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HOW TO APPLY the Access to Public Information Act?

A handbook for administrative bodies

A handbook for administrative bodies titled "How to apply the Access to Public Information Act?"

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INTRODUCTION: STANDARDS FOR ACCESS TO PUBLIC

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INFORMATION

The right of access to information is a relatively "new" right. Even though the first national law in this field was adopted as early as 1766 in Sweden, there were no international instruments governing access to information until the second half of the 20th century. In the last 15 years, the number of countries that have adopted access to information legislation increased dramatically, reaching 130 countries in 2020.[1]

I. Recognition of the right to access information in accordance with the international documents related to the protection of human rights

The foundations for the recognition of the right to access information at international level were laid down after the end of World War II. At its first session in 1946, the General Assembly of the United Nations adopted Resolution 59 (I), which reads as follows: *"Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated."* Furthermore, Article 19 of the Universal Declaration of Human Rights proclaimed the right of everyone to seek, receive and impart information. The same right is also enshrined as a fundamental human right in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which is a legally binding document.

As the UN determined the fundamental human rights in accordance with its mandate, democratic Europe devised the legal order for their protection. Thus, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, abbr. to ECHR) guarantees the right of everyone to receive and impart information. Article 11 of the Charter of Fundamental Rights of the European Union, contained in the section "Fundamental Freedoms," provides for the protection of the same right. Article 42 of the same Charter guarantees every citizen of the Union, and any natural or legal person residing or having its

[1] See: Global Right to Information Rating - By Country

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registered office on the territory of the Union, a right of access to documents of the institutions, bodies, offices and agencies of the Union. At the same time, Article 13 of the American Convention on Human Rights guarantees everyone the right to seek, receive and impart information. The right of everyone to receive information is also provided in Article 9 of the African Charter on Human and Peoples' Rights.

In 2006, the Inter-American Court of Human Rights pronounced a judgment recognizing the right of access to State-held information as part of everyone's right to seek, receive and impart information, enshrined in Article 13 of the American Convention on Human Rights.[2] In a judgment issued in 2009, the European Court of Human Rights ruled that the refusal to provide information held by a public institution constitutes an interference with the right to receive and impart information, guaranteed with Art. 10 of the ECHR.[3] The Court reasoned that the monopoly of public authorities over a given peace of information amounts to a form of censorship and prevents non-governmental organizations and the media from participating in the public debate and exercising their vital role of a "public watchdog."[4] The right to access government-held information was also acknowledged in respect of individuals conducting a study on a given topic[5].

II. Recognition of the right to access information held by public bodies as an independent right

The first Council of Europe document which acknowledged the right of individuals to access information held by public bodies was Recommendation R (81) 13, adopted by the Committee of Ministers of the Council of Europe on 25 November 1981. This document provided that all persons within the jurisdiction of Member States had the right to access information held by public bodies, and that such information

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[2] Claude Reyes et al vs. Chile, 2006.

[3] Társaság a Szabadságjogokért v. Hungary, Judgment of 14 April 2009, become final on 14 July 2009, application No. 37374/05.

[4] See Youth Initiative for Human Rights v. Serbia, Judgment of 25 June 2013, become final on 12 September 2013, application No. *48135/06;* Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria, Judgment of 28 November 2013, become final on 28 February 2014, application No. *39534/07.*

[5] Kenedi v. Hungary, Judgment of 26 May 2009, become final on 26 August 2009, application No. *31475/05.*

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could not be refused on the grounds that the applicant had no interest in it. Moreover, restrictions on the right of access were only permissible if they were necessary in a democratic society in order to protect one or more of the legitimate interests specified in the Recommendation. Nearly 20 years later, the Committee of Ministers adopted Recommendation R (2002) 2 on access to official documents. The Recommendation contained definitions of the terms "official documents" and "public bodies," and determined the restrictions to the right of access, the procedure for granting access upon request, the forms of access, the fees, the appeal procedure, as well as additional measures related to informing individuals about their rights and educating public officials about their obligations to ensure the effective exercise of these rights. Due to the rising importance of the right to access information and the swift promulgation of national laws in this area, it was soon decided to expand the Recommendation to a legally binding document — a convention.

The Convention on Access to Official Documents was adopted on 27 November 2008. It was opened for accession on 18 June 2009 in Tromsø, Norway. The Convention has been ratified by 10 states (Norway, Sweden, Hungary, Bosnia and Herzegovina, Lithuania, Montenegro, Finland, Estonia, Moldova and, in the summer of 2020, Ukraine) and entered into force on 1 December 2020.

The Convention laid down minimal standards concerning access to official documents, while allowing Member States to provide wider access through their national laws.[6] It also defined the term "official documents" and determined the scope of obliged bodies. Furthermore, the Convention outlined mandatory approaches to be followed when restricting access to information, and specified a list of permissible restrictions. It also introduced an obligation to publish information, a procedure for requesting access and a procedure for overseeing refusals.

III. Recognition of the right to access official documents of the European Union institutions

Regulation (EC) No 1049/2001 of the European Parliament and of the Council

[6] See Council of Europe, Details of Treaty No.205, Council of Europe Convention on Access to Official Documents, Art.1, par.1 of the Convention.

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regarding public access to European Parliament, Council and Commission documents was adopted in 2001 in accordance with Art. 255 of the Treaty of Amsterdam. Refusals to provide access to information in line with the Regulation can be challenged before the European Ombudsman and the Court of Justice of the European Union. The Treaty of Lisbon introduced a new provision — Art. 10, par. 3 of the Treaty on European Union — which states that *"Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen."* The Treaty of Lisbon also introduced a new provision in the Treaty on the Functioning of the European Union (TFEU) — Art. 15 — which replaced Art. 255 of the Treaty of Amsterdam. The new article stipulates an obligation for the European Union's institutions, bodies, offices and agencies to conduct their work as openly as possible in order to promote good governance and ensure the participation of civil society. Article 15, par. 3 of the TFEU guarantees any citizen of the Union, as well as any natural or legal person residing or having its registered office in a Member State, a right of access to documents of the Union's institutions, irrespective of the medium. At the same time, the Aarhus Convention on Access to Information, Pubic Participation in Decision-making and Access to Justice in Environmental Matters was adopted by means of Regulation (EC) 1367/2006 of the European Parliament and of the Council. In parallel, Directive 2003/4/EC on public access to environmental information introduced a legal regime for obtaining such access, which is binding on all EU Member States.

The regime of access to official documents is also connected to the "re-use of public sector information," even though the latter is subject to a separate legal framework. The re-use of public sector information stems from EU legislation, and more specifically from Directive 2003/98/EC of the European Parliament and of the Council on the re-use of public sector information, adopted in 2003. The Directive was later amended and complemented through Directive 2013/37/EU. In 2021, Member States have to implement the new Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information.

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IV. The Access to Public Information Act[7]

The Bulgarian Access to Public Information Act was adopted in the summer of 2000 following discussions that went on for nearly two years. In 1998, when the act was published on the Council of Ministers website and opened for public consultations, only 22 countries had access to information/freedom of information legislation. The right of access to information was not internationally recognized yet and was considered an aspect of the right to freedom of opinion and expression, proclaimed in Art. 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR).

There were only a few documents laying down standards in the field: a recommendation of the Council of Europe on access to information, published in 1981; the Johannesburg Principles adopted by a group of experts convened by the international organization ARTICLE 19; Art. 41 of the Bulgarian Constitution and the seminal interpretative judgment of the Constitutional Court, issued in 1996,[8] which formulated standards and approaches underpinning the future access to information legislation.

The Access to Public Information Act outlined the main elements of the right of access to information, including: who has a right of access to information; who is obliged to provide information, both proactively and upon request; the restrictions on access to information considered a state secret or an administrative secret at the time; the procedure for providing access to information; the obligations for proactive publication; the forms of access; the fees related to the provision of information, and; the procedure for appealing decisions on access to information requests.

In 2003, Bulgaria ratified the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the 1998 Aarhus Convention). The ratification represented a new step in the regulation of the right of access to information, public participation and access to justice in environmental matters.

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7 Prom. SG No. 55 of 7 July 2000.

8 Judgment No. 7 of 4 June 1996 on const. case No. 1/96.

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The APIA was amended substantially in 2007 and 2008. The first amendment was dramatic. Under the pretext of ensuring the implementation of the EC Directive on the re-use of public sector information (adopted in 2003), the legislature tabled a bill that essentially impaired the regime of access to information. The public outcry was remarkable; the amendments impairing the regime of access were discarded, whereas the following positive additions and modifications were approved:

- Introduction of rules on the re-use of public sector information through the implementation of Directive 2003/98/EC;

- Identification of public officials to be directly responsible for the provision of public information;

- Designation of appropriate space for reading the provided information.

The APIA amendments of 5 December 2008 ensured the compliance of the Bulgarian legislation with the standards laid down in the Council of Europe's Convention on Access to Official Documents, adopted in 2008.

- The scope of obliged bodies was expanded to include the territorial units of public bodies, organizations governed by public law, as well as natural and legal persons in relation to activities funded by the state budget or by EU programmes and funds.

- A new obligation was conferred on the obliged bodies, requiring them to publish online the categories of information listed in Art. 14 APIA, as well as other specified publications. They were also required to create "Access to information" sections on their websites for the benefit of applicants.

- The overriding public interest principle (test) was introduced, to be considered when applying the restrictions related to trade secrets, preparatory materials and negotiations.

- An obligation to provide partial access was also put in place.

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The most recent substantial amendments were adopted in December 2015.[9]

- The amendments improved both the regime of granting access to public information and the regime related to the re-use of public sector information.

- The option of obtaining electronic access was further extended.

- The categories of information that institutions are obliged to publish online in accordance with Art. 15, par. 1 of the APIA increased from four to 17. The majority of these categories overlapped with pre-existent obligations to publish; however, some categories were entirely new, such as "information that has been provided more than three times upon request" (Art. 15, par. 1, item 16). Another new provision was introduced requiring public bodies to publish information of public interest online on their own initiative (Art. 14, par. 2).

- Administrative heads were obliged to adopt lists of information categories subject to mandatory publication, and to make the lists public (Art. 15a, par. 3).

- Time limits for publication were introduced — three days from the promulgation, publication or creation of the information (Art. 15a, par. 4) — as well as penalties for non-compliance with the obligation: from BGN 50 to 100 for natural persons and from BGN 100 to 200 for legal persons (Art. 42, par. 3).

- Requests sent by e-mail do not have to bear an electronic signature (Art. 24, par. 2). However, public officials were explicitly obliged to provide electronic documents or a link to a webpage containing the sought information in response to every request (Art. 26, par. 1, item 4). In these cases, there is no need to sign a document attesting to the provision of the information, and access is given free of charge (Art. 35, par.3).

[9] Amended SG No. 97 of 11 December 2015.

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- Citizens can submit requests through a special platform, on which the obliged bodies publish the decision on the requests and the provided information (Art. 15c).

- The silence of a third party when asked to express a position with respect to the provision of access to information concerning the same third party shall not be interpreted as disagreement (as it were before the amendments), but rather as agreement (Art. 37, par. 1, item 2).

- One of the main goals behind the amendments was to improve the re-use of public sector information in line with Directive 2013/37/EU. The obligation to provide information under this procedure was extended from public bodies and organizations governed by public law to libraries, museums and archives. Furthermore, the concept of 'organization governed by public law' was clarified as including state-controlled and municipality-controlled enterprises.

- Institutions and organizations should aim to ensure the use and publication of information in a machine-readable format. The standard rules on the re-use of public sector information and on its publication in an open data format should be set out by an ordinance of the Council of Ministers. Institutions and organizations should publish information in an open, machine-readable format on the Open Data Portal, maintained by the government (Art. 15d). This format allows the quick processing of the information for commercial and non-commercial purposes.

- The fees for the re-use of information held by public bodies cannot exceed the material costs of its reproduction and provision (Art. 41g, par. 1). When the information is held by other public sector organizations, the fee cannot exceed the cost of collection, production, reproduction, and dissemination of the information, coupled with a reasonable return on investment (Art. 41g, par. 3). The fees should be determined in accordance with objective, transparent and verifiable criteria specified in a methodology adopted by the Council of Ministers. It was also provided that tariffs would be adopted by the Council of Ministers and by municipal councils (Art. 41g, par. 5).

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- The restrictions on the re-use of public sector information correspond to the restrictions stipulated in the Directive and in the applicable Bulgarian legislation (Art. 41b, par. 1). In the cases of trade or manufacturing secrets, institutions and organizations are obliged to perform an assessment as to whether there is an overriding interest in the disclosure of the requested information (Art. 41b, par. 3). If such cannot be identified, institutions and organizations are obliged to ensure the re-use of part of the information (Art. 41b, par. 2).

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WHO HAS A RIGHT OF ACCESS TO INFORMATION?

The Access to Public Information Act gives EVERY:

- Bulgarian citizen,
- foreign citizen or stateless person,
- legal entity — Bulgarian or foreign

the right to seek and receive access to information, WITHOUT HAVING TO DEMONSTRATE A SPECIFIC INTEREST.

In effect, the law does not stipulate any restrictions with respect to applicants. This is in line with the international standards on freedom of information, which are grounded on the idea that information held by the state belongs to the public as a whole.

Frequently asked questions:

Do applicants need to explain why they need the information?

No. No one can be obliged to justify a request for access to particular information. Precisely the opposite — it is the institution that should, in case of refusal, provide a reason for the refusal and refer to the appropriate restriction under the law.

Are there any groups of applicants who enjoy a privileged access to information?

No. The law promotes the principle of EQUAL access to information for everyone. It is not permitted to make a distinction between different categories of applicants, such as journalists, scientists, lawyers, businessmen, natural persons, etc.

Do legal entities have to prove their legal personality when requesting access to public information?

No. According to the Supreme Administrative Court, *"Access to public*

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information is immanent in civil society. This is the reason why Art. 41 of the Constitution of the Republic of Bulgaria, which is dedicated to the right to information, begins with the words 'Everyone has a right.'"[10] This constitutional provision prescribes a broad interpretation of Art. 4 of the APIA. Therefore, even civil society organizations that have not been registered have the right to seek and receive any information of their interest, regardless of the fact that they have not been explicitly listed in the legal provision in question. Stemming from this logic, the SAC concluded that there is no rule in the APIA requiring civil society organizations to prove their legal personality when requesting access to information. *"Such a requirement would be pointless in light of the principle that 'everyone has a right to seek and receive information' (Art. 41, par. 1 of the Constitution) and given that every organization typically consists of members who are (at least some of them) natural persons, and every natural person has a right of access to public information."*[11]

Important!

In order to guarantee the principle of equal access to information to the greatest degree possible, the law provides that individuals with vision, hearing or speech impairments are entitled to request access to information in a form that corresponds to their communication abilities (Art. 26, par. 4 APIA).

[10] Ruling No. 3335/13 April 2005 of the SAC, Fifth Division on admin. case No. 3169/2005.
[11] *Ibid.*

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WHO IS OBLIGED TO PROVIDE ACCESS TO INFORMATION?

The institutions obliged to provide access to information are specified in Art. 3 of the APIA. The legal provisions of the APIA focus mainly on the provision of information by ***public bodies***.

The act also applies to four other categories of bodies. It regulates access to information related to the activities of ***bodies governed by public law*** — these are different from public bodies and comprise all the institutions that exercise public functions within a certain field, but are not part of the public bodies framework. In addition, the APIA regulates access to information related to the activities of ***organizations governed by public law***. These include all legal entities that satisfy at least one of the following requirements:

a) more than half of the revenue for the previous fiscal year was funded by the state budget;
b) more than half of the management board or supervisory board members are appointed by bodies acting as contracting authorities in public procurement; and
c) bodies acting as contracting authorities in public procurement exercise control over the management of the entity.

The APIA also covers access to information related to the activities of certain ***natural and legal persons*** funded by the state budget or by EU funds. Finally, the APIA obliges the ***mass media*** to provide information concerning the transparency of their work.

I. Public bodies (Art. 3, par. 1 APIA):

All public bodies are obliged to provide access to information under the APIA. ***Executive bodies*** — ministries, regional administrations, state agencies, commissions, executive agencies, national services, etc. ***Legislative*** bodies — the National Assembly. ***Judicial bodies*** — investigative services, the Prosecutor's Office,

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courts. Institutions outside the three branches of power — Office of the President, Constitutional Court.[12]

Frequently asked questions:

Are territorial units of central authorities obliged to provide information themselves?

Yes. Following amendments to Art. 3, par. 1 of the APIA (SG No. 104 of 2008) territorial units of central authorities were explicitly added to the list of obliged bodies under the law.

II. Local government authorities (Art. 3, par. 1 APIA):

This category includes municipal councils and the mayors of municipalities. In addition to the latter, the mayors of parishes in the countryside and the mayors of districts in the larger cities are also obliged bodies under the law.

III.A. Bodies governed by public law (Art. 3, par. 2, item 1 APIA):

This category includes all institutions that are not part of the public bodies framework, but have been entrusted, by law, with the performance of public functions or the exercise of administrative powers within a particular field.

Bodies governed by public law, which are different from public bodies, are for instance: the National Health Insurance Fund (NHIF)[13], the National Social Security Institute, the Central Election Commission, the Electronic Media Council, the Bulgarian Medical Association (BMA)[14], the Chamber of Architects in Bulgaria (CAB),[15] etc.

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12 Appendix 1.

13 In a number of court rulings, the Fifth Division of the SAC has concluded that the NHIF is a body governed by public law within the meaning of Art. 3, par. 2, item 1 of the APIA (admin. case No. 9504/2002, No. 10261/2002. No. 8292/2003, No. 2664/2003 and No. 1793/2004).

14 Ruling No. 7441/3 June 2014 of the SAC, Fifth Division on admin. case No. 6447/2014.

15 Judgment No. 4374/22 December 2010 of the SCAC, Second Division, Panel 27 on admin. case No. 6270/2012.

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III.B. Organizations governed by public law (Art. 3, par. 2, item 1 APIA):

This category includes all legal entities whose work is funded by the state budget, or whose management is appointed or overseen by contracting authorities in public procurement.

For example:

According to the established case-law, the following legal entities are (or were at the time of appeal of the refusal to provide information) organizations governed by public law and are, therefore, obliged bodies within the meaning of the APIA:

- Elektroenergien Sistemen Operator EAD (ESO)[16];
- VIC Sliven OOD[17];
- The Urban Mobility Center (UMC) - Sofia[18];
- Stolichen Avtotransport EAD[19];
- MBAL – Pirdop AD[20];
- BDZ Passengers EAD[21];
- Toplofikatsiya Sofia EAD[22];
- Chistota Iskar EOOD[23];

[16] Judgment No. 11137/17 Jully 2017 of the SAC, Fifth Division on admin. case No. 10876/2017, judge-rapporteur Emanoil Mitev.
[17] Judgment No. 2674/22 February 2019 of the SAC, Fifth Division on admin. case No. 7003/2017, judge-rapporteur Mariya Nikolova.
[18] Judgment No. 2623/19 April 2018 of the SCAC, Second Division, Panel 59 on admin. case No. 832/2018, Judge Zornitsa Doychinova.
[19] Ruling No. 9922/26 July 2017 of the SAC, Fifth Division on admin. case No. 6204/2017, judge-rapporteur Marina Mihaylova.
[20] Judgment No. 1106/29 November 2016 of the SRAC, Panel 7 on admin. case No. 593/2016, Judge Emil Dimitrov.
[21] Judgment No. 396/22 January 2014 of the SCAC, Second Division, Panel 37 on admin. case No. 7938/2013.
[22] Judgment No. 921/19 February 2014 of the SCAC, Second Division, Panel 24 on admin. case No. 1785/2013.
[23] Judgment No. 7289/25 November 2013 of the SCAC, Second Division, Panel 30 on admin. case No. 8103/2013.

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- Community Center "Rayna Knyaginya" in Sofia.[24]

IV. Natural and legal persons (Art. 3, par. 2, item 2 APIA):

Any natural or legal person funded by the state budget, municipal budgets or EU funds is obliged to provide information about their activities. The obligation in this case is limited to information related to the funded activities.

For example:

In 2011, the Supreme Administrative Court (SAC) decided that the National Electricity Company (NEC)[25], which is not an obliged body under the APIA, was required to provide information related to the construction of new nuclear reactors on the Belene NPP site, as the construction project had been funded by the consolidated state budget.[26]

Frequently asked questions:

Which persons/entities perform activities funded by the state budget?

The annual State Budget of the Republic of Bulgaria Act contains lists of all persons and entities funded by the state budget.

Are state-owned/municipality-owned "companies" obliged to provide information?

State- and municipality-owned companies are companies in which part of the shares are owned by the state or a municipality, respectively. The fact that the state/municipalities hold stakes in a particular company does not automatically make that company an obliged body under the APIA. The APIA will only apply if the company is funded by the state budget. Information regarding the activities of state- and

[24] Judgment No. 4624/27 October 2011 of the SCAC, First Division, Panel 16 on admin. case No. 4092/2011.
[25] Ruling No. 6740/16 May 2011 of the SAC, Fifth Division on admin. case No. 3129/2011.
[26] Council of Ministers Decree No. 259/27 October 2008.

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municipality-owned companies can be sought from the respective state or local authority that exercises the rights of the state/municipality in the respective company. In the cases where a state- or municipality-owned company receives funds from the state budget, it is obliged to provide any information related to the funded activities.

Are state-owned/municipality-owned "enterprises" obliged to provide information?

State- and municipality-owned enterprises are obliged to provide information under the APIA, however not as entities funded by the state budget, but in their capacity of bodies governed by public law, different from the public bodies within the meaning of Art. 3, par. 2, item 1 of the APIA.

State-owned enterprises — In accordance with Art. 62, par. 3 of the Commercial Act, *"State-owned enterprises that are not commercial companies can be established by a legislative act."* A number of special legislative acts, enacted on the grounds of the cited provision, have established state-owned enterprises entrusted with the performance of public functions or with the exercise of administrative powers with respect to important aspects of public life.

For example:

In accordance with the Civil Aviation Act (CAA), the *Bulgarian Air Traffic Services* Authority, a state-owned enterprise, performs public functions related to the provision of air navigation services within the civil airspace of the Republic of Bulgaria (Art. 53 CAA) [27].

In accordance with the Forest Act, any state-owned forest lands that have not been placed under the control of public bodies or legal entities shall be governed by state-owned enterprises, established specifically for that purpose in line with Appendix 1 (Art. 163 FA).

In accordance with the Gambling Act (GA), the *Bulgarian Sports Totalizator* is a state-owned enterprise, established with the objective to raise funds to support physical education and sports in the Republic of Bulgaria (§9, item 1 of the

[27] Judgment No. 6434/24 October 2013 of the SCAC, Second Division, Panel 34 on admin. case No. 4829/2013.

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Supplementary Provisions of the GA).

Municipality-owned enterprises — In accordance with Art. 52 and 53 of the Municipal Property Act (MPA), *"The municipality-owned enterprise is a specialized unit of the municipality, established for the performance of local activities and services funded by the municipal budget."* The municipality-owned enterprise can carry out activities related to:

- Management, construction, maintenance, repairs and reconstruction of sites, networks and facilities of the technical infrastructure, as well as of other municipality-owned properties, and provision of services related to these properties;
- Provision of other services or performance of other local activities, determined by the relevant municipal council, funded by the municipal budget, and necessary for satisfying the needs of the municipality or the local population.

V. Mass media (Art. 3, par. 2, item 3 APIA):

The mass media are obliged to provide access only to specific categories of information related to ensuring the independence and transparency of their work (Art. 18 of the APIA).

It should be noted that the relevant international standards do not suggest to confer access to information obligations on the media in the national legislation, as the primary aim of this legislation is to ensure the transparency and accountability of public authorities.

Important!

It is possible for an institution to fall within several or even all the categories outlined in Art. 3, par. 2 of the APIA. For instance, the *Bulgarian National Television* (BNT) is a national public broadcaster pursuant to Art. 6 of the Radio and Television Act (RTA), and as such, it is a body governed by public law (Art. 3, par. 2, item 1 of the APIA). At the same time, the BNT is obliged to provide

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information related to its activities, subsidized[28] by the state budget (Art. 3, par. 2, item 2 of the APIA), as well as information under Art. 18 of the APIA, applicable to the mass media (Art. 3, par. 2, item 3 of the APIA).

[28] The BNT receives an annual subsidy from the state budget in accordance with Art. 70, par. 3, item 2 of the RTA.

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WHAT INFORMATION MUST BE PROVIDED UNDER THE APIA?

I. Scope and content of public information

The definition of the term ***public information*** in the APIA consists of two main characteristics. According to Art. 2 of the APIA, this is ANY information, regardless of its medium:

a) which is connected with the public life in the Republic of Bulgaria, and

b) the provision of which allows the applicant to form an opinion regarding the activities of the obliged bodies within the meaning of the Act.

In effect, the notion of public information includes any recorded information that is created or stored by public bodies, local government authorities or the other obliged bodies under the law.

Important!

A five-member panel of the SAC analyzed and systematized the case-law related to the scope of the term "public information" in 2006. According to that analysis, public information within the meaning of the APIA is:

a) any set of data, structured in accordance with particular criteria and having a specific purpose and use;

b) as well as any information concerning a particular status or activity of the bodies obliged under Art. 3;

c) but excluding interpretations of legal provisions.

It can be seen from the above that the SAC's interpretation of "public information" is ***as broad as possible***. It includes not only documents, but also information stored on other media. Moreover, the right of access to information can be exercised by asking questions in the cases where the applicant does not know which

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documents contain the sought answers.[29]

Important!

Over the years, one of the main contentious issues in the case-law was whether applicants should be able to describe the sought information in their requests by referring to specific documents. The SAC interpreted the matter in an inconsistent and conflicting manner, initially ruling that applicants had a right of access to information, but not to specific documents. At present, however, the question of how a request for access to information should be formulated (the so-called "access to information/access to documents issue") has been resolved with four judgments of five-member panels of the SAC. According to the latter, the requested information must be provided, regardless of whether the applicant has described the information or has requested access to a specific medium (e.g., a document).[30]

EXAMPLES:

In recent years, there has been a dramatic increase in cases where public bodies refuse to provide access with the argument that the sought information is not "public information" within the meaning of the APIA. In the majority of such cases (if not in all of them), the competent courts quash the refusal, holding that the information falls within the scope of the APIA:

- documents requested from the Sofia Municipality (SM), which show that the construction supervisor overseeing the renovation of Graf Ignatiev Street in

[29] Judgment No. 9720/10 October 2006 on admin. case No. 5011/2006 of the SAC, five-member panel, judge-rapporteur Aleksandar Elenkov.

[30] Judgment No. 2113/9 March 2004 on admin. case No. 38/2004 of the SAC, five-member panel, judge-rapporteur Andrey Ikonomov;

Judgment No. 1165/1 February 2006 on admin. case No. 9728/2005 of the SAC, five-member panel – II College, judge-rapporteur Ivan Trendafilov;

Judgment No. 8969/24 July 2008 on admin. case No. 6569/2008 of the SAC, five-member panel – I College, judge-rapporteur Tsvetana Surlekova, and

Judgment No. 2761/23 July 2011 on admin. case No. 13930/2010 of the SAC, five-member panel – II College, judge-rapporteur Lyubomira Motova.

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Sofia was indeed fined BGN 100,000 by the SM in October 2018;[31]

- copies of a correspondence between the Ministry of Economy and business companies, in which it is the majority shareholder, regarding the size of funds deposited by public bodies and state-owned enterprises in 2009 and 2010, and the banks in which the deposits were made;[32]

- information requested from the SM related to securing the Bronze House, installed in 2018 on the site of Georgi Dimitrov's mausoleum in Sofia;[33]

- information from the Agricultural State Fund (ASF) related to the ranking of the municipal projects under one of the measures of the EU's Rural Development Programme 2014 – 2020;[34]

- information related to fines, imposed and collected by the SM in 2015 and during two months of 2018 under the SM's Ordinance on Advertising Activities;[35]

- a copy of the conflict-of-interest statement of a former employee of the Social Assistance Agency (SAA), who, at the time of submission of the request in 2017, was nominated and was the only candidate in a selection procedure for Chairman of the National Social Security Institute;[36]

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[31] Judgment No. 1186/25 February 2019 of the SCAC, Second Division, Panel 68 on admin. case No. 12121/2018, Judge Vyara Ruseva.
[32] Judgment No. 2740/25 February 2019 of the SAC, five-member panel – II College on admin. case No. 15272/2018, judge-rapporteur Yovka Drazheva.
[33] Judgment No. 1224/25 February 2019 of the SCAC, Second Division, Panel 48 on admin. case No. 13223/2018, Judge Kalina Petsova.
[34] Judgment No. 3431/11 March 2019 of the SAC, Fifth Division on admin. case No. 10673/2017, judge-rapporteur Galina Karagyozova.
[35] Judgment No. 1336/1 March 2019 of the SCAC, Second Division, Panel 22 on admin. case No. 10268/2018 г, Judge Desislava Kornezova.
[36] Judgment No. 4479/26 March 2019 of the SAC, Fifth Division on admin. case No. 8537/2018, judge-rapporteur Anna Dimitrova.

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- an investment project of the Varna Municipality for reconstruction of the street network on Narodni Buditeli Blvd;[37]

- information related to outstanding debts to the SM for the period 1 September 2015 – 1 September 2018, assigned for collection to private enforcement agents (PEAs);[38]

- a copy of a letter from the Bulgarian Shooting Union (BSU) to the Ministry of Youth and Sports on the subject of updating the list of Olympic medalists in shooting, who have retired from professional sports;[39]

- information from the Chief Architect of the SM related to the enforcement of punitive sanctions imposed on a legal entity for installing a movable object on municipal property in the capital without acquiring the necessary permission;[40]

- a list of all orders made by the Ministry of Defense (MD) and its subordinate structures for the supply of food and beverages in the period August 2015 – October 2018, including the supplier, the date of the order, the date of delivery and the value of the supplied products;[41]

- information regarding the public dues of the Smolyan Municipality by month for the period October 2018 – June 2019;[42]

- information regarding the amount received by the SM for lending municipal property for the exhibition "The Living Dinosaurs" that took place in the

[37] Judgment No. 4479/26 March 2019 of the SAC, Fifth Division on admin. case No. 8537/2018, judge-rapporteur Anna Dimitrova.
[38] Judgment No. 2302/3 April 2019 of the SCAC, Second Division, Panel 28 on admin. case No. 12528/2018, Judge Antony Yordanov.
[39] Judgment No. 1091/17 May 2019 of the Plovdiv Administrative Court, Panel XXIX on admin. case No. 588/2019, Judge Svetlana Metodieva.
[40] Judgment No. 3726/3 June 2019 of the SCAC, Second Division, Panel 25 on admin. case No. 1358/2019, Judge Boryana Petkova.
[41] Judgment No. 3860/7 June 2019 of the SCAC, Second Division, Panel 28 on admin. case No. 1014/2019, Judge Antony Yordanov.
[42] Judgment No. 348/10 October 2019 of the Smolyan Administrative Court on admin. case No. 315/2019, Judge Krasimira Selenova.

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capital;[43]

- a copy of the Ministry of Culture's minutes from the last competition to elect a director of the Drama and Puppet Theater – Pleven in 2015;[44]

- information related to the Struma Motorway, held by the Road Infrastructure Agency (RIA) and prepared under a contract between the RIA and Obedinenie Lot 3.2 Proekt signed in 2013;[45]

- copies of orders for the removal of illegal constructions, issued by the Blagoevgrad Municipality;[46]

- information regarding the amounts owed to the Blagoevgrad Municipality as of December 2017 by natural and legal persons using municipal properties or having concession agreements with the municipality;[47]

- a copy of the statement required under the Conflict of Interest Prevention and Ascertainment Act (CIPAA) for one of the deputy mayors of the Blagoevgrad Municipality;[48]

- a geodetic survey and an inspection record of the Sliven Municipality on a construction site;[49]

- copies of documents related to a construction permit issued by the Sliven Municipality to a specific company for the reconstruction of a building in

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[43] Judgment No. 13655/15 October 2019 of the SAC, Fifth Division on admin. case No. 6433/2018, judge-rapporteur Diana Dobreva.
[44] Judgment No. 1961/13 February 2018 of the SAC, Fifth Division on admin. case No. 7844/2016, judge-rapporteur Emil Dimitrov.
[45] Judgment No. 3373/16 March 2018 of the SAC, Fifth Division on admin. case No. 10233/2016, judge-rapporteur Donka Chakarova.
[46] Judgment No. 3865/26 March 2018 of the SAC, Fifth Division on admin. case No. 10298/2016, judge-rapporteur Vladimir Nikolov.
[47] Judgment No. 554/27 March 2018 of the Blagoevgrad Administrative Court on admin. case No. 49/2018, Judge Serafimka Madoleva.
[48] Judgment No. 4305/3 April 2018 of the SAC, Fifth Division on admin. case No. 1072/2017, judge-rapporteur Emanoil Mitev.
[49] Judgment No. 13272/31 October 2018 of the SAC, Fifth Division on admin. case No. 4697/2018, judge-rapporteur Galina Karagyozova.

Sliven;[50]

- information requested from the Aksakovo Municipality on whether a specific Varna-based company has transported waste to the designated landfill on the territory of the village of Vaglen in the same municipality, and how much waste was transported /measured in tons, number of trips paid on unloading and/or in any other way/;[51]

- information regarding the construction permits issued by the Sliven Municipality in September 2012;[52]

- information from the Communications Regulation Commission (CRC) regarding the amount paid for representative clothing for all the employees of the Commission;[53]

- information from the Ministry of Finance (MoF) regarding the maximum capacities of tax warehouses in the country for each type of fuel, and the concentration of ownership over the warehouses;[54]

- copies of documents prepared by the MoI in relation to the surrender of seven Turkish citizens by the Republic of Bulgaria to the Republic of Turkey in October 2016;[55]

- information from the Bulgarian Development Bank AD (BDB) regarding municipal debts to construction companies that were transferred to a

[50] Judgment No. 13740/9 November 2018 of the SAC, Fifth Division on admin. case No. 4060/2017, judge-rapporteur Zdravka Shumenska.
[51] Judgment No. 2423/13 December 2018 of the Varna Administrative Court, Panel XVI on admin. case No. 2782/2018, Judge Krasimir Kiprov.
[52] Judgment No. 15568/13 December 2018 of the SAC, Fifth Division on admin. case No. 8180/2017, judge-rapporteur Diana Dobreva.
[53] Judgment No. 12/3 January 2017 of the SCAC, Second Division, Panel 40 on admin. case No. 9203/2016, Judge Dilyana Nikolova.
[54] Judgment No. 3390/21 March 2017 of the SAC, Fifth Division on admin. case No. 4602/2016, judge-rapporteur Donka Chakarova.
[55] Judgment No. 2226/4 April 2017 of the SCAC, Second Division, Panel 40 on admin. case No. 11904/2016, Judge Dilyana Nikolova.

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programme for acquiring the BDB;[56]

- information from the Mayor of the Mladost District in Varna regarding the issuance of orders to remove 61 illegal constructions in the Maksuda neighborhood;[57]

- information regarding the revenue and expenses of the Yambol Municipality in relation to all court cases decided in the period January 2011 – December 2013;[58]

- information from the SM regarding conducted coordination procedures for the payment of insurance indemnities to tenants of municipal properties;[59]

- information from the General Directorate for the Execution of Penalties (GDEP) regarding an inspection conducted in the Pazardzhik Prison in 2017;[60]

- information from the Veliko Tarnovo Municipality regarding the reconstruction of a residential building that is part of a group cultural monument;[61]

- information from the Sofia-City Prosecutor's Office (SCPO) regarding the work of a Member of Parliament as an investigator;[62]

- a contract for the performance of public railway services, concluded between the Ministry of Transport, Information Technologies and Communications (MTITC) and BDZ – Passengers EOOD;[63]

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[56] Judgment No. 4593/10 July 2017 of the SCAC, Second Division, Panel 25 on admin. case No. 5245/2016, Judge Boryana Petkova.
[57] Judgment No. 264/11 February 2016 of the Varna Administrative Court, Panel 22 on admin. case No. 3248/2015, Judge Yanka Gancheva.
[58] Judgment No. 1576/12 February 2016 of the SAC, Fifth Division on admin. case No. 3549/2015, judge-rapporteur Emanoil Mitev.
[59] Judgment No. 5898/17 May 2016 of the SAC, Fifth Division on admin. case No. 5305/2015, judge-rapporteur Diana Dobreva.
[60] Judgment No. 522/13 October 2016 of the Pazardzhik Administrative Court, Panel IV on admin. case No. 488/2016, Judge Vasko Nanev.
[61] Judgment No. 514/19 January 2015 of the SAC, Seventh Division on admin. case No. 5399/2014.
[62] Judgment No. 5400/13 May 2015 of the SAC, Fifth Division on admin. case No. 9195/2014.
[63] Judgment No. 5972/25 May 2015 of the SAC, Fifth Division on admin. case No. 6396/2014.

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- information from the Veliko Tarnovo University (VTU) regarding the university's participation in the project "Joint Risk Monitoring during Emergencies in the Danube Area Border";[64]

- information from the Stara Zagora Municipality regarding the full text of the project idea, with which the municipality participated in the Mayors Challenge initiative of Bloomberg Philanthropies;[65]

- information from the Veliko Tarnovo Municipality regarding the mapping of vegetation and the conduct of geological surveys on land, on which the municipality has approved a construction project;[66]

- information from the Elin Pelin Municipality regarding a procedure for approving the expansion of the airfield in the village of Lesnovo;[67]

- information from the Bulgarian National Radio (BNR) regarding the number of vehicles owned by the BNR, as well as their makes and models;[68]

- copies of minutes of conducted general meetings of VIC – Sliven OOD;[69]

- information from the Ministry of Justice (MoJ) regarding the personal prisoner file of the last executed prisoner in Bulgaria;[70]

- information from the Ministry of Finance (MoF) regarding the statements of independent MPs on the subject of transferring their budget subsidies to a particular political party.[71]

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64 Judgment No. 6040/8 May 2014 of the SAC, Seventh Division on admin. case No. 16854/2013.
65 Judgment No. 116/26 June 2014 of the Stara Zagora Administrative Court, Panel III on admin. case No. 158/2014.
66 Judgment No. 233/29 May 2014 of the Veliko Tarnovo Administrative Court, Panel IV on admin. case No. 8/2014.
67 Judgment No. 704/16 January 2013 of the SAC, Fifth Division on admin. case No. 9351/2012.
68 Judgment No. 170/5 January 2012 of the SAC, Fifth Division on admin. case No. 16146/2011.
69 Judgment No. 881/17 January 2012 of the SAC, Fifth Division on admin. case No. 3126/2011.
70 Judgment No. 2082/13 February 2012 of the SAC, Fifth Division on admin. case No. 3992/2011.
71 Judgment No. 1442/19 March 2012 of the SCAC, Second Division, Panel 34 on admin. case No. 6243/2011.

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II. Types of public information

1. Official public information (Art. 10 APIA)

Official public information is information contained in the acts of public bodies and local government authorities issued in the exercise of their powers. The term includes all types of acts issued by these bodies: normative acts, general acts, and individual acts.

The principle enshrined in the Bulgarian legislation is that access to the normative acts of public bodies is ensured through their promulgation in the State Gazette (Art. 12, par. 1 of the APIA and Art. 37 of the Law on Normative Acts). It is also possible to give access to other official information (different from the information contained in normative acts) by means of promulgation in the cases where this is provided for in a special law or on the basis of a decision of the body that created the information. For instance, explicit obligations to promulgate certain general and individual acts are contained within the Privatization and Post-Privatization Control Act, the Concessions Act, the Public Procurement Act and others.

When access is requested to official information that has already been promulgated, the law stipulates an obligation for the relevant public body to identify the issue number of the State Gazette, in which the information was published, as well as the publication date (Art. 12, par. 4 of the APIA). The access to any other official public information is free and can be obtained in accordance with the procedure specified in the law.

2. Administrative public information (Art. 11 APIA)

Administrative public information is information that is collected, created and stored in relation to official information, as well as in the fulfillment of the activities of public bodies and their administrations. In practice, the category includes all the information that is not considered *official information*, i.e., with the exception of the information contained within the acts issued by public bodies.

Access to administrative public information is free and can be obtained in accordance with the procedure laid down in the APIA.

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Frequently asked questions

What is the difference between administrative public information and information that is considered an administrative secret?

Administrative information is a type of public information that can be accessed freely in accordance with the APIA (Art. 11 and Art. 13 of the APIA). Information considered an administrative secret is a type of classified information under Art. 26 of the PCIA. The matters related to the creation, processing and storage of information classified as an administrative secret, as well as the rules and procedure for obtaining access to such information, are laid down in the PCIA.

III. Special procedures for access to public information

The procedure for obtaining access to information under the APIA — including the provisions related to the request form, the time limits, the decisions, the appeal, etc. — does not apply with respect to several categories of information, which has the characteristics of public information, but also bears certain specificities that require the application of special rules for its provision. In particular, this applies to:

1. Information disclosed in connection with the provision of administrative services to individuals and legal entities (Art. 8, par. 1 APIA)

The general legal framework governing the provision of administrative services by public bodies is laid down in the Administrative Procedure Code (APC), which determines the standards for the organization, provision, and challenging of refusals to provide such services. By contrast to the information accessed under the APIA, the information provided to individuals and legal entities via administrative services is important for certifying, recognizing, claiming, exercising or extinguishing other rights or obligations of those parties (Art. 21 of the APC). This is why administrative services are more individual in nature, and their provision usually requires more specific, i.e., more personal information about the applicant. The specific administrative services are

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outlined in the respective special laws and typically consist in the issuance of various certificates, licenses, etc.

2. Information kept at the National Archives of the Republic of Bulgaria (Art. 8, par. 2 APIA)

The access to documents kept at the National Archives is regulated by the National Archives Act (NAA), which determines the rules for the collection, registration, processing and use of archival documents. The main characteristic of the documents kept at the National Archives is that they are all considered ***valuables*** within the meaning of the NAA, which necessitates the adoption of special rules related to the storage and use of these documents.

3. Access to personal data (Art. 2, par. 5 APIA)

The Personal Data Protection Act (PDPA) regulates the access of individuals to their own personal data, as well as the access to the personal data of third parties. The scope and content of the term *personal data*[72] are outlined in § 1, item 2 of the Supplementary Provisions (SP) of the PDPA and in § 1, item 2 of the SP of the APIA.

Important!

A distinction should be made between the cases in which an applicant has requested access to public information containing personal data and the cases in which the requested information constitutes personal data (of the applicant or of a third party) in its entirety. In the first case, the information must be provided in accordance with the rules stipulated in Art. 31 of the APIA. In the second case, the relevant procedure laid down in the PDPA shall apply.

[72] The definition of "personal data" is taken from Art. 4, par. 1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.

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For example:

According to the established case-law, any information related to the number, duration and purpose of a municipal mayor's business trips, as well as to the expenses for such trips, is considered public information that does not constitute "personal data," as it does not concern a particular individual, but is connected with the performance of the mayor's public duties.[73] Such information should be provided under the APIA, and there is no need to obtain the consent of the mayor.

Frequently asked questions

Does the Spatial Planning Act (SPA) contain special rules for accessing information related to spatial planning that exclude the application of the APIA?

Not when the applicant is not an interested party within the meaning of the SPA. In accordance with the established case-law, the procedure for accessing information under the SPA is limited to persons who are a party in the relevant administrative proceedings. Therefore, the public bodies specified in the SPA are only obliged to provide information to persons regarded as interested parties within the meaning of Art. 131 of the SPA. This order embodies the general principle enshrined in Art. 12, par. 2 of the APC. In the cases where the applicant does not have the capacity of an interested party, the SPA cannot be applied, and access to the sought information can only be obtained under the APIA, insofar as the information is of a public nature.[74]

[73] Judgment No. 9097/21 September 2006 of the SAC, Fifth Division on admin. case No. 5319/2006.

[74] Judgment No. 15568/13 December 2018 of the SAC, Fifth Division on admin. case No. 8180/2017, judge-rapporteur Diana Dobreva; Judgment No. 13740/9 November 2018 of the SAC, Fifth Division on admin. case No. 4060/2017, judge-rapporteur Zdravka Shumenska; Judgment No. 13272/31 October 2018 of the SAC, Fifth Division on admin. case No. 4697/2018, judge-rapporteur Galina Karagyozova; Judgment No. 514/19 January 2015 of the SAC, Seventh Division on admin. case No. 5399/2014, judge-rapporteur Sonya Yankulova.

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RESTRICTIONS ON THE RIGHT OF ACCESS TO INFORMATION

A number of restrictions on the right of access to information have been introduced in order to protect the rights of others or safeguard important public interests. For instance, the protection of personal data, which can be found in documents containing public information, falls within the category "rights of others." On the other hand, the protection of information, the disclosure of which could threaten the national security or the public order, is done to safeguard a public interest.

The international instruments that guarantee the right of everyone to seek, receive and impart information generally provide that any restrictions on this right should be interpreted and applied narrowly. This understanding can be inferred from Art. 10 of the European Convention on Human Rights (ECHR), Art. 19 of the International Covenant on Civil and Political Rights (ICCPR), Art. 3 of the Convention on Access to Official Documents, and Art. 4 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarchus Convention).

I. European standard on restricting access to information

The right of access to information held by public bodies has been recognized as guaranteed by the European Convention on Human Rights in the case-law of the European Court of Human Rights (ECtHR). In a judgment of 2009, the ECtHR ruled for the first time that Art. 10 of the ECHR was applicable in cases of refused access to public information. The unfounded refusal of a public body to provide public information was defined by the ECtHR as an "information monopoly," i.e., a form of censorship.[75] In November 2016, a Grand Chamber of the ECtHR confirmed the understanding that the right of access to information that is held by public bodies and

[75] Judgment on the case of Társaság a Szabadságjogokért v. Hungary*(Application No. 37374/05),* available in English at this link.

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can contribute to a public debate is protected by Art. 10 of the ECHR.[76] Several NGOs submitted *amicus curiae briefs* on the case, including the distinguished London-based organization ARTICLE 19 and Access to Information Programme.[77]

The Council of Europe's Convention on Access to Official Documents (the Convention) also plays a key role in understanding how the restrictions on access to information should be applied.[78] An official explanation of its provisions can be found in the Explanatory Report to the Convention.[79] The text of the Report is also useful for gaining a better understanding of the restrictions under the APIA, as well as of how to apply them correctly (e.g., assessment for the provision of partial access, harm test, and overriding interest test). The document preceding the Convention — Recommendation (2002) 2 of the Committee of Ministers to the Council of Europe Member States[80]— was cited by the Supreme Administrative Court as far back as 2002.[81]

Three-part test applicable to the restrictions on access to information

The European standard governing the application of the restrictions on access to information is primarily set out in Art. 10, par. 2 of the ECHR. According to this provision, a restriction on the right to receive and impart information is only permissible when it is prescribed by law, proportionate to one of the legitimate aims specified in the provision, and "necessary in a democratic society." These three conditions should all be fulfilled in order to justify a restriction on access to information. This three-part test is also reproduced in the Convention on Access to Official Documents.

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76 Решение от 8 ноември 2016 по дело Унгарски хелзинкски комитет срещу Унгария (*Magyar Helsinki Bizottság v. Hungary*), жалба № 18030/11.

77 Available at this link.

78 Available at this link.

79 Available at this link.

80 Available at this link.

81 Judgment No. 4694 of 2002 on admin. case No. 1543 of 2002 of the Supreme administrative court, five-member panel.

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Legitimate aims

Art. 3, par. 1 of the Convention lists 11 legitimate aims that could justify a restriction on access to official documents. Most of these aims coincide, in part or in whole, with the grounds for refusing access to information laid down in the APIA.

For instance, national security, defense, and international relations are protected both under the Convention[82] and under the Bulgarian legislation.[83] The same applies to commercial and other economic interests.[84] On the other hand, some of the legitimate aims specified in the Convention are not fully embedded within the Bulgarian legislation. For instance, the protection of the economic, monetary and exchange rate policies of the State is much more narrow in scope in the APIA as compared with the Convention.[85] Moreover, the Convention provides for the protection of the equality of parties in court proceedings and the effective administration of justice, and gives Concerned States the opportunity to further protect, at their own behest, the communication with the Reigning Family and its Household or with the Head of State. These grounds for restricting access to information have no analogue in the Bulgarian legislation.

Necessary in a democratic society

The Convention on Access to Official Documents goes one step further than the ECHR in terms of clarifying the "necessary in a democratic society" requirement. In particular, the Convention provides that access to information can be refused when its provision would lead to harm or to a threat of harm to one of the legitimate interests specified therein. However, even if it is expected that the disclosure of the information would lead to harm, an assessment should be made as to whether there is an overriding public interest in place. Furthermore, the Convention provides for the

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82 Art. 3, par. 1(a) of the Convention.

83 See Art. 25 of the PCIA which provides that state secrets protect the national security, defense, foreign policy, and constitutional order in the country from any potential harm.

84 These are specified in Art. 3, par. 1(a) of the Convention and are also protected by Art. 17, par. 1-3 of the APIA.

85 See Art. 3, par. 1(h) of the Convention and compare with Section III of the List appended to Art. 25 of the PCIA, which only includes important economic interests of the State – item 3.

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introduction of time limits for protection of the information falling within the scope of the specified restrictions. Such time limits are also set out in the Bulgarian legislation.[86]

In other words, in order to justify a restriction on the right to access information, the European standard requires the restriction to be:

- expressly prescribed by law;
- proportionate to at least one of a number of specified legitimate aims;
- necessary in a democratic society.

The requirement that the restriction be "necessary in a democratic society" means that access to a document can only be refused if the disclosure of the information within:

- **will harm** or **may harm** one of a group of explicitly stated protected interests;
- unless there is an **overriding public interest** in the disclosure of the information.

II. Bulgarian legislation on restricting access to information

The restrictions on access to information are laid down in:

- Art. 41 of the Constitution of the Republic of Bulgaria;
- international treaties that form part of the domestic legislation:
  - Art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms;[87]
  - Art. 19 of the International Covenant on Civil and Political Rights;[88]
- Art. 7, Art. 13, Art. 17, Art. 31, and Art. 37 of the APIA;

86 Compare Art. 13, par. 3 of the APIA and Art. 34, par. 1, item 1 – 4 of the PCIA.
87 Incorporated in Bulgarian law pursuant to Art. 5, par. 4 of the Constitution.
88 Incorporated in Bulgarian law pursuant to Art. 5, par. 4 of the Constitution.

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- a number of special laws regulating specific restrictions on access to information, such as:
  - The Protection of Classified Information Act (PCIA);
  - The General Data Protection Regulation and the Personal Data Protection Act (PDPA);
  - The Trade Secret Protection Act (TSPA).

Art. 41 of the Constitution has been interpreted in Judgment No. 7/1996 of the Constitutional Court on constitutional case No. 1 of 1996. In that case, the Court held that restrictions on access to information can only be applied in order to protect a competing interest and are subject to a narrow interpretation. The right of access should be seen as a principle, and its restriction — as an exemption from that principle. It should be noted that in line with this understanding, the national laws in some countries refer to the restrictions as "exemptions."[89]

The Bulgarian legislation, seen as a collection of the relevant normative acts, coupled with the interpretations provided in judgments of the Constitutional Court and other courts, related to access to information, is mostly compliant with the European standard on restricting access to information.

Compliance with the requirement that the restriction be "expressly prescribed by law"

Restrictions on access to information can only be stipulated in a legislative act. This follows from the adopted interpretation of Art. 41, par. 1 and 2 of the Constitution.[90] In accordance with Art. 7, par. 1 of the APIA, the right of access to information can only be restricted if the requested information is a protected secret under the law.

In their case-law, the domestic courts have accepted that when there is a special

[89] See the Freedom of Information Act 2000 (UK) which uses the term "exemption" (Art. 17(1)(b-c)) or "exempt information" (Art. 17(1)); the Free Access to Public Information Act 2019 of the Republic of Macedonia which uses the term "изключок" (Art. 6) and others.

[90] See Judgment No. 7 of 4 June 1996 of the Constitutional Court on constitutional case No. 1/1996.

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law regulating a particular restriction, the provisions of that law have to be considered alongside the provisions of the APIA. For instance, the SAC has held that when a public body justifies a refusal to disclose information classified as a state secret, it must indicate when and on what grounds the information was marked classified, as well as specify the category of the information in accordance with the List in Appendix 1 to Art. 25, par. 1 of the PCIA.[91]

In practice, there are cases where the public body cites a special law regulating a particular restriction on access to information, and then does not provide a decision on the request for access, claiming that the APIA is not applicable (Art. 4, par. 1). The SAC considers this approach erroneous. Indeed, the APIA is not applicable in cases where the legislature has introduced a special procedure for access to public information. However, a special procedure for access is not the same as a special law regulating a restriction on access to information. These are two entirely different concepts. For instance, the protection of "tax and social security information" as a secret under the Tax and Social Insurance Procedure Code (TSIPC) does not represent a special law, but rather a restriction on access to information within the meaning of Art. 7 of the APIA. The SAC emphasizes that the procedure laid down in Art. 74 of the TSIPC, which relates to tax and social security information, is applied by the income authorities and other officials specified in the TSIPS, but cannot be used as an avenue for gaining access to information by any individual. With regards to the special procedure in the TSIPC, the SAC concludes the following:

„This procedure has been established in order to set aside the protection of the information in respect of a limited number of public officials, whereas the information remains a secret in respect of all other persons, and their access to it can be restricted on the grounds of Art. 7, par. 1 of the APIA, as there is no special procedure for access they can avail of, but instead there is a prescribed legal ground for restricting their right of access – Art. 37, par. 1, item 1 of the APIA."

This is why a refusal to provide information related to tax warehouses for fuels is unlawful if founded upon the argument that the information represents tax and social

[91] Judgment No. 2113 of 9 March 2004 on admin. case No. 38/2004 of the SAC, Fifth Division.

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security information, and, therefore, access to it is provided under a special procedure.[92]

The courts have also introduced stringent requirements with respect to the precision of the legal provisions regulating access restrictions. For example, a legal provision stipulating that "protected secret" means information that has become known to someone in the course of exercising their official duties cannot be considered as a valid ground for refusing access to the information. The categories of information that pertain to each separate restriction should be expressly laid down in the relevant legal provision. Therefore, it is not possible to refuse access to the contents of a notice of adjustment solely on the basis of the fact that tax inspectors are required to keep confidential any information that has become known to them in the course of their work activities.[93] In other words, a provision in a special law that merely creates obligations for public officials to keep some unidentified information confidential cannot be used as grounds to refuse access to requested public information.[94]

Legitimate aims

The legitimate aims that can justify the application of restrictions on the provision or disclosure of information are exhaustively listed in the already cited Art. 41, par. 1 of the Constitution and Art. 19 of the ICCPR. According to the Constitutional Court, the applicable restrictions have been adopted at constitutional level and cannot be extended through ordinary legislation.

According to Art. 41, par. 1, clause 2 of the Constitution, also reproduced in Art. 5 of the APIA, the legitimate aims that can justify a restriction on the right of access to information are limited to the protection of:

- national security,

[92] Judgment No. 3390 of 21 March 2017 on admin. case No. 4602/2016 of the SAC, Fifth Division. The case was initiated by three MPs in relation to a refusal of the Ministry of Finance to provide access to information concerning tax warehouses, the ownership of which had been considered problematic.

[93] Judgment No. 10539 of 22 November 2002 on admin. case No. 5246 of 2002 of the SAC, Fifth Division.

[94] In the cited case, the requested information was contained in a notice of adjustment issued following a tax inspection of a higher education institution.

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- the public order,
- the rights and reputation of other citizens,
- public health or morals.[95]

The Judgment of the Constitutional Court mentions both constitutionally protected rights (rights of others) and constitutionally protected interests (national security, the public order).[96]

The Bulgarian legislation provides for various restrictions related to protecting the **rights of others**. These include:

- trade secret /fair competition/;
- protection of personal data /right to private life/;
- protection of intellectual property.

A proposal to formulate an express provision that would contain an exhaustive list of all the legitimate aims was already made in the course of the drafting of the APIA. Indeed, this is the approach that has been followed in many of the national laws on access to public information, considered most fully compliant with international standards. In the end, however, the APIA only reiterates the broadly formulated aims, listed in the Constitution.[97]

A review of the relevant legislation led to the identification of the following legitimate aims (restrictions on access to public information):

- state secret: the protection of the country's national security, defense, foreign policy, and constitutional order from harm or a threat of harm;
- administrative secret: the protection of another state interest, provided by law;
- investigative secret: the protection of the interest of an effective criminal investigation;
- opinions and consultations on a draft administrative decision (administrative act);

[95] The protection of public health and morals can be excluded from the scope of legitimate aims, as it can only justify the restriction of the right to impart, but not of the right to seek information. This is why such restrictions are not provided either in Recommendation 2002 (2), or in the Bulgarian legislation.

[96] Judgment of the Constitutional Court, *op. cit*.

[97] See Art. 5 of the APIA, which reflects the content of Art. 41, par. 1, clause 2 of the Constitution.

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- ongoing negotiations;
- personal data;
- trade secret;
- information obtained from another country under the conditions of the PCIA (foreign classified information).

The analysis of the legitimate aims specified in the Bulgarian legislation shows that some of them are more broadly formulated than in the Convention on Access to Official Documents and in other national laws. For instance, the protection of information related to disciplinary proceedings[98] is not expressly provided in the Bulgarian legislation; however, such information can be considered as falling within the scope of the protection of preparatory documents (Art. 13, par. 1, item 1 of the APIA) or the protection of personal data. The protection of information related to ongoing inspections and investigations is also not laid down in a separate provision, as it is in the Convention or in Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents,[99] as well as in many national laws. Under the Bulgarian legislation, however, this restriction falls within the broader scope of the protection of preparatory documents (Art. 13, par. 1, item 1 of the APIA). In addition, there is no separate provision on the protection of information related to whistleblowers. The protection awarded to such information is case-based; for instance, tip-offs submitted to the Commission for Anti-corruption and the Forfeiture of Illegally Acquired Property are expressly protected,[100] but tip-offs submitted to other institutions are not.[101] In these cases, the restrictions related to the protection of preparatory documents and personal data should apply. The public interest the effective counteraction of crimes, violations and corruption evokes the need for unequivocal protection of the channels, through which tip-offs can be received.

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98 This restriction is expressly provided in Art. 3, par. 1(d) of the Convention.

99 See Art. 3, par. 1(d) of the Convention and Art. 4, par. 2, subpar. 3 of the Regulation.

100 See Art. 49 of the AFIAPA.

101 In accordance with Art. 108, par. 2 of the APC, no one can be prosecuted simply for submitting a report about an irregular activity. In the absence of expressly provided protection of the identity of whistleblowers, however, it remains unclear how this protection from prosecution can be guaranteed.

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Legitimate aims and legal provisions

The restrictions aimed at the protection of competing interests are comprehensively set out in specific legal provisions:

- Art. 25 of the PCIA contains the definition of "**state secret**," and List 1 appended to Art. 25 enumerates the various categories of information that can be classified as a state secret;
- Art. 26, par. 1 of the PCIA determines the interests that the administrative secret can cover. The specific categories subject to classification as an administrative secret are defined in special laws and have to be further detailed in lists of information categories, adopted by the relevant organizational units;
- Art. 13, par. 2, item 1 of the APIA provides a definition of the restriction related to the so-called **preparatory documents**, connected with the issuance of a final administrative act;
- The definition of the term **personal data** is provided in Art. 4, par. 1 of the General Data Protection Regulation, which is directly applicable;
- Art. 17 of the APIA defines the limits of the protected **commercial and manufacturing secret**;
- The protection of the so-called **investigative secret** is stipulated in Art. 198, par. 1 of the CPC.

Proportionate to the legitimate aim pursued

The requirement for **proportionality** dictates that public bodies should only restrict access to information, or its disclosure, insofar as necessary in order to protect a particular interest.

According to the European standard and the domestic legislation, proportionality can be achieved through several approaches:

- narrow interpretation of the restriction;
- granting of partial access;

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- determining the form of access.

Narrow interpretation of the restriction

According to the Constitutional Court, any restriction on the right to seek and receive information constitutes an **exemption** from an adopted principle (the said right), and every exemption should be interpreted narrowly.[102] Given that the categories of information subject to protection are described in detail in the law, the administration cannot go beyond the defined scope of these categories to refuse access to information. Therefore, the legally protected category of "reports … concerning the operational work activities of the special security services" cannot be interpreted broadly, so as to include the results of the work of these services.[103] In the case cited herein, the SAC made a distinction between the security services reports on the Petrolgate case and the protected category of information under the PCIA.

Granting of partial access

The option to grant **partial access** is stipulated in Art. 7, par. 2 and Art. 37, par. 2 of the APIA. The pre-2008 wording of Art. 37, par. 2 provided that whenever a restriction on the right to information was applicable, the public body could choose to grant partial access to the requested information. Some court panels interpreted this norm as prescribing a specific approach, while others took the position that it gave public bodies the discretion to decide whether to grant partial access. However, following the APIA amendments of 2008, it became obligatory for public bodies to grant partial access in such situations. There are no issues with providing access to a letter from the tax authorities addressed to any individual, as long as that individual's personal data have been redacted[104]; similarly, it is possible to disclose the content of an act establishing an administrative offence, but without the names of the individuals concerned.[105]

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102 Judgment of the Constitutional Court, *op. cit*.
103 Judgment No.5 of 3 January 2006 on admin. case No. 4268/2005 of the SAC, Fifth Division.
104 Judgment No. 6017 of 2002 on admin. case No. 10496/ 2002 of the SAC, five-member panel.
105 Judgment No. 9822/18 December 2001 on admin. case No. 5736/2001 of the SAC, Fifth Division.

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Determining the form of access

In accordance with the APIA, when the disclosure of particular information may infringe copyright, the public body should not refuse access completely, but should rather determine an appropriate form of access (Art. 27, par. 2 in conj. with par. 1, item 3 of the APIA). In a situation like that, the Ministry of Health provided access to the architectural design of a pharmacy in a form that protected against copyright infringement (the chosen form in this case was "examination of the information").

III. Necessary in a democratic society

Harm test

In accordance with the national legislation and the relevant international standards, **access to information can only be restricted in the cases where its disclosure can or may harm one of a limited number of protected interests**. This requirement for harm or the threat thereof is laid down in the law with respect to most of the codified restrictions:

- concerning state secrets — Art. 25 of the PCIA;
- concerning administrative secrets — Art. 26 of the PCIA;
- concerning preparatory information and ongoing negotiations — Art. 13, par. 1 of the APIA;
- concerning trade secrets — Art. 17 of the APIA.

In certain cases, the assessment as to whether the provision of particular information would or could harm a protected interest is left entirely at the discretion of the public body. For instance, this is the case with the restriction related to **preparatory documents** (Art. 13, par. 2, item 1 of the APIA), as well as with the restriction concerning ongoing/future **negotiations** (Art. 13, par. 2, item 2 of the APIA).

In many cases, the performance of an assessment as to whether the provision of particular information would or could harm a protected interest is required by law. Such is the case with **classified information** — state or administrative secret.

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Time limits for protection of the information

One indicator of the assessed potential harm that could result from the provision of particular information is the **temporary nature** of the restriction. In certain cases, the legislation stipulates explicit time limits for protection of the information. In essence, these time limits imply a presumption of harm. The maximum duration of the time limits is set out in the law, and can only be extended by exception and only in respect of certain restrictions (e.g., Art. 34, par. 2 of the PCIA).

In some cases, the public body can flexibly decide what the time limit for protection of the relevant information should be. This applies to the protection of preparatory documents or of information related to negotiations (Art. 13, par. 2, items 1 and 2 of the APIA). In these cases, it is not necessary to apply the maximum time limit of two years; instead, the relevant official can determine a shorter time limit in accordance with the planned closing date of the procedure or of the negotiations.

In other cases, such as when the requested information is a state or an administrative secret, the time limits are expressly fixed in the law. Any amendments to the time limits for protection in those cases are only allowed by exception and can only be effected by the official who classified the requested information. Moreover, this can only happen if — while performing a periodic review (Art. 35, par. 4 of the PCIA) or upon receiving a notice from another official with access to the classified document (Art. 31, par. 8 of the PCIA) — the said official identifies that the information has been assigned an incorrect level of protection (incorrect classification marking).

Assessment on whether there is an overriding public interest in the disclosure of the information

Even information, the protection of which is duly justified in accordance with the law, can still be provided upon a request under the APIA. This can be done when there is an "overriding public interest." This legal concept was introduced with the 2008 amendments of the APIA and is in line with the applicable international standards.

In some cases, the existence of an **overriding public interest** is established in the relevant legislation. For instance, the Anti-corruption and Forfeiture of Illegally Acquired Property Act requires the creation and maintenance of a public register, which

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contains information regarding the property, income and potential interests of high-ranking public officials and other officials.

In other cases, the legislation confers an obligation on public bodies to **independently assess, with reference to the criteria laid down in the law**, whether to provide particular information, the public interest in which prevails over the protection of competing interests. The APIA stipulates certain scenarios (SP, § 1, items 5 and 6), in which public bodies have to assess whether the provision of particular information would contribute to the transparency and accountability of institutions, to an ongoing public debate, to prevent or detect corruption, etc.

In accordance with the case-law of the SAC, the existence of an overriding public interest in providing access to public information is subject to a positive presumption. Therefore, the failure to justify a refusal to provide access with arguments establishing the existence or lack of a public interest under § 1, item 6 of the SP of the APIA, is an independent ground for declaring the refusal unlawful.[106]

A requirement to perform an assessment as to the existence of an overriding public interest is also laid down in Art. 20, par. 4 of the Environmental Protection Act (EPA). The provision only regulates emissions explicitly, allowing public bodies to perform an assessment at their discretion in other cases.

IV. Restrictions

The annual reports on the state of the administration, published by the Council of Ministers, also contain a statistic about the application of restrictions. According to

[106] Judgment No. 4398/3 April 2018 on admin. case No. 2755/2018 of the SAC, five-member panel. With this judgment, the SAC quashed a refusal of the Minister of Energy to provide the full contents of an administrative file containing correspondence between the Ministry of Finance and the Ministry of Economy and Energy, exchanged in the period 2009 – 2010 on the subject of a request from 11 lead editors of print media for information about the size of funds deposited in banks by public bodies and public enterprises as of 31 December 2009 and 31 March 2010, as well as information about the specific banks used. The request of access also concerned correspondence with the companies in which the Ministry of Energy is the majority shareholder. See also Judgment No. 5879 of 18 April 2019 on admin. case No. 778/2018, Fifth Division of the SAC.

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the 2019 report, the number of cases in which access to public information was refused on account of an administrative secret was 77; the refusals based on the protection of a trade secret were 20; in another 50 cases, the information was considered preparatory and having no significance of its own (Art. 13, par. 1, item 1 of the APIA); in 21 cases, it was decided that the information concerned ongoing negotiations. In 134 cases, the information affected the interests of third party companies that objected to its disclosure. In 66 cases, the information affected the interests of third party individuals that objected to its disclosure. There were only seven cases of refusing access on account of a state secret.[107] In the preceding years, the number of cases[108] falling under each of the specified restrictions is different, but the proportions are more or less the same.

Restriction > Year V	State secret	Administrative secret	Preparatory documents	Ongoing negotiations	Trade secret	Interests of natural persons	Interests of legal entities
2019	7	77	50	21	20	66	134
2018	1	74	80	27	29	68	100

[107] The report is accessible at the following address: https://iisda.government.bg/annual_report/488. The quoted statistic can be found on page 50.

[108] The 2018 Report on the State of the Administration can be accessed at the following address: https://iisda.government.bg/annual_report/364, the statistic can be found on page 49. The 2017 Report on the State of the Administration can be accessed at the following address: https://iisda.government.bg/annual_report/304, the statistic can be found on page 45. The 2016 Report is published on the following address: https://iisda.government.bg/annual_report/224, and the statistic can be found on page 41.

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2017	4	54	58	8	12	52	106
2016	-	19	48	11	19	57	76

The cases related to the protection of the interests of third party legal entities form the largest group in the presented statistic. Coupled with the cases involving a trade secret (which in reality is the same restriction), they establish the biggest category of refusal cases. The second place is typically occupied by the protection of preparatory documents category, even though in 2019 the number of such cases was smaller than the number of refusals on the basis of an administrative secret. The latter restriction group has increased significantly throughout the years, jumping from 19 cases in 2016 to 77 cases in 2019. At the same time, the protection of personal data (interests of natural persons) has remained relatively stable.

Protection of the interests of third parties

Art. 31 of the APIA is dedicated to the obtainment of consent from a third party, whose rights and interests are affected by the provision of particular public information. This legal norm does not stipulate a restriction, but rather outlines a procedure for ensuring the protection of any third party interests. However, the norm does not specify what these interests are.

Nevertheless, it is evident that the interpretation of "interest" as a "subjective preference" does not conform to the law and the Constitution. Art. 31, par. 1 of the APIA clearly states "and his/her consent **is needed**," i.e., there is a necessity, which is based on clear, pre-defined rules. This is also the reason why in the Constitution this protection is limited to "the rights and reputation of other citizens."

The restriction related to the protection of third parties seeks to safeguard the following values:

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- trade secrets (the interest in fair competition);
- personal data (protecting the private life of individuals).

The protection against copyright infringement, on the other hand, does not justify the restriction of access to information. In these cases, the protection of the affected rights is carried out in a balanced manner that also upholds the right of access to public information. To elaborate, the public body is allowed to not comply with the applicant's preferred form of access and to determine a different form, which would protect the copyright and prevent any unlawful processing of the information (Art. 27, par. 1, item 3 of the APIA). This is one example of applying the rule of **proportionality** in practice.

The requirement to obtain the consent of any third party whose rights and interests have been affected /Art. 31, par. 1 of the APIA/ also supports the application of the **narrow interpretation** principle to the restrictions. Given that the restriction at issue has been introduced to protect the interests of third parties, it is unwarranted to persevere in defending these interests, irrespective of the will of the party subject to protection.

The 2015 amendments to the APIA introduced the rule that access can only be restricted if the third party concerned explicitly objects to the disclosure of the requested information. In all other cases the public body is obliged to provide access.

Art. 31, par. 5 of the APIA is particularly important for the **narrow application** of this restriction. According to this legal norm, there is no need to obtain the consent of a third party whose rights and interests are affected by the provision of certain information, provided that the party concerned is an obliged body within the meaning of Art. 3 of the APIA. In practice, the law provides for a specific situation, in which there is an **overriding public interest** in the disclosure of the requested information, regardless of the protected interest concerned. Therefore, public bodies, as well as all the other categories of obliged bodies, such a state-owned enterprises or companies in which the state is the major shareholder, do not have to be asked to consent to the

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disclosure of any information that concerns them in any way.[109]

The next assessment that the public body has to perform is whether the requested information falls within the scope of the identified overriding public interest. If it does, then access to it has to be provided, regardless of the consent of the third party. Such is the case with contracts, in which one of the parties is an obliged body under the APIA.

Personal data protection

Under the terms of the General Data Protection Regulation, personal data is any information relating to an identified or identifiable natural person.[110] Legal entities do not fall within the scope of this protection.

In accordance with the general rule set out in Art. 2, par. 1 of the APIA, the law does not apply to access to personal data. Indeed, the procedures for collection, access and other forms of processing of personal data are laid down in the General Data Protection Regulation. However, the APIA is applicable in the cases where the personal data are found within documents containing public information.

There is no restriction related to the protection of personal data in the Convention on Access to Official Documents. Instead, the wording therein states "privacy and other legitimate private interests."[111] The notion of "privacy" here relates to an individual's personal sphere. The distinction is important, because it implies that any information pertaining to an individual's public sphere, even if considered "personal data" within the meaning of the General Data Protection Regulation, is not necessarily protected under the APIA. In Regulation 1049/2001, this restriction concerns information related to the "privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data."

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[109] See Judgment No. 1359/25 September 2020 on admin. case No. 1190/2020 of the Varna Administrative Court. In that case, the court held that the state-owned enterprises Bulgarian Port Infrastructure and TSV EAD, owned and managed by the Minister of Transport, Information Technology and Communications, are obliged bodies and do not have to be asked to consent.

[110] Article 4, par. 1 of the General Data Protection Regulation.

[111] Art. 3, par. 1(f).

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Therefore, the main object of protection is once again the private sphere of individuals.

At constitutional level, the balance between the right of access to information and the protection of personal data is represented in the balance between the rights under Art. 41, par. 1 and Art. 32, par. 2 of the Constitution. In Judgment No. 7 of 1996 of the Constitutional Court, the protected right to privacy is described as "a complex group of interests that form the defined intimate sphere of an individual, the penetration of which should be barred."[112] At the same time, the Constitutional Court has stated that *"this constitutional limitation does not preclude the expression of public criticism, especially with regards to political figures, and public bodies and officials."* The approach, according to which information related to "public figures" is protected to a lesser extent than information concerning private individuals, is further developed in Judgment No. 4 of 2012. In that Judgment, the Constitutional Court held that the protection of the personal data of individuals in public office or exercising public duties *"is much more narrow than the protection afforded to ordinary citizens."*[113] Ultimately, the Constitutional Court emphasized that the protection of personal data should not be considered more important than the right to seek and receive information, but the two competing rights should be carefully balanced in each individual case.[114]

In view of the above, it can be concluded that the protection of personal data is different for persons in power and for ordinary citizens. In essence, the former have to accommodate a higher degree of public interest in their affairs due to the responsibility they have been assigned.

Personal data vs. an overriding public interest

The protection of personal data in documents containing public information is typically accomplished by redacting/obscuring the respective data (Art. 31, par. 4 and Art. 37, par. 2 of the APIA). However, this is not applicable in cases where the applicant is interested precisely in the information relating to a particular individual, for example a public official. In such cases it is necessary to strike a balance between the competing

112 Judgment of the Constitutional Court (JCC) No. 7 of 4 June 1996 on const. case No. 1/1996.
113 JCC No. 4 of 26 March 2012 on const. case No. 14/2011.
114 JCC No. 8 of 15 November 2019 on const. case No. 4/2019.

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interests.

By law, any personal data stored in registers, made public by virtue of a law or another normative act, are subject to public access. This group of registers includes the registers of different professionals, such as notaries, lawyers, etc., as well as the Land register, the Companies register, the Register of identified collaborators of the communist Committee for State Security, the Register of high-ranking public officials, the Register of property statements and conflict of interest statements of high-ranking public officials, and others.

With respect to all other types of personal data, the courts make an individual assessment on a case-by-case basis. In its jurisprudence, the SAC has endorsed the already cited understanding of the Constitutional Court that the protection of the personal data of individuals occupying a public office or exercising public duties is much more narrow than the protection afforded to ordinary citizens.

The SAC has ruled that any information related to the names and position of persons appointed to carry out public activities cannot be refused on the grounds of protecting personal data.[115] Moreover, the number of professional trips undertaken by a public official, such as a deputy-mayor, as well as the purpose, the duration, and the expenses associated with such trips, do not constitute personal data.[116] In addition, information about the work experience of an individual should also be provided,[117] when it is connected with a requirement to assume a particular office within the public administration. The same applies to information regarding the education and

[115] Judgment No. 240/9 January 2008 on admin. case No. 6700/2007 of the SAC, Fifth Division – regarding the public officials empowered to issue decisions under the Integration of People with Disabilities Act. See also Judgment No. 13550/17 on admin. case No. 7186/16 – the full names of the persons heading "Road Traffic" departments/sectors; Judgment No. 142/18 on admin. case No. 5916/16 of the SAC, Fifth Div. – the same information regarding a different regional directorate. Judgment No. 14701/14 on admin. case No. 6440/14 of the SAC, Fifth Div. – the names of assistants to prosecutors and judges.

[116] Judgment No. 3101/23 March 2006 on admin. case No. 8452/2005 of the SAC, Fifth Division – information regarding the business trip expenses of a deputy-mayor.

[117] Judgment No. 8572/12 on admin. case No. 4051/12 of the SAC, five-member panel – regarding the work experience of the person occupying the office of General Secretary of the Communications Regulation Commission.

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qualifications of senior management ministry officials.[118] Information about any received awards should also be disclosed.[119] With respect to information concerning remuneration, the courts have ruled that such information should be provided in respect of high-ranking pubic officials.[120]

The lack of consent from a third party is also not a justification for refusing access to public information contained in a specific document. In accordance with Art. 31, par. 4 of the APIA, in these cases the public body can provide **partial** access. An example of the provision of partial access is the disclosure of a letter from a public body once the addressee has been obscured, or the disclosure of a decision to impose a fine once the attesting witnesses have been obscured.[121]

Protection of trade secrets

The term "trade secret" is defined in the Bulgarian legislation as any business information, know-how or technological information that simultaneously meets three requirements, specified in the law.[122] However, the protection of trade secrets under the APIA is more narrow; it only relates to information held by an obliged body, the provision or disclosure of which would lead to unfair competition between businesses.[123]

This means that the APIA does not apply to any information regarding a particular business, but only to information, the disclosure of which would harm the interest of protecting fair competition. According to the SAC's case-law, the mere reference to Art. 17, par. 2 of the APIA is not sufficient to justify the application of the

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118 Judgment No. 9486/06 on admin. case No. 3505/06 of the SAC, five-member panel – education and qualifications of the management team of the Ministry of Education and Science.

119 Judgment No. 10398/10 July 2013 on admin. case No. 2551/2013 of the SAC, Fifth Division, upheld by Judgment No. 16380/10 December 2013 on admin. case No. 13425/2013 of the SAC, five-member panel – information regarding an award weapon received by the president of a regional court.

120 Judgment No. 652/16 on admin. case No. 9103/15 of the SAC, Fifth Division – information regarding the remunerations of the members of the Bulgarian National Bank's Governing Council.

121 Judgment No. 6017/2002 on admin. case No. 10946/ 2001 of the SAC, First Div.; Judgment No. 9822/2001 on admin. case No. 5736/ 2002 of the SAC, Fifth Div.

122 See Art. 3 of the Protection of Trade Secrets Act.

123 See Art. 17, par. 2 of the APIA.

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"trade secret" restriction:

„When an obliged body within the meaning of Art. 3, par. 2, item 1 of the APIA invokes Art. 17, par. 2 of the APIA and refuses to provide information requested under par. 1 on the grounds that its provision or disclosure would lead to unfair competition between businesses, the public body is obliged to specify which characteristics of the requested information cause this risk."[124]

The pre-2008 wording of the provision stated that information, which constitutes a trade secret **or** the disclosure of which would lead to unfair competition between businesses, is not subject to disclosure. In its current version, the provision states that only information that constitutes a trade secret, the disclosure of which would lead to unfair competition between businesses, is protected under the law.

The new wording of Art. 17 of the APIA explicitly provides that any obliged body invoking the protection of a trade secret should specify the particular circumstances that would lead to unfair competition between businesses.

The trade secret concept cannot be applied to information revealing that a competent public authority has identified the commission of legal violations by a particular company. In these cases, the public authority has acted in accordance with its legal obligations and created information, connected with the exercise of its powers.[125] This information is not created by the concerned company, and the latter cannot claim that the disclosure of the information would harm any of its protected interests.

Trade secrets vs. an overriding public interest

The restriction related to the protection of trade secrets is subject to a mandatory assessment on the existence of an overriding public interest. The grounds for performing such an assessment are grouped into five categories under the law. In the case of trade secrets, it should be emphasized that the legislators have established

[124] Judgment No. 115 of 5 January 2005 on admin. case No. 5380/2004 of the SAC, Fifth Division.
[125] Judgment No. 5915/13 on admin. case No. 7650/12, Fifth Div. – information on which companies owning customs warehouses for fuels have not installed the measuring instruments required by law.

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a positive presumption of the existence of an overriding public interest. This presumption is rebuttable in the sense that the public body can prove that the interest in protecting the requested information prevails. According to the SAC, *"in order to rebut the presumption of an overriding public interest, the public body has to demonstrate that the public interest in the disclosure of the information is not conclusive and does not indisputably prevail over the third party's interest in protecting the trade secret."*[126] The SAC emphasizes that this standard of proof is extremely high and almost impossible to satisfy.[127]

In the case-law of the courts, it has been accepted that the existence of an overriding public interest justifies the disclosure of contracts and annexes thereto, where one of the contracting parties is a company, and the other is an obliged body under the APIA. The same applies to documents related to payments, reports and deliveries under such contracts. By contrast, customers/suppliers lists, know-how, specific quantities that reveal business capacity, etc., remain within the scope of the protection of trade secrets.

Preparatory documents

This restriction exists in most national legislations under one form or another. Its aim is typically to protect the freedom of discussions between the officials within a public body. The precise wording used in the Convention on Access to Official Documents is "the deliberations within or between public authorities concerning the examination of a matter." In the case-law under the APIA, it is accepted that this restriction applies to consultations, position papers, opinions and recommendations, as well as to minutes of sessions of collective bodies, such as the Council of Ministers.[128] It is important to note that the restriction is also applicable with respect to ongoing inspections and investigations.

The restriction under Art. 13, par. 1, item 1 has a time limit. Until 2002, the maximum time limit was fixed to 20 years. After that, it was amended to a maximum

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126 Judgment No. 10304 of 23 July 2014 on admin. case No. 15032/2013, VII Div. of the SAC.
127 *Ibid.*
128 See Judgment No. 4694/16 May 2002 on admin. case No. 1543/2002.

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of two years (Art. 13, par. 3 of the APIA). Unlike the time limits under the PCIA, the time limit under Art. 13, par. 3 of the APIA is not fixed; instead, public bodies are free to determine shorter time limits in accordance with the actual need to protect the information. For instance, it is recommended to publish information related to procurement orders, competitions, inspections or investigations immediately after the respective procedure has been completed.

In the case of preparatory documents, public bodies assess whether there is harm, and whether to apply the restriction, at their own discretion. In other words, they are not obliged to apply the restriction if they are not persuaded that there are good reasons to do so.

Preparatory documents vs. an overriding public interest

The restriction related to the protection of preparatory documents is subject to an assessment on the existence of an overriding public interest. This assessment is mandatory, irrespective of whether the applicant has explicitly asked for it in the access to information request.

Above all, it is important to note that this restriction should be interpreted and applied narrowly, as the courts have instructed in their case-law. In particular, it is only applicable to opinions, recommendations, position papers and consultations connected with the issuance of a final administrative act. In the absence of an intention to adopt such an act, the restriction is, in principle, inapplicable. For example, the conclusion that there were no discussions on final administrative acts at a particular session of the Council of Ministers is sufficient to justify the inapplicability of the restriction under Art. 13, par. 2, item 1 of the APIA.[129] By the same logic, if the Minister of Foreign Affairs has not issued a final administrative act on a given issue, it is not possible to invoke Art. 13, par. 2, item 1 of the APIA in order to refuse access to the correspondence created by the Ministry's administration on that issue. To shed more light on the topic, the applicant in one case requested information regarding the position of the Republic of Bulgaria on the dismantling of a monument of Khan Asparuh, erected by representatives of the Bulgarian minority in Ukraine. The SAC held

[129] *Ibid.*

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that, since the Minister of Foreign Affairs had not issued a final administrative act on that issue, the restriction could not be applied to the correspondence, exchanged within the Ministry in relation to the issue.[130] This is due to the fact that in the absence of a final administrative act, the preparatory information acquires *independent* significance.

Furthermore, this restriction does not apply to statements of fact, but only to recommendations and consultations. Therefore, a statement regarding the state of prisons, expressed in a report of the Inspectorate with the Ministry of Justice, does not constitute information that can be refused on the grounds of this restriction.[131] The restriction is also inapplicable to information about the environment. The reason is that the relevant special law — the Environmental Protection Act — does not stipulate a restriction, analogous to Art. 13, par. 2, item 1 of the APIA.[132]

Finally, this restriction does not apply if the requested information does not contain opinions, recommendations, position papers and consultations.[133] For this reason, any information related to the unlawful expenditure of EU funds cannot be refused on that ground.

HOW IS ACCESS TO INFORMATION PROVIDED?

The Access to Public Information Act stipulates an obligation to provide access to information:

- on the initiative of the obliged bodies – proactive publication of information and
- upon request from applicants expressed orally, in writing or in electronic form.[134]

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130 Judgment No. 2308/06 on admin. case No. 10940/05 of the SAC, five-member panel.
131 Judgment No. 15158/10 on admin. case No. 3051/10 of the SAC, Fifth Division.
132 Judgment No. 8921/09 on admin. case No. 15062/08 of the SAC, Third Division.
133 Judgment No. 318/09 January 2018 on admin. case No. 12383/2016 of the SAC, Fifth Division.
134 According to the Council of Ministers' Report on the State of the Administration, the number of electronic requests is predominant in recent years. See the comparative data: 1/Data from government reports and 2./Visualized data from government reports.

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I. Provision of public information on the initiative of the obliged bodies

The provision of information in response to requests is an essential, but not the only obligation of public bodies, which should operate in accordance with the principle of full transparency.

In many instances, public and local authorities hold information that, owing to its nature, should be made available to the public without delay. The disclosure of such information would also help institutions fulfill their assigned functions. For example, a public authority tasked with the coordination of different social programs should publish information regarding the starting date and the terms of such programs; food control institutions should publish information regarding the safety and quality of food products on the market, the health risks associated with their use, etc.

Furthermore, citizens willing to submit an access to information request are not always familiar with all the different types of information held by public authorities. This prevents them from formulating their requests accurately. For this reason, it is important that all obliged institutions periodically publish basic information related to their activities.

Following the December 2015 amendments to the Access to Public Information Act, the new provisions related to proactive publication made everything easier for the obliged bodies within the meaning of the law.

In order to organize the proactive publication of information on their website pages, the obliged bodies had to determine officials/units to be entrusted with this responsibility. Since publication is an open process — i.e., in addition to the categories that require publication, there is also information, the publishing of which depends on the existence of a relevant public interest — all the officials working within the obliged bodies should be aware of the APIA requirements, in order to be able to assist the unit responsible for proactive publication. This necessity is clearly understood by the public

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bodies that have organized this process well and have described it in their internal rules for compliance with the APIA.

1. Obligation to provide public information (Art. 14, par. 2)

Under the terms of the APIA, public bodies are obliged to **publish** or **announce**, on their own initiative, information that:

- **can prevent a threat to the life, health and safety of citizens, or to the security of their property**

In the context of the Covid-19 pandemic, many institutions created special sub-sections on their websites, where they publish a regularly updated statistic of the identified cases, as well as information about the appropriate measures to be taken to avoid infection. The Unified Information Portal (UIP) was established to serve the same purpose. In addition, briefings and press conferences are being held frequently.

The authorities have the most reliable information about ongoing fires, inundations and other disasters that can threaten the life, health and safety of the Bulgarian citizens. Therefore, they must use all available communication channels to disseminate such information.

For example:

The General Directorate of Fire Safety and Protection of the Population should promptly release information concerning natural disasters, accidents and catastrophes, as well as information about the measures undertaken to overcome them.

The Ministry of Health and its regional structures — the Regional Health Inspectorates (RHI) — should proactively inform the public about the development of the COVID-19 pandemic through briefings, press conferences, and information notes to the media.

- **refutes previously disseminated inaccurate information that affects important public interests**

If the authorities are aware of the dissemination of information, which they know

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to be incorrect, they should use all the available information channels to disseminate the correct information, in order to avoid panic and rushed actions on the part of the public.

It is particularly important to apply this provision with respect to information concerning the environment and the health of the public. For instance, if people somehow obtained false information about radiation pollution in the country, this would naturally lead to fear and anxiety within the society. Therefore, it is clear that the authorities in possession of accurate and reliable information in this case would have to promptly intervene in order to refute (usually through the media) the previously disseminated false information.

- **is or could be of interest to the public**

With regards to the notion of "information that is or could be of interest to the public" (Art. 14, par. 2, item 3), it should be understood as information that is of collective interest for the relevant community for social, economic, cultural, environmental or financial reasons. As the existence of a public interest is not easily identifiable, the APIA has provided several steps to follow (SP §1, items 5 and 6):

"Until proven otherwise, there is a public interest in the disclosure of information that:

a) gives citizens the opportunity to form an opinion and to take part in ongoing discussions;

b) promotes the transparency and accountability of the bodies under Art. 3, par. 1 with respect to the decisions they take;

c) guarantees the lawful and expedient fulfillment of the legal obligations of the bodies under Art. 3;

d) reveals corruption and abuse of power, poor management of state or municipal property, or other unlawful or inexpedient actions or omissions of public bodies or officials that affect state or municipal interests, or the rights and legal interests of other persons;

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e) refutes previously disseminated incorrect information affecting important public interests;

f) is related to the parties, subcontractors, subject, price, rights and obligations, terms, time limits, and sanctions specified in contracts where one of the contracting parties is an obliged body under Art. 3.“

(SP §1, item 5 of the APIA)

The documents related to ongoing media discussions, and which could help the participants in such discussions form an opinion on how a specific decision has been taken, constitute information of public interest. The same applies to information connected with allegations of abuse of power or corrupt practices.

Information of public interest is also any information that has already been requested and provided under the APIA on several occasions, and, therefore, its publication on the website of the respective public body would prevent the submission of new requests for the same information, thus relieving the respective officials of unnecessary additional work. The APIA recommends to make such information public.

- **ought to be prepared or provided by law**

For instance, the Environmental Protection Act (EPA) confers an obligation on the Executive Environment Agency (EEA) to maintain a public register of all transfers and releases of pollutants at national level, and to provide access to this register through the EEA website.

The EEA maintains a National Environmental Monitoring System, which is based on the national networks for monitoring of: atmospheric air, water, land and soil, forests and protected areas, biodiversity, radiation, and noise.

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What information must the obliged bodies publish on the Internet?

The heads of administrative structures within the executive, as well as within bodies and organizations governed by public law, are also obliged to publish the information described above (Art. 14, par. 2, items 1-3 of the APIA) on their official websites (Art. 15, par. 1, item 15 and Art. 15a, par. 1 of the APIA).

The APIA lists 17 categories of information that public institutions are obliged to publish online. One of these categories concerns information that has already been provided more than three times in response to requests.

2. Obligation to provide up-to-date public information on the website of the public body (Art. 15, par. 1)

1) information regarding the powers of the public body, as well as regarding the organizational structure, functions and responsibilities of its officials

In reality, this information is contained in the legislation (law, regulation, ordinance) that regulates the activities of the respective public body. Usually, the most detailed description is provided in the rules on the organization of the respective executive bodies. However, in practice it has been shown that having a clear and concise description of the powers and functions of a public body on its website helps the public understand the precise responsibilities of that body.

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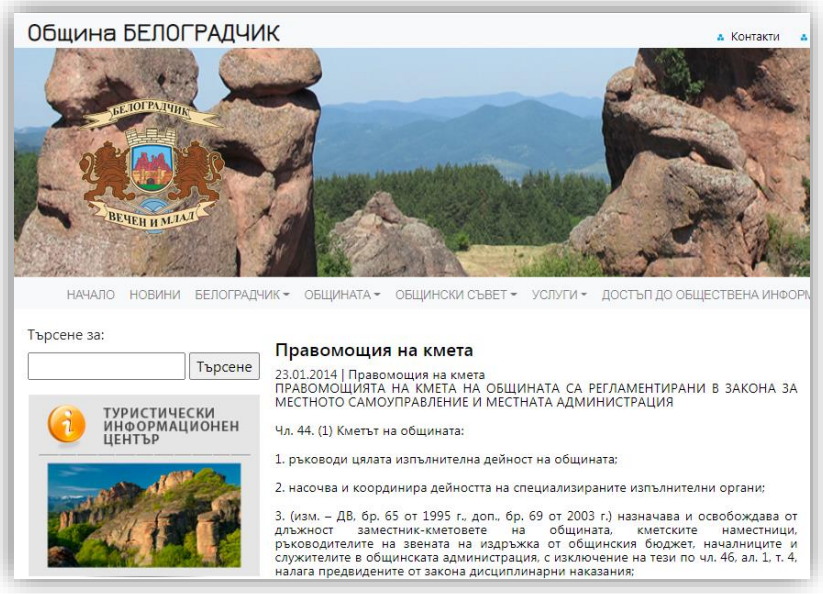

↑ Website of the Belogradchik Municipality – "Powers of the Mayor" section.

2) a list of the administrative acts issued in the exercise of the body's functions, as well as the texts of the normative and general administrative acts issued by the body

This category includes the normative and general administrative acts issued by the respective public body, such as ordinances, regulations, internal rules and instructions, and orders/decisions.

3) a description of the databases and other information resources used by the respective public body

This category can include a description of the registers and databases maintained by the public body, as well as of the metadata, accessibility and formats of these registers and databases.

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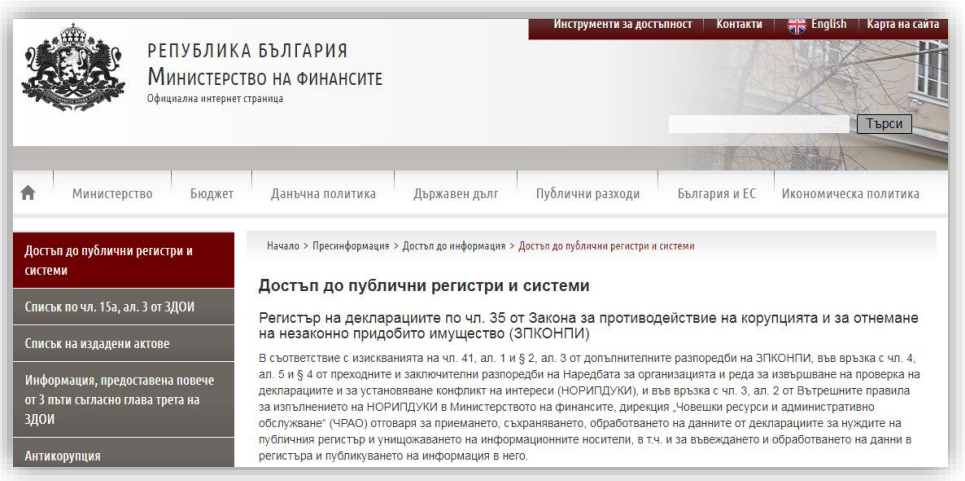

↑ Website of the Ministry of Finance – "Access to pubic registers and systems" section.

4) **the name, address, e-mail address, telephone number and working hours of the unit within the respective public body that is responsible for accepting access to information requests;**

5) **organizational rules and internal rules related to the provision of administrative services to the public;**

6) **strategies, plans, programmes, and activity reports;**

7) **information related to the budget and the financial reports of the respective public body, which should be published in accordance with the Public Finance Act;**

8) **information related to conducted public procurement orders, which should be published on the buyer's profile in accordance with the Public Procurement Act;**

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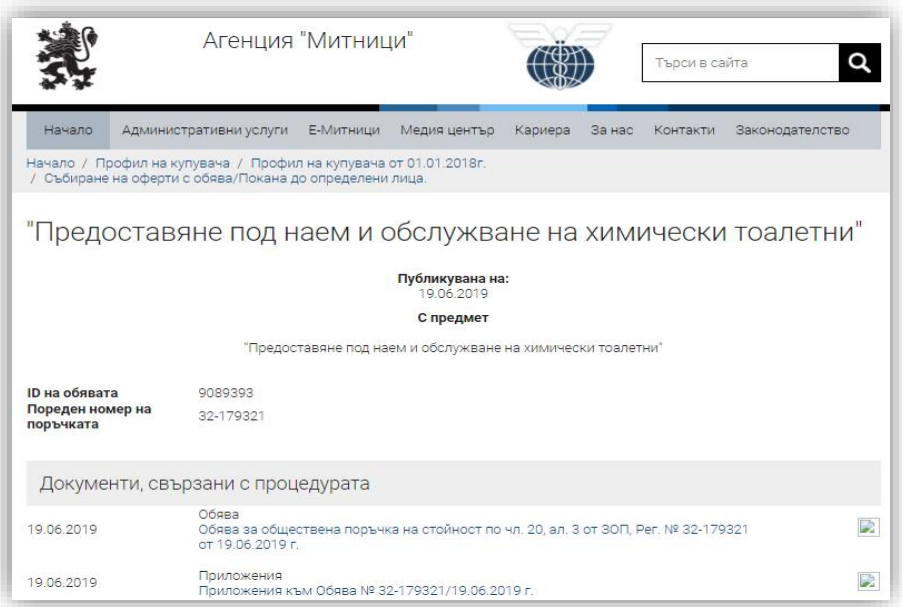
In accordance with the Public Procurement Act (PPA), contracting authorities are obliged to maintain a "Buyer's profile" section on their websites or on the platform under Art. 39a of the PPA. In their buyer's profile, the respective contracting authorities should publish several categories of electronic documents, including: decisions to open a procurement procedure; procurement notices; minutes and records of the public procurement commissions, and the appendices thereto; signed contracts and the annexes thereto; contracts with subcontractors, separate agreements, etc.



↑ Website of the National Customs Agency – "Buyer's profile" section.

9) drafts of normative acts, together with their explanatory notes, and with the report and results of the public consultations on the draft

When a public body is not empowered to adopt normative acts, the relevant section on its website should contain a link to the website of the superior public body, empowered to adopt normative acts in the respective field. Alternatively, the section should contain a link to the Public Consultations Portal, maintained by the Council of Ministers Administration: http://www.strategy.bg/

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10) notices for instigation of proceedings for the issuance of a general administrative act under Art. 66 of the Administrative Procedural Code, including the principal considerations for the issuance of the act, as well as the forms of, and time limits for, participation of stakeholders in the proceedings;

11) information on exercising the right of access to public information, on the rules and procedure for re-use of information, on the fees under Art. 41g, and on the formats in which the information is held;

This information requires particular preparation. The Access to Information Officer and the Public Relations Officer have to draft a short text to be published in the "Access to information" section of the respective institution, which text should contain relevant contact details and should explain how citizens can exercise their right of access to information held by the institution. Often times, this information is only included in the institutions' internal rules for compliance with the APIA. However, institutions should ensure that the information is published in their "Access to information" sections, where it can be clearly seen by the public.

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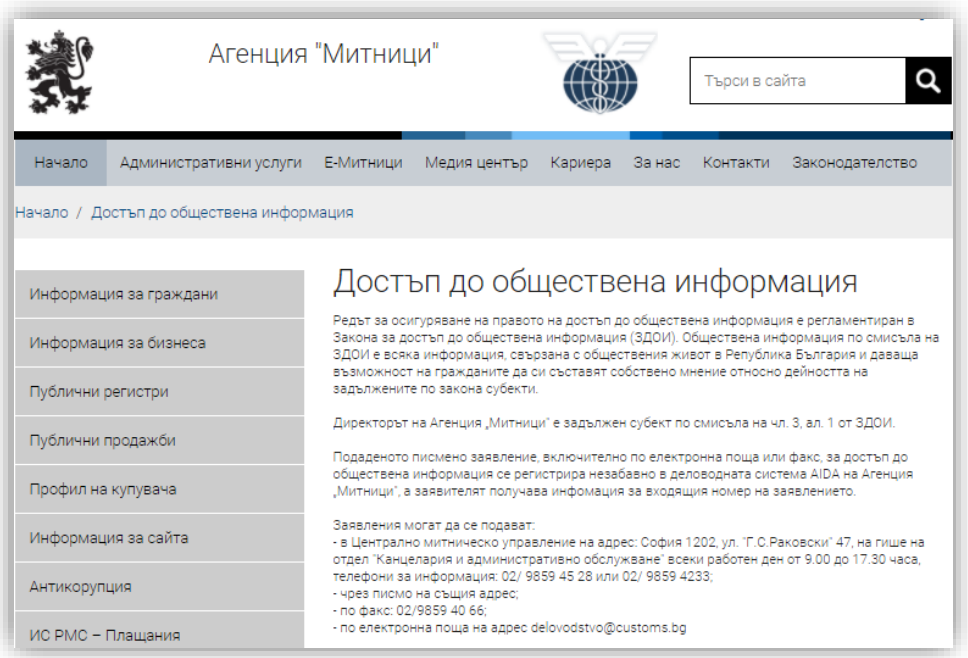

↑ Website of the National Customs Agency – detailed "Access to information" section.

12) competition notices for civil service positions;

13) information subject to publication under the Conflict of Interest Prevention and Ascertainment Act

The Conflict of Interest Prevention and Ascertainment Act was repealed in 2018 (rep. SG No. 7 of 19 January 2018) with the adoption of the Anti-corruption and the Forfeiture of Illegally Acquired Property Act. The new legislation does not include a reference to Art. 15, par. 1, item 13 of the APIA. However, the declarations under Art. 35, par. 1 of the AFIAPA have to be published on the website of the "election or appointment body," and Art. 42, par. 3 of the AFIAPA makes an explicit reference to the APIA.

14) information made public in accordance with the Protection of Classified Information Act and the administrative acts on its implementation

This applies to the list of information categories that constitute administrative

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secrets, which should be made public in accordance with Art. 21, par. 5 of the Rules on the application of the PCIA.

This category also includes any documents with removed classification markings, as access to those is realized in accordance with the APIA, pursuant to Art. 34, par. 3 of the PCIA.

↑ "Access to information" section of the Council of Ministers. A list of the information categories subject to classification as administrative secrets.

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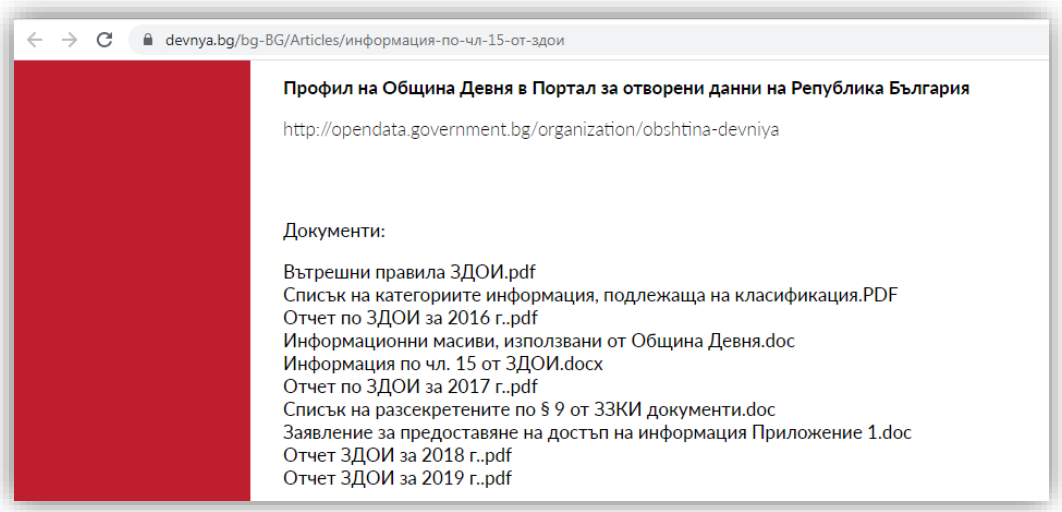

↑ "Access to information" section of the Devnya Municipality. A list of the documents declassified under §9 of the PCIA.

15) information under Art. 14, par. 2, items 1-3;

16) information provided more than three times under the procedure laid down in Chapter III

This category concerns information that has already been subject to a request for access and provided more than three times. Although the law uses the term "request," which refers to requests in writing and their electronic equivalents, it is evident that item 16 is related to the public interest in the relevant information. There are two conditions to be met in order to publish such information:

- There has to be a public interest in the information
- The information should indisputably be of a public nature

The purpose behind the publication is to save pubic officials the time spent processing individual requests.

Below we will give the National Customs Agency as an example, since they have approached the matter in accordance with the APIA principles, and not in a formalistic way, by publishing on their website the information that citizens seek to obtain most often:

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"As a result of our communication with citizens, businesses and the media, we publish the answers to the most recurring questions in different sections of our website:

Receipt of mail and courier items

Getting an EORI number

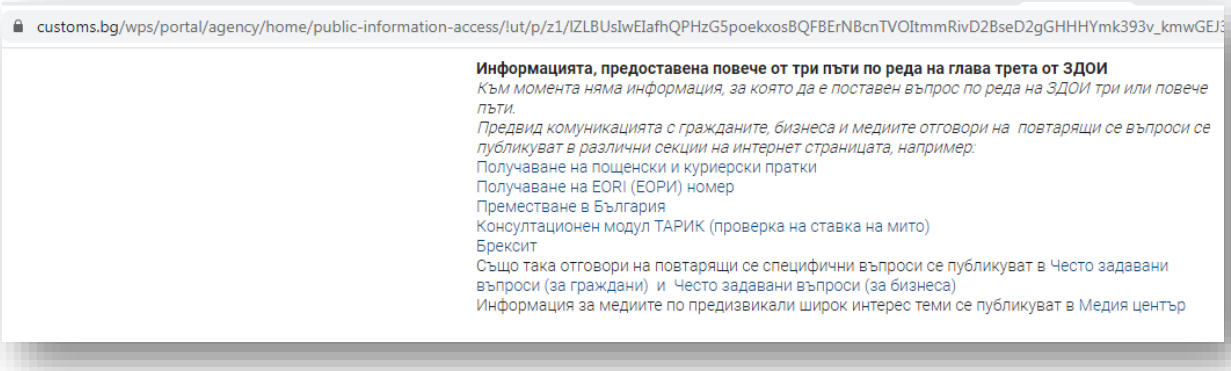
Moving to Bulgaria

TARIC Consultation Module (customs tariff check)

Brexit

Answers of specific recurring questions are also published in our Frequently asked questions (individuals) and Frequently asked questions (businesses)

Information for the media on topics of high interest are published in the Media Center"



↑ Website of the National Customs Agency – information that has been provided more than three times under Chapter III of the APIA.

17) other information determined by law

If a new legislative act stipulates an obligation to publish certain categories of information, they should be added to the list of information categories subject to publication, which has to be reviewed on an annual basis. To elaborate, the heads of administrative structures are obliged to publish a list of the information categories

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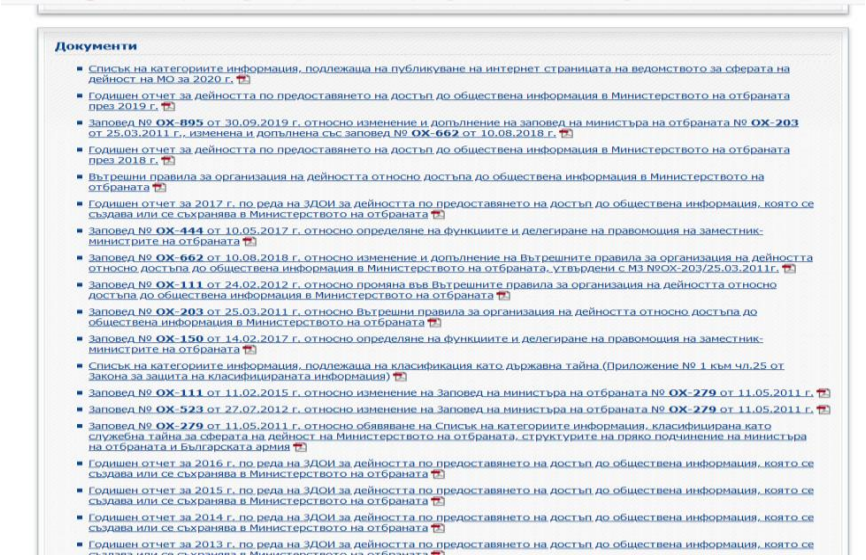
subject to publication by their institution every year. The list should also specify the formats in which these information categories can be accessed. The APIA stipulates a 3-day time limit for publications, and provides for punitive sanctions in the event of non-compliance.

The 2015 amendments to the APIA also provided time limits for updating the relevant information — three working days, unless otherwise specified by law. Therefore, when publishing documents or information, it is advisable to indicate the date of publication and the date on the respective document.



Документи

- Списък на категориите информация, подлежаща на публикуване на интернет страницата на ведомството за сферата на дейност на МО за 2020 г.
- Годишен отчет за дейността по предоставянето на достъп до обществена информация в Министерството на отбраната през 2019 г.
- Заповед № **ОХ-895** от 30.09.2019 г. относно изменение и допълнение на заповед на министъра на отбраната № **ОХ-203** от 25.03.2011 г., изменена и допълнена със заповед № **ОХ-662** от 10.08.2018 г.
- Годишен отчет за дейността по предоставянето на достъп до обществена информация в Министерството на отбраната през 2018 г.
- Вътрешни правила за организация на дейността относно достъпа до обществена информация в Министерството на отбраната
- Годишен отчет за 2017 г. по реда на ЗДОИ за дейността по предоставянето на достъп до обществена информация, която се създава или се съхранява в Министерството на отбраната
- Заповед № **ОХ-444** от 10.05.2017 г. относно определяне на функциите и делегиране на правомощия на заместник-министрите на отбраната
- Заповед № **ОХ-662** от 10.08.2018 г. относно изменение и допълнение на Вътрешните правила за организация на дейността относно достъпа до обществена информация в Министерството на отбраната, утвърдени с МЗ №ОХ-203/25.03.2011г.
- Заповед № **ОХ-111** от 24.02.2012 г. относно промяна във Вътрешните правила за организация на дейността относно достъпа до обществена информация в Министерството на отбраната
- Заповед № **ОХ-203** от 25.03.2011 г. относно Вътрешни правила за организация на дейността относно достъпа до обществена информация в Министерството на отбраната
- Заповед № **ОХ-150** от 14.02.2017 г. относно определяне на функциите и делегиране на правомощия на заместник-министрите на отбраната
- Списък на категориите информация, подлежаща на класификация като държавна тайна (Приложение № 1 към чл.25 от Закона за защита на класифицираната информация)
- Заповед № **ОХ-111** от 11.02.2015 г. относно изменение на Заповед на министъра на отбраната № **ОХ-279** от 11.05.2011 г.
- Заповед № **ОХ-523** от 27.07.2012 г. относно изменение на Заповед на министъра на отбраната № **ОХ-279** от 11.05.2011 г.
- Заповед № **ОХ-279** от 11.05.2011 г. относно обявяване на Списък на категориите информация, класифицирана като служебна тайна за сферата на дейност на Министерството на отбраната, структурите на пряко подчинение на министъра на отбраната и Българската армия
- Годишен отчет за 2016 г. по реда на ЗДОИ за дейността по предоставянето на достъп до обществена информация, която се създава или се съхранява в Министерството на отбраната
- Годишен отчет за 2015 г. по реда на ЗДОИ за дейността по предоставянето на достъп до обществена информация, която се създава или се съхранява в Министерството на отбраната
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- Годишен отчет за 2013 г. по реда на ЗДОИ за дейността по предоставянето на достъп до обществена информация, която се

↑ Website of the Ministry of Defense – updating the information subject to publication.

What information must be published in the "Access to information" section and who must publish it?

The obligation to include such a section on the websites of public bodies was introduced in the APIA in 2008 (SG No. 104 of 2008, Art. 15a, par. 2). The required content of the section was expanded in 2015 (SG No. 97 of 2015, in force as of 12 January 2016, Art. 15a, par. 2, par. 3).

The purpose of "Access to information" sections is to assists applicants with the submission of access to information requests. All "public sector organizations" should

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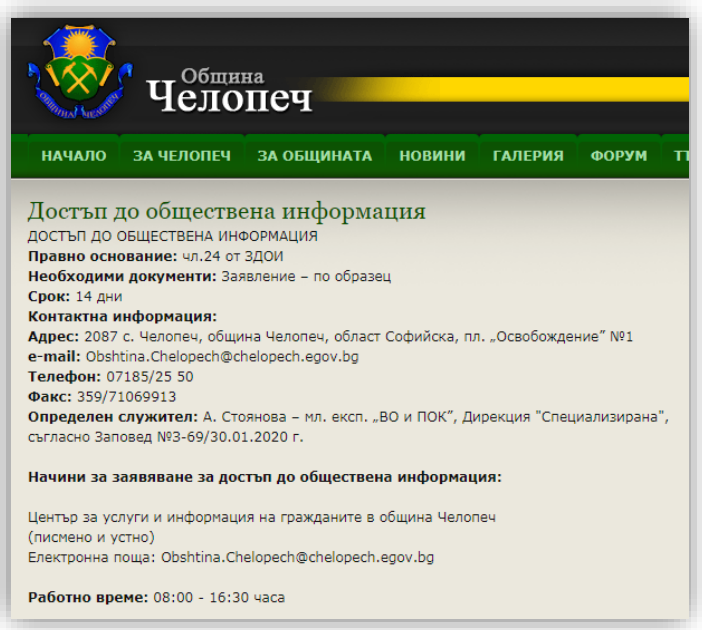
maintain such sections on their websites, and this includes administrative bodies (public bodies and their territorial units, local government authorities, and bodies governed by public law) and organizations governed by public law, as well as public libraries (including university libraries), museums and archives. Even though 498 out of the 562 institutions monitored in the period February – March 2020 had created "Access to information" sections on their websites, the content of only 23 of those sections satisfied the applicable legal requirements.[135]

Under the terms of the APIA, the "Access to information" sections of the obliged bodies should contain:

- **the name, address, e-mail address, telephone number and working hours of the unit within the respective public body that is responsible for accepting access to information requests;**



[135] https://data.aip-bg.org/surveys/Y3Q966/stats-indicators?q=YU7D79

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↑ Website of the Chelopech Municipality – "Access to information" section

- **information on exercising the right of access to public information, on the rules and procedure for re-use of information, on the fees under Art. 41g, and on the formats in which the information is held;**

This information requires particular preparation. The Access to Information Officer and the Public Relations Officer have to draft a short text to be published in the "Access to information" section of the respective institution, which should explain how citizens can exercise their right to access information held by the institution. Often times, this information is only included in the institutions' internal rules for compliance with the APIA. However, institutions should ensure that the information is published in their "Access to information" sections, where it can be clearly seen by the public.

↑ Website of the Ministry of Finance – "Access to information" section.

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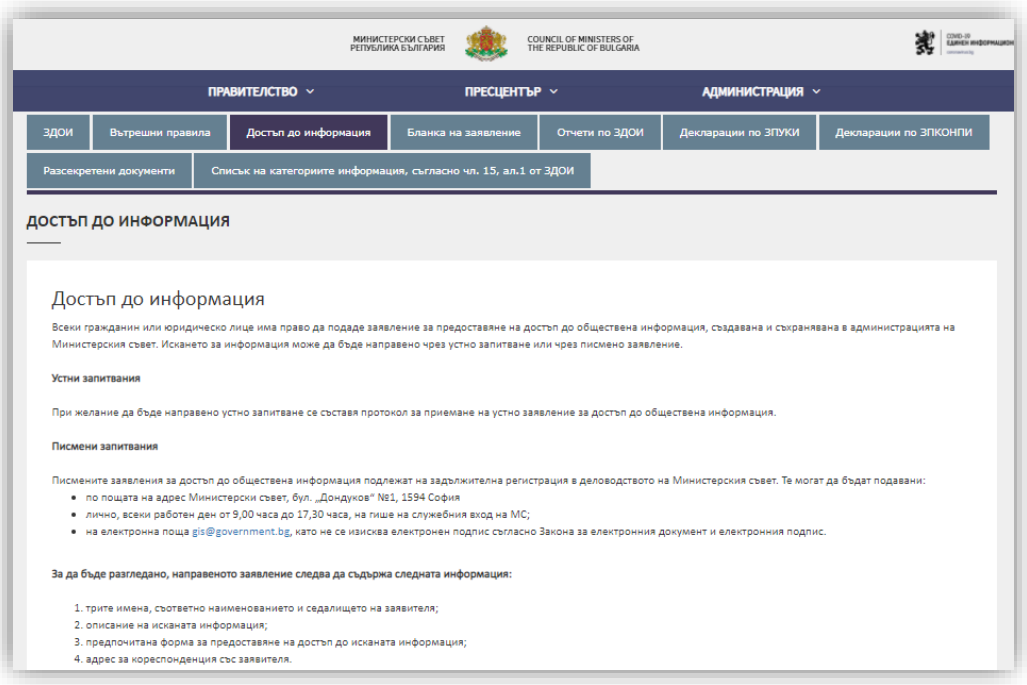

↑ Website of the Council of Ministers – "Access to information" section.

- **annual reports on the received requests**

It is known that as of 2004, public bodies submit their reports under Art. 15, par. 2 to the Integrated Information System of the State Administration (IISST) for the purposes of the annual report under Art. 62, par. 1 of the Administration Act.[136] However, the reports under Art. 15, par. 2. of the APIA must be published in the "Access to information" sections of the institutions. This obligation is not negated by the submission of these reports to the IISST. Some public bodies publish registers of

[136] 2005 Report of the State of the Administration. "A Report of the State of the Administration has been prepared for the sixth time this year. For a second consecutive year, the heads of administrative structures within the executive provide the relevant information in electronic form via a web-based system (**www.sareport.government.bg**). After the report has been accepted by the Council of Ministers, it will be submitted to the National Assembly for reference purposes."

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the received requests alongside their financial reports. Others stipulate, in their internal rules, an obligation for the Public Information Officer to give periodic reports to the head of the institution. Irrespective of the approaches adopted by different institutions, the reports should contain an analysis of the decisions on the received requests, especially the decisions to refuse access and the reasoning behind them.

- **the applicable internal rules on access to public information**

Following the adoption of the APIA and the development of the case-law on its application, many public bodies created their own internal rules (IR). An obligation to publish internal rules was provided in the 2008 amendments to the APIA. In 2016, after the 2015 APIA amendments, an AIP study showed that 66% (373) of the obliged bodies under the APIA had **adopted** and **published** IR on their websites. According to the Council of Ministers (CoM) Report on the State of the Administration, published in the same year, 491 out of 559 institutions had adopted IR. The relevant data for 2019 are the following: according to the CoM report, 542 of 587 reporting institutions had adopted IR, and according to the 2020 AIP study, 459 of 562 institutions had published IR on their websites. With respect to the new IR requirements following the 2015 APIA amendments, 298 institutions had updated their IR as of March 2020.

Important!

The internal rules for compliance with the APIA should be updated in accordance with the new requirements of the APIA and should be published in the "Access to information" section.

- **the fees for any expenses incurred for the provision of access to information, in accordance with Art. 20, par. 2**
- **the procedure for accessing the public registers maintained by the institution.**

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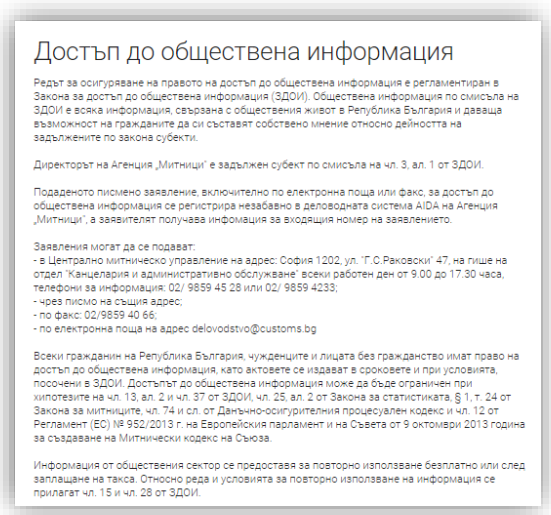


Достъп до обществена информация

Редът за осигуряване на правото на достъп до обществена информация е регламентиран в Закона за достъп до обществена информация (ЗДОИ). Обществена информация по смисъла на ЗДОИ е всяка информация, свързана с обществения живот в Република България и даваща възможност на гражданите да си съставят собствено мнение относно дейността на задължените по закона субекти.

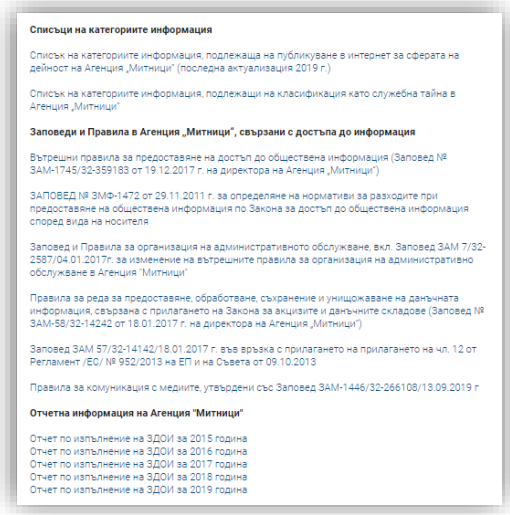
Директорът на Агенция „Митници" е задължен субект по смисъла на чл. 3, ал. 1 от ЗДОИ.

Подаденото писмено заявление, включително по електронна поща или факс, за достъп до обществена информация се регистрира незабавно в деловодната система AIDA на Агенция „Митници", а заявителят получава инфомация за входящия номер на заявлението.

Заявления могат да се подават:
- в Централно митническо управление на адрес: София 1202, ул. "Г.С.Раковски" 47, на гише на отдел "Канцелария и административно обслужване" всеки работен ден от 9.00 до 17.30 часа, телефони за информация: 02/ 9859 45 28 или 02/ 9859 4233;
- чрез писмо на същия адрес;
- по факс: 02/9859 40 66;
- по електронна поща на адрес delovodstvo@customs.bg

Всеки гражданин на Република България, чужденците и лицата без гражданство имат право на достъп до обществена информация, като актовете се издават в сроковете и при условията, посочени в ЗДОИ. Достъпът до обществена информация може да бъде ограничен при хипотезите на чл. 13, ал. 2 и чл. 37 от ЗДОИ, чл. 25, ал. 2 от Закона за статистиката, § 1, т. 24 от Закона за митниците, чл. 74 и сл. от Данъчно-осигурителния процесуален кодекс и чл. 12 от Регламент (ЕС) № 952/2013 г. на Европейския парламент и на Съвета от 9 октомври 2013 година за създаване на Митнически кодекс на Съюза.

Информация от обществения сектор се предоставя за повторно използване безплатно или след заплащане на такса. Относно реда и условията за повторно използване на информация се прилагат чл. 15 и чл. 28 от ЗДОИ.



Списъци на категориите информация

Списък на категориите информация, подлежаща на публикуване в интернет за сферата на дейност на Агенция „Митници" (последна актуализация 2019 г.)

Списък на категориите информация, подлежащи на класификация като служебна тайна в Агенция „Митници"

Заповеди и Правила в Агенция „Митници", свързани с достъпа до информация

Вътрешни правила за предоставяне на достъп до обществена информация (Заповед № ЗАМ-1745/32-359183 от 19.12.2017 г. на директора на Агенция „Митници")

ЗАПОВЕД № ЗМФ-1472 от 29.11.2011 г. за определяне на нормативи за разходите при предоставяне на обществена информация по Закона за достъп до обществена информация според вида на носителя

Заповед и Правила за организация на административното обслужване, вкл. Заповед ЗАМ 7/32-2587/04.01.2017г. за изменение на вътрешните правила за организация на административно обслужване в Агенция "Митници"

Правила за реда за предоставяне, обработване, съхранение и унищожаване на данъчната информация, свързана с прилагането на Закона за акцизите и данъчните складове (Заповед № ЗАМ-58/32-14242 от 18.01.2017 г. на директора на Агенция „Митници")

Заповед ЗАМ 57/32-14142/18.01.2017 г. във връзка с прилагането на прилагането на чл. 12 от Регламент /ЕС/ № 952/2013 на ЕП и на Съвета от 09.10.2013

Правила за комуникация с медиите, утвърдени със Заповед ЗАМ-1446/32-266108/13.09.2019 г

Отчетна информация на Агенция "Митници"

Отчет по изпълнение на ЗДОИ за 2015 година
Отчет по изпълнение на ЗДОИ за 2016 година
Отчет по изпълнение на ЗДОИ за 2017 година
Отчет по изпълнение на ЗДОИ за 2018 година
Отчет по изпълнение на ЗДОИ за 2019 година

↑ Example of an "Access to information" section – National Customs Agency

Publication of information in an open format

Every public sector organization should, on an annual basis, plan for the gradual online publication, in an open format, of the databases and other information resources that it maintains, access to which is free. Every year, the Council of Ministers should adopt a list of datasets that have to be published online in an open format.

Important!

As of 11 September 2016, all public sector organizations have to publish the databases and information resources that they maintain in an open format, and access to which is free, on the Open Data Portal (https://data.egov.bg/).

II. Provision of information upon a request from an applicant

The APIA allows citizens to request access to information orally and in writing. In both cases, the applicants must contact a designated official. Therefore, in order to facilitate access to information, it is advisable that institutions appoint:

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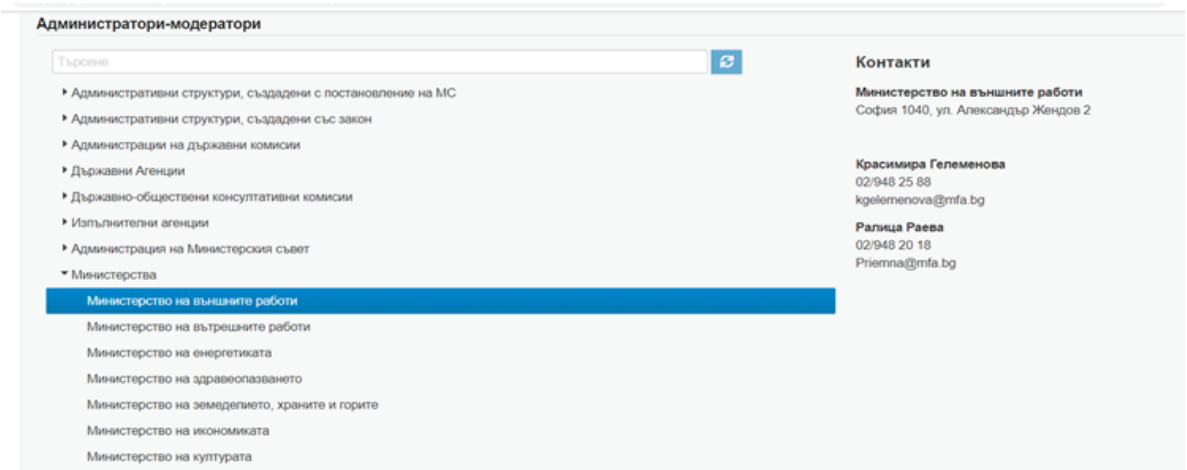
- **a person** responsible for responding to access to information requests, including oral requests;
- **a physical place** for accepting access to information requests. This can be the secretariat, the reception room, the Press Center and Public Relations Department, or a unit created specifically for accepting access to information requests.

As of the end of 2018, the Access to Public Information Platform has been functioning as a unified, centralized public information system for requesting and providing access to public information (https://pitay.government.bg/PDoiExt/indexExt.jsf). The obliged bodies under the APIA, required to register on the Platform, include public institutions and their territorial units, and local government authorities. The Platform is integrated with the Administrative Register of the IISST, so each institution included in the register is also represented on the Platform without having to undertake any additional actions. However, each institution, obliged to publish information on the Platform, is required to appoint administrators/moderators responsible for maintaining its profile on the Platform and for processing information requests. Information about the administrators/moderators can be found in the "Contacts" section of the Platform and should also ideally be published in the respective "Access to information" section of the institution.



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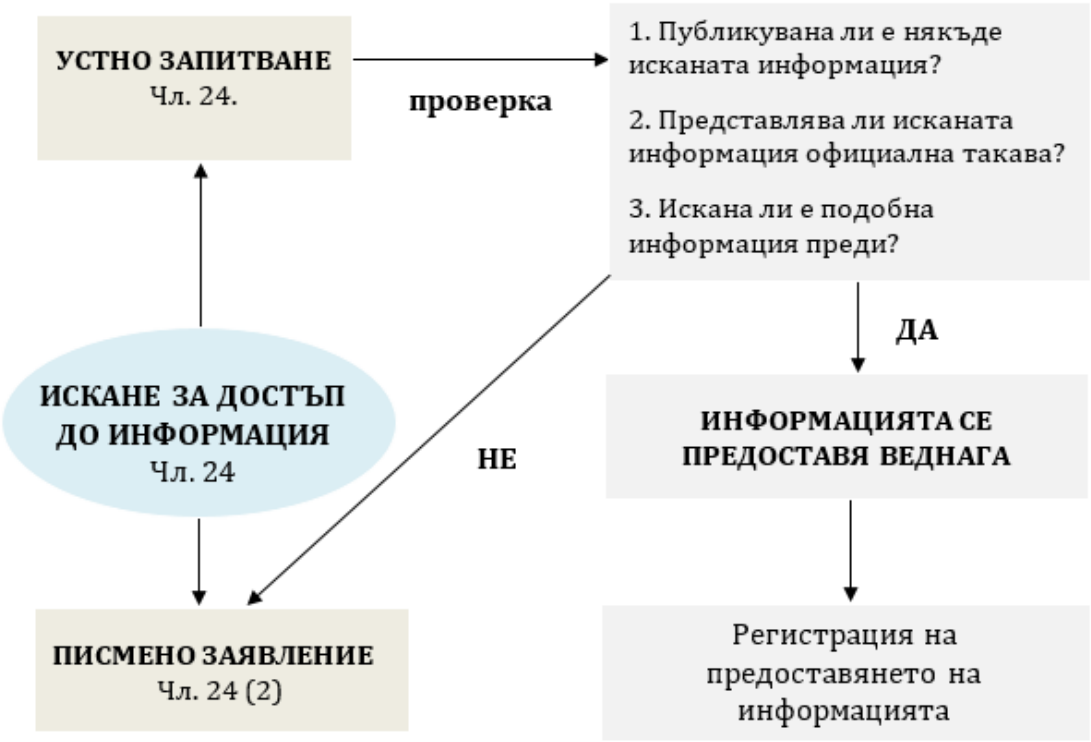
1. Oral request for information



Citizens often request information from public bodies orally. This can be in the form of simple questions, or in the form of requests for document copies, written reports, etc. The provision of information in response to oral inquiries is easier both for the applicants and for the public bodies.

In order to make the provision of information upon an oral request practically possible, the official in charge of accepting information requests should:

- be familiar with the obligations of public bodies under the APIA;
- be aware of the volume and nature of the information created and stored by the respective public body, in order to be able to assess whether it is possible to provide the requested information immediately;

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- in order to streamline the work process, it is advisable to have a list of all the acts and public documents of the institutions readily available in the reception room or wherever information requests are accepted.

For example:

A computer can be installed in the information center of the institution, allowing citizens to access the information under Articles 15 and 15d of the APIA, as well as the acts issued by the institution and other public information. In this way, citizens will be able to seek and examine documents on their own.

If you are approached by a citizen with an oral request for information:

- Check whether the requested document has already been published somewhere — website, official newsletter, etc. If the requested information has already been published, you can provide the applicant with a copy immediately.
- Check whether the requested information has already been provided in response to an identical request for access to information. Often times, the same document is of interest to many people, and if it has already been provided once, it is not necessary to assess it again.
- If the applicant requests information that requires more time to prepare, or if you are unable to immediately decide whether to give access to the requested documents, talk to the applicant, find out the information they need and, if necessary, help them prepare a written request for access to information.

For example:

In the *Dobrich Municipality*, a public official of the Center for Services and Information, who is responsible for accepting and registering requests, as well as for providing public information, is obliged to provide the requested information immediately, when it is easily accessible, publicly available, it does not affect the interests of third parties, and its provision does not require much time or an in-depth assessment by experts.

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Frequently asked questions:

Who should respond to oral requests?

Whether an official should be appointed to respond to oral inquiries often depends on the nature of the institution's activities. Public bodies that work with citizens on a daily basis usually have dedicated information centers. In other institutions, which work with citizens more rarely, this role can be assigned to an official working in the press center or in the secretariat.

For example:

In the *National Audit Office*, oral requests are handled by an official of the Media Policy and Public Relations Unit.

In the *Beloslav Municipality*, oral requests are handled by the official who receives citizens in the Center for Information and Municipal Services, Secretariat Counter.

Should oral requests be registered and how?

It is advisable to avoid any unnecessary formalism. The practices in different institutions vary.

For example:

In the *Ministry of Transport, Information Technology and Communications*, the official who receives oral requests fills in a form, similar to a written request. The form is then signed by the applicant and the official, and registered in the Document and Workflow Management System.

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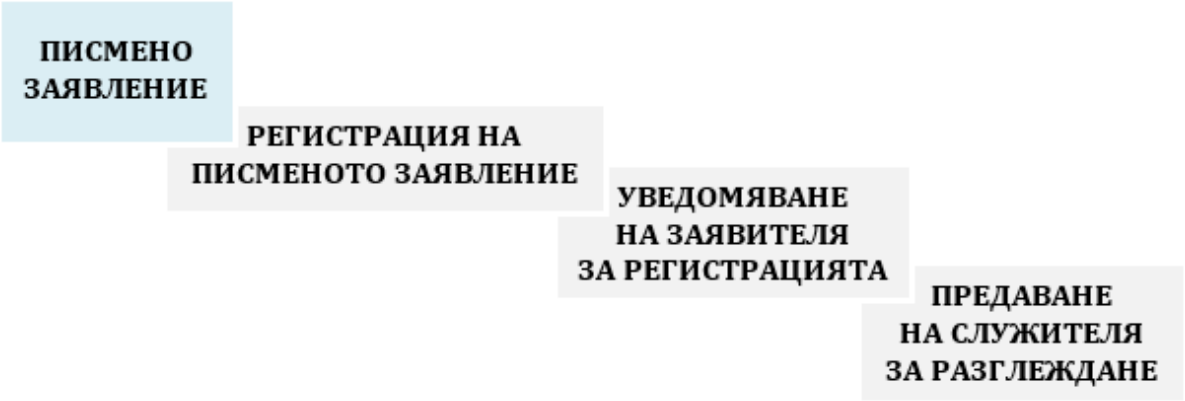
2. Provision of information upon a request in writing

a. Receipt and registration



Written requests for access to information are usually submitted to public bodies in four ways: in person by the applicant, by mail, by e-mail, or via the Access to Public Information Platform (APIP). In all four cases the requests must be registered.

For example:

In the *Ministry of Transport, Information Technology and Communications*, the officials of the Secretariat and Administrative Services Department of the Secretariat Directorate register the received written requests in the Administrative Information System (Document and Workflow Management System EVENTISR7) with a separate registration index. The registered requests are submitted to the department head for allocation via the Administrative Information System. A copy of the request is also provided to the Director of Public Relations and Protocol.

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In the *Targovishte Municipality*, written requests are registered, on the day of their receipt, in a special register in the Center for Administrative Services of the Municipality, which is maintained by the Head of Administrative Services. A separate registration index is used for the registration of written and the registration of oral requests, and the registration number of each request is composed of the registration index, the serial number, and the date of receipt of the request. On the day of their registration, the written requests are submitted to the Mayor of the Targovishte Municipality for resolution. The Mayor refers the access to information requests to the competent officials (deputy mayor, secretary or chief architect), who then decide whether to provide the requested information. The competent officials then refer the access to information request to the relevant director or department head, who has to draft a reasoned decision.

When the request is submitted via the Platform, it is given a unified registration identifier (URI), which can be used to find the request on the Platform and follow its development. Irrespective of the URI, which is generated automatically upon submission of the request, the relevant institution that the request is addressed to also registers it with another registration index, used for internal communication and processing of the request.

b. Processing of written requests — steps

Who is responsible for processing written requests and referring them for resolution?

Once the requests are registered, they should be assessed by the designated official, responsible for the provision of public information at the relevant institution. With regards to who that official is — different institutions follow different approaches.

For example:

In the *Ministry of Transport, Information Technology and Communications*, the registered requests are submitted to the department head for allocation via the Administrative Information System. A copy of the request is also provided to the

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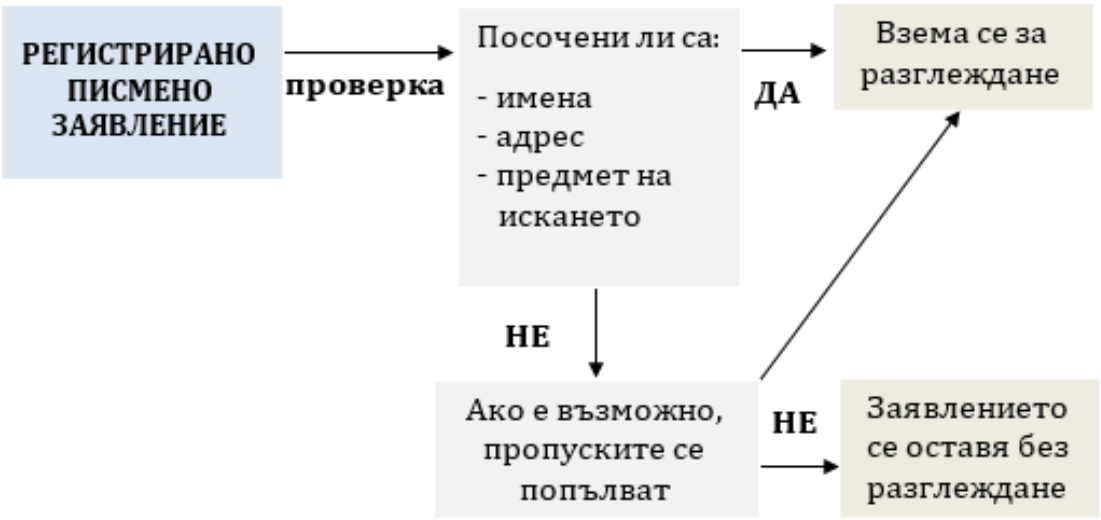
Director of Public Relations and Protocol. The General Secretary, on the other hand, oversees the compliance with the time limits for responding to the requests, set out in the APIA.

In the *Targovishte Municipality*, the written requests are submitted to the Mayor for resolution on the day of their registration. The Mayor refers the access to information requests to the competent officials (deputy mayor, secretary or chief architect), who then decide whether to provide the requested information. The competent officials then refer the access to information request to the relevant director or department head, who has to draft a reasoned decision.

Once the written requests have been registered, they have to be considered, and decided on within a 14-day period. Below, we will try to describe the different steps followed in the process of responding to a sample information request.

Step One *— initial review: Does the request contain a name, address and subject? (Art. 25, par. 1 and 2 of the APIA)*



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Every written request for information should contain:

- **The full name of natural persons.** For legal persons — **their name and headquarters**;

- **What information** the person is seeking to access. The information can be indicated in a descriptive way (e.g., "*I would like to be given access to all the available information on…*"). It is also acceptable to ask for specific documents (citing their number, subject and date of issue). Sometimes, applicants only describe a document by what they know — e.g., by the addressee of a particular order. Nevertheless, the requested information should be provided in all of these cases. It is not necessary to include any concrete details about the requested document, as long as it is possible to identify the document clearly. Applicants can also submit questions, the answers to which would help them identify particular information or documents.

- **Address for correspondence.**

Important!

Remember that the mandatory details each request for information should contain only serve the purpose of facilitating its resolution and the provision of the requested information. Therefore, if the applicant has omitted some insignificant detail (e.g., the applicant has not included their second name or has provided a phone number instead of an address), this should not be used as a justification to not examine the request. Instead, make an effort to get in touch with the person in order to clarify and complete the missing information. If nothing can be done on your part after the initial review has been completed, then the request can be left without examination.

For example:

If the Troyan Municipality receives a request that does not contain the applicant's name or address, or a description of the requested information, then the applicant should be given three days to rectify the request and a warning that it would not be examined otherwise.

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Frequently asked questions:

Should the requests contain a natural person's PIN or a legal entity's UIC/BULSTAT No.?

No. The APIA does not stipulate such a requirement. On the contrary, requesting such information from applicants goes against the spirit of the law.

Should the address indicated by applicants match the address on their ID?

No. The applicant can indicate any chosen address for correspondence.

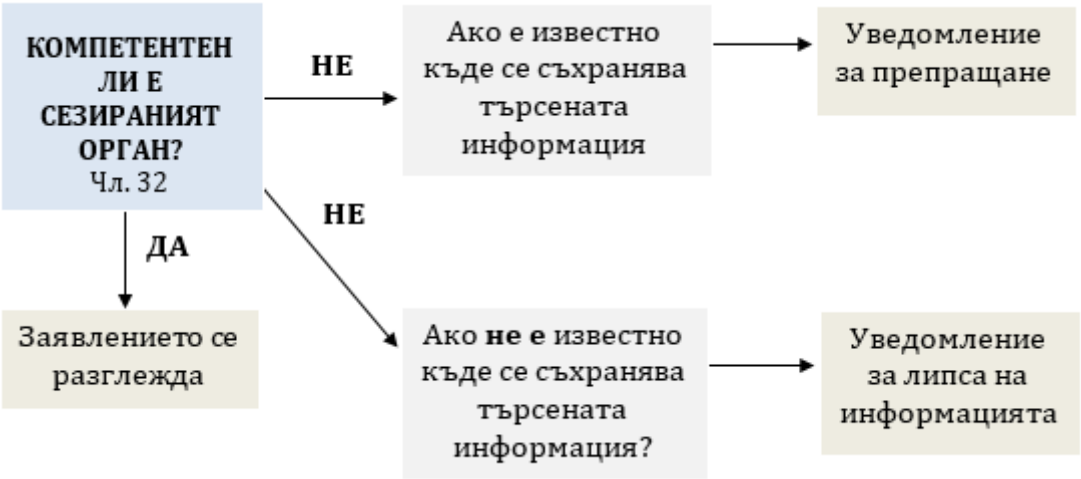
Should the request be signed by the applicant?

No. It is sufficient to include the applicant's full name, or if the applicant is a legal entity — its name and headquarters.

Should electronic requests for information contain an electronic signature?

No. Electronic requests need not contain an electronic, nor a physical, signature.

Step two — subsequent review: Does the public body have the requested information? (Art. 32, par. 1 and Art. 33 of the APIA)



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Citizens do not always know which institution holds the information they need. This is why it is possible to receive a request for a document that you do not have. In this case, if you know where the requested document is held, you should refer the information request to the relevant institution. The time limit for notifying the applicant about the transfer of the request is 14 days from the date of receipt of the request. The notice to the applicant must contain the name and address of the institution or legal entity, to which the information request has been transferred.

If you are not aware where the requested information is kept, make sure to let the applicant know.

Frequently asked questions:

Are public bodies obliged to provide information that they hold, but have not created?

Yes. The APIA (Art. 3, par. 1) obliges public bodies to provide information created **OR** held by them.

For example:

If a citizen requests from a municipality information related to the ownership of, and/or to a permission to conduct repair works on, a cultural monument, the municipal administration must provide the relevant opinions of the Minister of Culture or the National Institute for Immovable Cultural Heritage.

Should the information be provided in the form requested by the applicant?

Yes. The obliged bodies are required to comply with the applicant's preferred form of access to the requested information.

For example:

If a citizen has requested a record from a particular information system — be that a case management system or any other system — the public body is obliged to provide such a record, as long as the relevant computer software can produce it.

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In accordance with the case-law on access to information, the provision of information in the form of a written record is permissible when the record contains systematic data, stored in the public body for a defined period of time.

By exception, this rule does not apply in cases where:

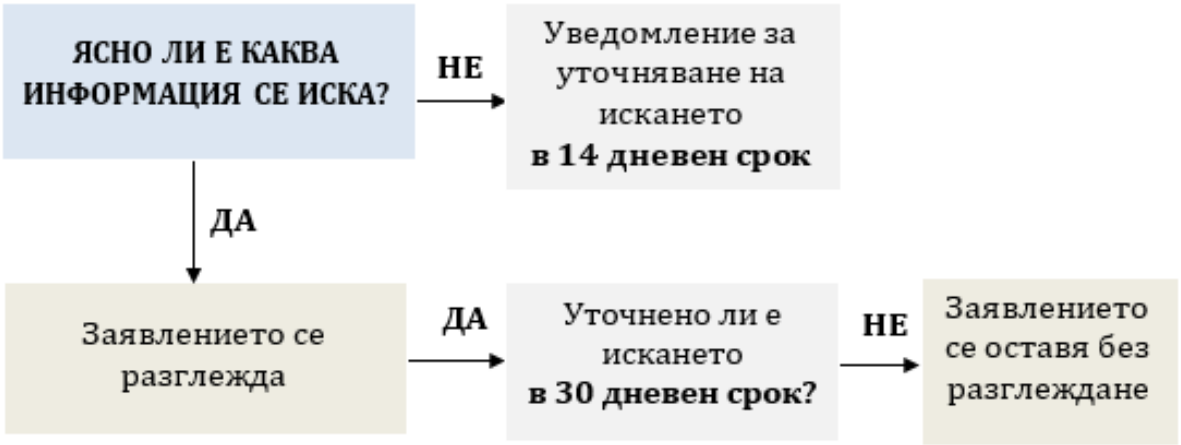
1. it is not technically possible to provide the information in the form requested by the applicant (for instance, the institution does not have a copier with the ability to copy A3 format materials);

2. complying with the applicant's preference would lead to an unjustified increase in the cost of the provision;

3. providing the information in the form requested by the applicant would lead to copyright infringement or to unlawful processing of the information (for instance, providing a copyrighted item in a digital form, which allows for easy multiplication).

In all of the above cases, the information is provided in a form determined by the public body (Art. 27 of the APIA).

***Step Three** — subsequent review: Is it clear what information is sought by the applicant? (Art. 29 of the APIA)*



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Citizens are not always able to describe the information they need well enough. In certain cases, the access to information request is not formulated clearly, and the officials are not able to identify which documents are being requested. For instance, this can happen when the applicant has described the information too broadly: *"I would like to receive information related to the procurement orders published by the agency X."*

In these cases, the law requires the obliged body to send the applicant a notice for clarification of the request. The notice must be sent within 14 days from the date of receipt of the request.

Once the notice has been received, the applicant has 30 days to **clarify** the request. If this is not done within the specified time limit, the request is left without examination.

After the applicant clarifies the information he needs, the institution must provide the information within 14 days of the clarification.

Frequently asked questions:

Can the information request be clarified over the phone?

Yes. It is recommended to avoid any formalities in order to provide the requested information as quickly as possible.

Assessment of the volume of the requested information — notice of extension of the time limit

When the requested information is of considerable volume, or if finding the specific documents would take more time, the APIA allows the obliged bodies to extend the time limit for provision of the information by no more than 10 days. In these cases, the applicant must be notified in writing about the extension.

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Step Four — assessment: Are there any grounds to refuse access to the information? Does the restriction apply to the entire document or only to parts of it? (Art. 37 of the APIA)

For a complete overview of all the restrictions, see the "Restrictions on the right of access to information" section of the handbook.

Who should make the assessment?

The assessment whether the requested information is subject to any restrictions should be made by the person specified in the APIA (e.g., minister, mayor, agency director), or by an official expressly authorized by that person.

The most important factors to take into account are:

1. A refusal to provide the requested information can only be issued on the grounds provided in the law.

2. Partial access should be provided whenever possible.

Assessment whether the requested information affects third party interests

It is possible that the documents requested by the applicant contain information, the disclosure of which would affect the rights or the protected interests of third parties. These rights can be associated with the protection of personal data or trade secrets (see the handbook section on access restrictions). It is not necessary to obtain the consent of the third party, when it is an obliged body under the APIA and the information at issue is public information within the meaning of the APIA, or when there is an overriding public interest in the disclosure of the information. In all other cases, the obliged body must obtain the consent of the third party, before deciding whether to provide the requested information. The law requires the consent to be given in writing. If the third party has lawfully and explicitly objected to the provision of the requested information, the latter should be provided in such form and volume that would protect the interests of the third party.

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Frequently asked questions

In what circumstances is it lawful to not seek the consent of the third party?

In the cases where the third party is also an obliged body under the APIA, it is not necessary to seek its consent. In these cases, the requested information can be provided to the applicant immediately.

What is the time limit for requesting the consent of the third party?

The letter requesting the consent of the third party should be sent within 7 days from the date of registration of the access to information request.

How long does the third party have to respond?

The obliged body should wait for up to 14 days from the date of sending the request for consent.

What is the appropriate course of action if the third party does not respond?

If the third party fails to respond, the obliged body **must provide** full access to the requested information.

What is the appropriate course of action if the third party refuses to give consent?

In this case, the obliged body **must assess whether there is an overriding public interest** in the disclosure of the requested information. If such an interest exists, the obliged body is required to give access to the information, irrespective of the objection of the third party (Art. 31, par. 5 of the APIA). If there is no overriding interest, the decision of the obliged body must contain clear arguments as to why such a conclusion has been reached.

What is the appropriate course of action if the third party refuses to give consent and there is no overriding public interest in the disclosure of the information?

In this case, the obliged body **must assess whether it can provide** partial access to the information in a manner and volume that would protect the interests of the third party (Art. 31, par. 4 of the APIA).

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Step Five — decision to provide or refuse access to the requested public information (Art. 34 and Art. 38 of the APIA)

c. Decision to provide access to information

In the cases where there are no reasons to withhold the requested information, the obliged body should issue a decision granting access to the information. The decision must be issued as quickly as possible, but in any event no later than 14 days after the date of registration of the request. The failure to issue a decision within this time limit will amount to a tacit refusal, which can be repealed in court.

The **decision** to grant access to public information must indicate:

- **what part of the requested information can be accessed**

The law gives the obliged bodies the opportunity to provide partial access to information. This means that if an applicant requests access to a document, which contains both secret information protected **by law** and information that is not secret, the obliged body can disclose the document after the secret parts have been obscured.

- **the period of time, for which access to the information is provided**

When the applicant has requested access to information in the form of examination of original documents, or copies thereof, the obliged body is required to ensure that the requested information be at the disposal of the applicant for a minimum of 30 days. The decision to grant access should specify the start and the end date of the period, throughout which the information can be accessed. If the information is provided in electronic form or in the form of copies, it is not necessary to determine a 30-day period. In these cases, access should be provided together with the decision. Taking additional time to provide the requested information in the form of electronic or paper copies is in violation of the law.

- **where the information can be accessed**

The obliged body is required to designate a room, in which the applicant can peacefully access the requested documents. This applies to the cases where the applicant has requested to read and examine the documents.

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- **the form of access to the information**
- **the fees that the applicant has to pay**

Here it should be stressed that the APIA expressly provides that access to information shall be free. The fee that applicants have to pay covers only the costs for making paper or technical copies of the information. The fees associated with the provision of access to information are calculated with reference to tariffs, determined by the Minister of Finance. The provision of information in electronic form or via a link to a website where the information is uploaded or published should be free of charge.

Important!

It is advisable that the decision to grant access to information should specify the name and phone number of the official, responsible for the actual provision of the information. This will allow the applicant to get in contact with the official and arrange a suitable date and time to access the information, as well as the mode of payment (on site or via bank transfer), etc. In this way, the applicant will not have to wait, and the official will be able to plan the workday accordingly.

For example:

Here is an excerpt from a decision to provide access to public information, sent to AIP from the Ministry of Health:

"You can kindly contact us on tel. …… every working day of the week, from 9:00 to 17:30h, to arrange the most convenient time to provide you the information."

Important: if a request for information has come through the Access to Information Platform, the **only** appropriate form of access that the obliged body can provide is publication of the information on the Platform. Even though this is not expressly stated in the law, the other forms of access (examination on site, oral report, or copies on a tangible medium) are not applicable to requests submitted via the Platform. The reason is that the very purpose behind the Platform is to make the information provided in response to access requests public. If the applicant does not want the requested information to be published, (s)he should file the request through other means — by mail, in person, or via e-mail.

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Important: when responding to a request, submitted via the Platform, in which the applicant has explicitly indicated that (s)he wants to receive the information on a specified e-mail address, it is sufficient to publish the requested information on the Platform. It is not necessary to also send the information to the e-mail address specified by the applicant, as (s)he has registered on the Platform and will receive the decision and the appended information on the e-mail address associated with his/her profile on the Platform.

Important: the decision should be provided on the Platform in compliance with the requirement to protect the personal data of third parties and of the applicant. This means that the decision should only be published after the personal data of third parties and of the applicant have been obscured. Another possible approach is to publish the decision, make it "invisible" for all Platform users except the applicant, and provide the requested public information in the "Decision" field of the electronically generated form on the Platform's administrative panel, or publish the information in a separate file accessible by all Platform users.

d. Actual provision of access to information

After the decision to provide information has been signed, it should be sent to the applicant in the manner requested by him/her. If the applicant asked for paper copies, the requested documents should be copied and prepared for handover. If the applicant requested documents in electronic form, the obliged body should send the decision to provide access to the specified e-mail address, together with a copy of the information or with a link to the web address where the information is stored.

Important!

If you are providing the information in the form of a web address where the information is stored, you should indicate the exact web address (link), so that the applicant does not have to further search for the information (by browsing webpages or searching by keyword or by number).

It is recommended to include an active hyperlink within the body of the e-mail, which the applicant will be able to click and directly open the webpage containing the relevant information.

If the applicant has requested paper documents of a small volume, it is

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recommended to send them by mail. This will save you time and effort. Some institutions in Bulgaria have adopted this sensible approach.

It is recommended to observe the following good practice: in the institution's internal rules on providing access to information, lay down procedures for sending copies of requested documents by traditional mail, as well as by e-mail. If you are sending copies by traditional mail, instead of asking the applicant to sign a handover document, you can prepare such a document yourself by using the return receipt signed by the applicant as evidence.

In the cases where the applicant receives the requested documents in person, (s)he has to pay the fee for the copying of the information and, where necessary, to sign a record of handover.

Here it is also recommended to avoid any unnecessary formalities, both with regards to the payment for the requested documents and with regards to signing a record of handover. Institutions should offer the option for prompt on-site payment of the costs associated with the provision of the information. The record of handover should be prepared in advance and the actual provision of the information should not take much of the applicant's time.

In many cases institutions only offer the option to pay for the information via bank transfer, and often times the price of the bank transfer exceeds the price of the information significantly. Every institution should provide a convenient way for applicants to pay for the information, either at the accounting desk or at the cash desk.

The record that has to be signed during the handover of the information should contain a description of the provided documents.

e. Decision to refuse or partially refuse access to information

In case that access to the requested information, or to parts of it, has to be restricted, the obliged body should issue a decision to refuse the information. The decision to refuse access must contain:

- factual grounds/argumentation;
- legal grounds;
- operative part of the decision;

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- information on where and how the decision can be appealed.

The factual grounds/argumentation should contain a description of the following circumstances: what information was requested, who requested it and when; what actions were undertaken by the obliged body and what conclusions were reached on the facts. This is also the place to discuss the performed assessment on the existence of an overriding public interest.

The legal ground is specified in the respective normative act that contains the grounds to refuse access to information.

The operative part of the decision indicates the conclusion drawn from applying the respective legal provision to the established facts of the case.

Where and how the decision can be appealed — it should be specified that the decision can be appealed within a 14-day period before the competent administrative court. The failure to specify any aspect of the above will lead to an extension of the time limit for appeal.

The indication of the competent court, before which the decision to refuse access can be appealed, should be made in accordance with the 2018 amendments to the Administrative Procedure Code (APC), and specifically Art. 133, par. 1, clause 1: *"The actions challenging individual administrative acts shall be heard by the administrative court, whose territorial jurisdiction encompasses the permanent address or the headquarters of the addressee or addressees, specified in the act."* Since the decisions under the APIA are individual administrative acts, a question arises as to whether it is necessary to identify the permanent address or the headquarters of the addressee of the decision to refuse access, i.e., the applicant, in every single case. The headquarters of legal entities are public and freely accessible via the Companies Register and the Register of Non-Profit Legal Entities. However, the permanent address of individuals is not public and can only be accessed through a special procedure.

The decision on whether to provide access under the APIA should indicate the administrative court, whose territorial jurisdiction encompasses the address, specified by the applicant in the information request.

The failure to issue a decision within the time limit under the APIA is an

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administrative offence, and the respective official can be fined BGN 50 to BGN 100 pursuant to Art. 42, par. 1 of the APIA.

Important!

The decision to refuse access should always be served to the applicant against a signature, or sent to the applicant by mail, together with a return receipt.

III. Appealing decisions to refuse access to information

Any decision under the APIA that affects the rights of the applicant can be appealed before a court (Art. 40 of the APIA). This applies equally to decisions to refuse access and to decisions to provide access to requested public information. The decisions are appealed before the competent administrative court, identified with reference to the address of the applicant. The appeal procedure is laid down in the APIA and the APC, and for all matters not settled in the APC, reference should be made to the Civil Procedure Code (Art. 144 of the APC).

Appeals should be sent **through** the administrative body that issued the decision **to** the competent administrative court.

Important!

In accordance with the APC, within three days **(3 days)** of receiving the appeal, the administrative body is required to prepare the complete administrative file and send it to the competent court, together with the appeal. The applicant must be notified that the appeal has been sent (Art. 152, par. 2 of the APC).

At any point before the first court hearing on the case, the administrative body can retract the challenged decision or rectify a tacit refusal by issuing the required decision (Art. 156, par. 1 of the APC). In these cases, the body can reach out to the applicant to drop the appeal.

The failure to comply with the obligation to send (within 3 days) the appeal, together with the complete administrative file, to the court is an administrative offence, for which the respective official can be fined BGN 150 to BGN 1500 (Art. 303, par. 2

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of the APC).

Important!

During an appeal of a refusal to provide information, justified under Art. 37, par. 1, item 1 of the APIA (classified information representing a state or an administrative secret, as well as the information under Art. 13, par. 2 of the APIA), the court may ask the administrative body to supply evidence in support of that justification claim. In practice, this means that the judge may oblige the administrative body to provide the refused information, so that the judge can examine it in a private hearing and rule on the lawfulness of the refusal and on the security classification of the information (Art. 41, par. 3 and 4 of the APIA). The time limit for the provision of the information is determined by the court on a case-by-case basis.

Frequently asked questions:

Are tacit refusals subject to appeal?

Yes. In accordance with Art. 38 and Art. 41i, par. 3 of the APIA, the decision to refuse access to information must contain factual and legal grounds for the refusal. Therefore, the courts have ruled that the obliged bodies are required to issue an explicit and justified refusal in writing, whereas tacit refusals are subject to appeal under Art. 58 and 59 of the APC.

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