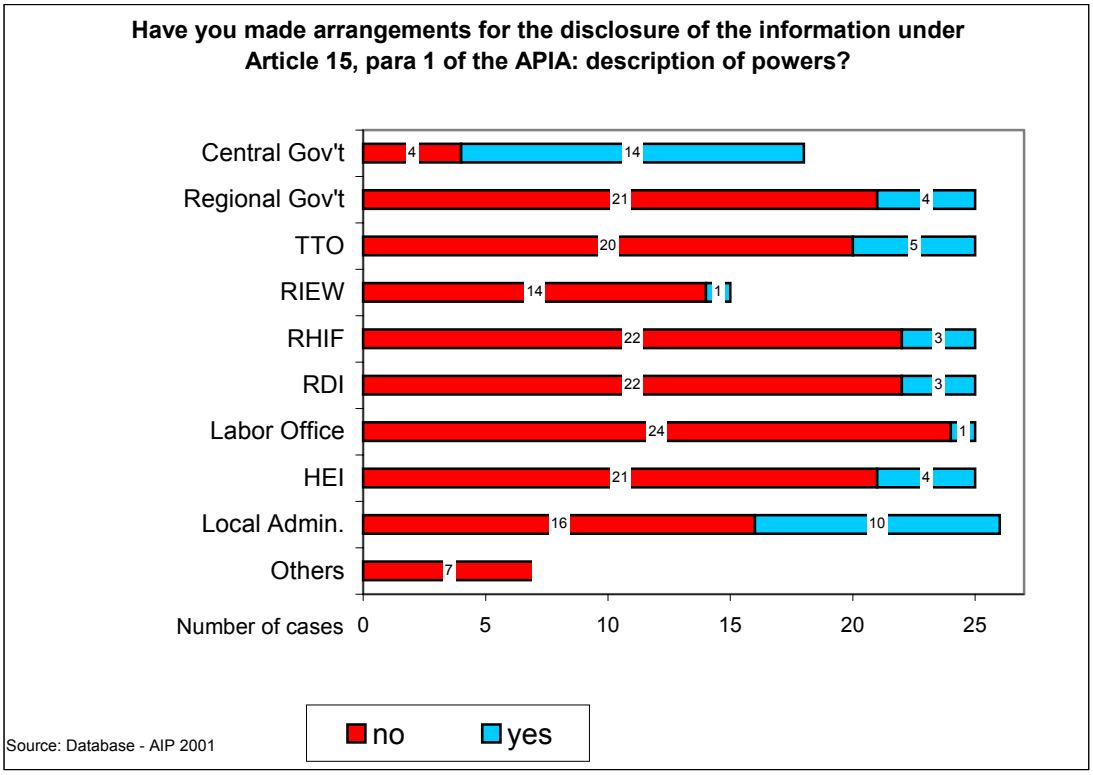


Disclosure of information under Article 15, para 1 of APIA (Question 5)

A. Description of powers

The survey revealed that 45 central and local administrative structures fulfilled the obligation for their heads to publish up-to-date information from time to time, describing their powers under Article 15, para 1 of APIA. Descriptions of the functions and responsibilities of their subordinate structures were also subject to publication. Local governments were the first to respond – 10 out of 26 municipalities had already published that information. 5 TTOs and 4 regional governments had followed suit. 171 central and local governments had failed to do so.

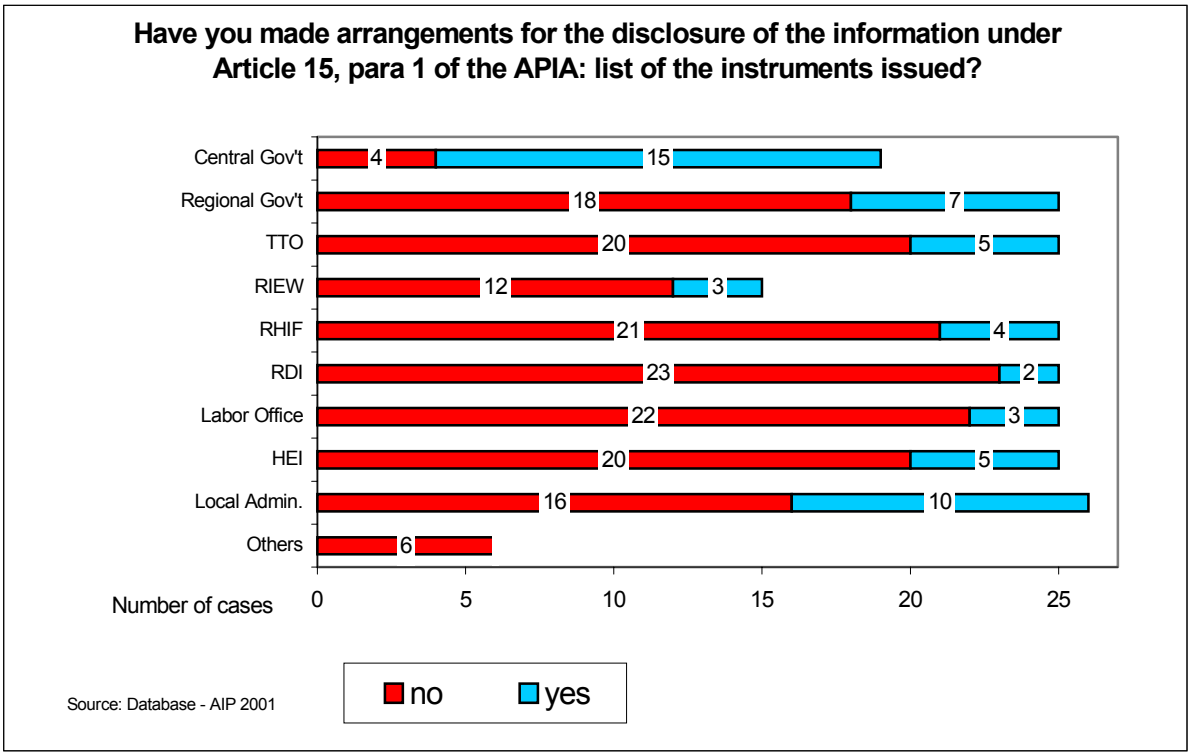
Ministries observed the law. They had published the required information on their web sites (www.government.bg).



B. List of instruments

162 administrations had not compiled lists of the instruments they issued in the discharge of their duties. APIA was not observed in the case of 23 RDIs, 22 labour offices, 21 RHIFs and 20 HEIs. There were 10 municipalities out of 54 administrations, which had fulfilled their obligation under APIA.

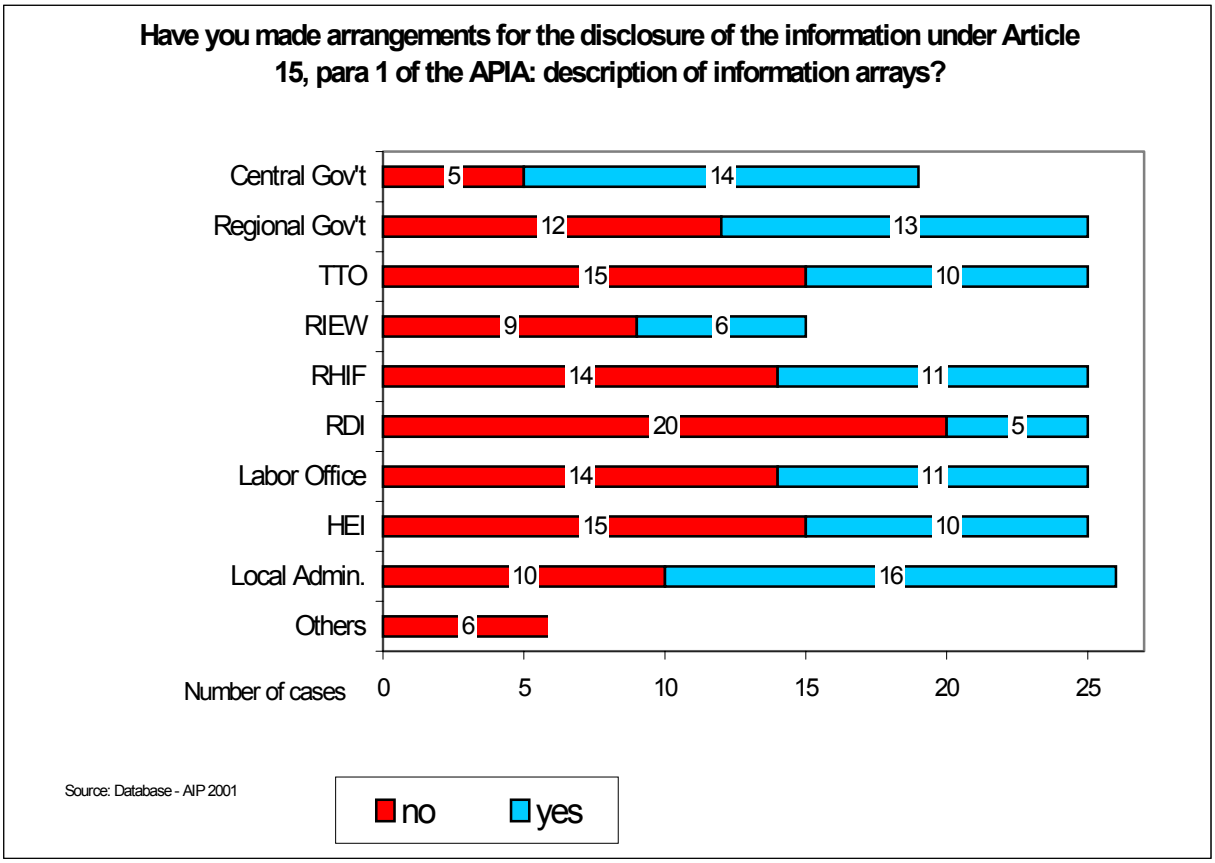
Ministries observed the law. They had published the required information on their web sites.



Description of information arrays

96 central and local administrative structures had drawn up descriptions of the information arrays and resources they used. The law was observed in the case of 16 municipal mayors, 13 regional governments and 11 labour offices. 14 RIEWs, 20 RDIs, 15 TTOs and an equal number of HEIs had not fulfilled their obligations under APIA.

Ministries observed the law. They had published the required information on their web sites.



C. Name, address, telephone number and working hours of the contact person

150 administrations had failed to publish information about the name, address, telephone number and working hours of the administrative unit responsible for receiving requests for access to information, including 20 municipalities, 16 regional governments, 21 TTOs and HEIs.

Ministries observed the law. They had published the required information on their web sites.

The central government bodies involved in the survey had published part of the information under Article 15, para 1 of APIA on the Internet. The Register of Administrative Structures on the web site of the Government contains some information under Article 15, para 1 on regional subdivisions of central government bodies, regional governments and municipalities.