
ACTIVE DISCLOSURE AND ELECTRONIC ACCESS TO INFORMATION

General Remarks

On December 5, 2008, in the State Gazette, the Amendments Act to the Access to Public Information Act was promulgated. Along with other important changes, the law provides for new obligations of the institutions with regard to the publication of the categories of information stipulated by Art. 15 in their Internet sites. The provisions of Art. 15 are the following:

Art. 15. (1) In order to achieve transparency of the administration's activities, and for the purpose of maximum facilitation of access to public information, every head of an administrative structure within the system of the executive power shall publish on a regular basis up-to-date information containing:

1. description of his/her powers as well as data on the organizational structure, the functions and the responsibilities of her/his administration;
2. list of the acts issued within her/his authority;
3. description of the information resources used by the respective administration,
4. the name, the address, the telephone number and the working hours of the unit which is authorized to receive and handle access to public information requests.

(2) (Amended, SG No. 24/2006) Every authority under sub-art. 1 shall prepare an annual report on the access to public information requests, which shall contain among others data on the refusals made and the reasons therefor. This annual report shall be part of the annual reports under art. 62, sub-art. 2 of the Administration Act.

The amendments provide that the information under Art. 15 shall be published in the Internet sites and, moreover, an *access to information* section shall be created where not only the name, address, telephone and working time of the unit responsible for the receiving of access to information requests within the respective administration, but also the internal access to information rules for the respective administrative structure within the system of the executive power, shall be published. The procedure for access to public registers, whose description shall be published under the provision of Art. 15, Para. 1, Item 3 of the APIA, shall be presented in the *access to information* section of the Internet sites of the institutions. Since the electronic request is regarded as a written request according to the provision of Art. 24, Para. 2 of the APIA, the procedure for its submission shall be part of the internal access to information rules. The amendments to the law brought clarity with regard to the so far disputable interpretation of Art. 15, Para. 1, Item 2, namely „**list of the acts issued within her/his authority.**“ The Additional Provisions to the law give the following definition for the term:

„A structured aggregation of **all legal, common, and individual administrative acts** issued by the respective administrative body.“

This definition should bring clarity and more precision to the implementation of this existing obligation as the main arguments for the bad implementation of this requirement set forth by the APIA since 2000 have been the vagueness about which acts shall be included in that list.

An additional facilitation for the citizens would be the requirement for a short annotation about the subject of the administrative act to be included in this list/register.

Art. 15a. (New, SG No. 104/2008)

(1) Information under Art. 15 shall be published on the Internet sites of the administrative structures within the system of the executive power.

(2) In the *access to information* subsection of the Internet sites under sub-art. 1, the data under Art. 15, sub-art. 1, item 4 and sub-art 2, as well as the existing internal rules related to the access to information and the procedure for access to the public registers maintained by the administrative structures within the system of the executive power, shall be published.

The fulfillment of these obligations by the heads of the administrative structures in the system of the executive power is due one year after the amendments to the APIA become effective, i.e. December 2008.

In the course of three successive years, *Access to Information Programme* has made an assessment of the availability of the information under Art. 15 based on a survey of the institutional web sites content. The results are published in the annual reports of the organization.¹⁹ We thought that a reasonable approach from the side of the administration suggested the use of the cheapest media for publication - the existing official web sites of the institutions regardless of the fact that no specific obligation was stipulated by the law.

Similar survey will be performed in the end of 2009 considering the fact that the preparation period expires at that time according to the new provisions of the law.

The aim of the survey that we present in the current *Access to Information in Bulgaria* annual report is to evaluate the preparedness of the institutions to answer requests submitted electronically.

The necessity for evaluation of that preparedness was conditioned by several factors:

- Practical problems observed on the base of electronic requests submission which have emerged during the last years and have been referred to AIP for advice;
- Established facts that institutions within the system of the executive power require electronic signature for the submission of electronic requests for access to information;
- The increasing number of requests submitted electronically according to data from the report of the Ministry of State Administration and Administrative Reform (MSAAR).²⁰ For example, according to the report of the MSAAR, the number of requests submitted electronically in 2006 was 4,811 or 18,9% out of the total number of requests. In 2007, the number increased to 7,522 which was 33,9% out of the total number of submitted requests.

¹⁹ http://www.aip-bg.org/l_reports.htm

²⁰ 2007 Report on the State of the Administration, <http://www.mdaar.government.bg/docs/AnnualReport%202007.pdf>, pp. 124 (in Bulgarian).

Methodology

The survey was prepared by the team of AIP and was performed within the period February 10 - March 5, 2009 by two volunteers.²¹ They had the task to submit electronic requests to the administrative structures from the system of the executive power as they are listed in the public Register of Administrative Structures. The Register is accessible through the Internet site of the Ministry of State Administration and Administrative Reform.²²

The requestors had several tasks:

- To find the Internet site of the administrative structure from the register;
- To find on that web site an e-mail address of an official who is responsible for accepting requests, or a contact e-mail of the institution where they may submit requests;
- To check if an *access to information* section exists on the web site since the process of creation of such sections has started several years ago and is stipulated as an obligation by the APIA amendments as of December 5, 2008;
- They had to also check and signify if rules for the submission of electronic requests were published on the web site.

Finally, our requestors had to submit a request to the identified e-mail demanding access to information with the following content:

„Has an official been assigned within the institution of your authority to be directly responsible for the provision of public information as set forth by § 18 of the Transitional Provisions of the Amendments Act to the Access to Public Information Act (Promulgated in SG No. 49 as of June 19, 2007)? In case such an official has been assigned, please name the particular official responsible for the provision of information.“

As it has been mentioned above, the main aim of the survey was to evaluate the situation - possibilities, problems and results from the submission of requests electronically. That is why the information to be requested has been chosen in such a way not to create any difficulties for the institutions. This is information which should have been published in their Internet sites or should have been made available with no difficulties for them. Specifying a department and publication of information about it has been one of the obligations for the heads of administrative structures from the system of the executive power according to Art. 15, Para.1, Item 4 since 2000 when the APIA was adopted. One more particular obligation was provided by § 18 of the Transitional Provisions (Promulgated in SG No. 49 as of June 19, 2007), namely, the assignment of the officials about which we were inquiring with the request.

The perfect answer to such a request would have been to provide the link in the Internet where the name of the official has been specified and the administrative decision for the assignment of that official.

²¹ The reports of the two participants in the survey were used for the presentation of the results - Ms. Galina Nencheva and Mr. William Popov.

²² <http://ar2.government.bg/ras/>

Survey Outcomes

General Results

Requests were submitted to 399 institutions, including ministries, agencies, state commissions, regional governor's administrations, municipalities. The submission of requests to 6 institutions from the Register of Administrative Structures was not possible due to the following reasons:

- No electronic mail addresses were signified on the web site (Municipality of Zemen and Municipality of Kazanlak);
- No Internet site was found (Municipality of Trekliano);
- It was impossible to open the Internet site of the institution (Municipality of Lesichovo);
- Not-existing electronic mail address (Municipality of Kirkovo);
- Wrongly stated electronic mail address.

Out of the total number, 137 institutions (34.3%) gave an answer within the legally prescribed period, i.e. within 14 days.

29 institutions (7%) answered after the deadline.

233 (58.40%) did not answer at all the requests which were, let us remind that, for access to information subject to mandatory publication.

An *Access to Information* section is found in the web sites of 53 (13.28%) institutions; in 61 (15.29%) institutional web sites, the official responsible under the APIA is signified. In 99 institutions (24%), the procedure for the submission of requests electronically is signified, and in 17 (4.26%), an electronic signature is required for the submission of the request.

Regarding the ways by which the electronic requests were answered, they are exceptionally diverse and show high extent of administrative creativity to answer in that case a simple question. The way some administrations have acted raises questions about the effectiveness of the meaningless compliance with the letter of the law which is to the disadvantage of the rationality and the provision of efficient service to the citizens. The creation of registers for requests, the creation of internal rules and procedure for processing requests shall not turn into an end in itself for the administration. The procedure and the forms should be used for the facilitation of the administration and the citizens, not vice versa.

Detailed Results

If we look at the statistics, the results are pessimistic.

Out of all 399 administrative structures, 233 did not answer in any way which is 58.40%.

Eighty-nine (34.44%) out of the total of 258 municipalities to which requests were submitted answered the electronic request in one way or another (electronically, via mail, by phone). Some of them did that with a great delay. 75 (29%) of all the municipalities answered within the legally prescribed period. 65 out of these had signified the official whom the requestor may address.

Only 6 ministries (31%), including the administration of the Council of Ministers, answered the requests.

Three ministries - the Ministry of Agriculture and Food, the Ministry of Defense, the Ministry of Labor and Social Policy - informed the requestor by phone that he/she should submit a request signed with a universal electronic signature (UES). We will not comment on the fact that the Ministry of Environment and Water which is the body overseeing the implementation of the UN Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention) did not answer to the request in any way.

Out of the regional governor's administrations, 10 have answered but in fact only 5 have provided the requested information which, as it has been already noted, is official public information and is subject to publication in the Internet.

Out of the rest administrative structures, such as executive agencies, state agencies, commissions, etc., from the system of the executive power, 43 have answered.

Is it possible that a procedure and rules for access to information are established and the citizens are served well by being answered after the submission of electronic requests?

Apparently, for some administrations this is possible. Below, we have done our best to mention all of them which have answered the requests without any formalities, immediately, or within three-four days.

All these can be nominated as administrations which work in the service of the citizens and follow the spirit of the Access to Public Information Act, including its last amendments:

These are the municipalities of: Anton, Asenovgrad, Beloslav, Blagoevgrad, Bozhurishte, Borovo, Bratsigovo, Breznik, Burgas, Byala Slatina, Veliki Preslav, Veliko Tarnovo, Velingrad, Valchedram, Georgi Damyanovo, Gotse Delchev, Gulyantsi, Garmen, Dobrich, Dobrichka, Dragoman, Dulovo, Zavet, Isperih, Kavarna, Karnobat, Knezha, Kostenetz, Krivodol, Krichim, Kubrat, Kuklen, Loznitsa, Lukovit, Lyubimets, Maritsa, Medkovets, Mezdra, Mineralni bani, N. Kozlevo, Nevestino, Nikolaevo, Nikopol, Nova Zagora, Opan, Petrich, Pirdop, Popovo, Radnevo, Razlog, Satovcha, Sliven, Smyadovo, Stara Zagora, Strazhica, Straldzha, Strelcha, Strumyani, Teteven, Tryavna, Tundzha, Tvarditsa, Targovishte, Tsenovo, Chelopech.

The municipalities of Sofia and Etropole also answered within the legally prescribed time period, although not electronically but via snail mail.

Within the legally prescribed period also answered:

Regional Governor's Administrations: Burgas, Veliko Tarnovo, Haskovo, Lovech, Varna.

Ministries: Council of Ministers, Ministry of Emergency Situations, Ministry of Economy and Energy, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Justice.

Executive Agencies: Nuclear Regulatory Agency, General Labor Inspectorate Executive Agency, State Receivables Agency, Public Financial Inspection Agency, Archives State Agency, State Tourism Agency, Agency for Economic Analysis and Forecasting, Executive Agency on Sorts Testing, Approbation and Seed Control, National Evaluation and

Accreditation Agency, Privatization Agency, State Reserve and War-time Stocks State Agency, Executive Agency Maritime Administration, Disabled People Agency.

State Commissions, Regional Offices, Regional Inspectorates: State Energy and Water Regulatory Commission, State Commission on Gambling, all Basin Directorates for water management, Sofia Regional Inspectorate for Public Health Care and Control, Sofia Regional Inspectorate on Environment and Water, National Part "Central Balkans," General Directorate Civil Aviation Administration, Bulgarian Metrology Institute, State Institute for Culture.

Other institutions provided the requested information with a delay that reached 46 days: The municipalities of: Plovdiv, Pazardzhik, Petrich, Chepelare, Breznik, Haskovo; Executive Agency Automobile Administration, Commission for Consumers Protection, Executive Agency Railway Administration, etc.

A part of the institutions obviously believe that it is not enough that citizens pay their taxes but that they shall be charged a variety of amounts of money for an e-mail ranging from 0.30 BGN - **Ministry of Culture**, through 0,72 BGN - **Municipality of Kotel**, to 1,59 BGN - **Municipality of Peshtera**. **The Municipality of Razgrad and the Municipality of Gorna Oryahovitsa** also set a requirement for payment in order to provide public information which is subject to publication. Obviously, the rational purpose is to keep busy the bank where the account of the institution is, since the requestors are from Sofia and in order to receive the information they have to wire the money and then to scan and send the bank transfer order which counts for 5 BGN more at their expense. Something more, if the requestor have submitted the request electronically, and they have the right to submit such a request, even if no internal procedure for answering such requests have been developed, an answer can be given electronically at the address that he had signified in the request. Several institutions have done so without issuing decisions on head letters, without scanning and sending these decisions by ordinary mail.

In one of the municipalities - Dryanovo, they had checked the identification of the requestor in the national data base „Population.“ Obviously, the officials there are not aware that everybody has the right of access to information even non-Bulgarian citizens. Taking into consideration that also foreigners and people without citizenship can request the Bulgarian institutions for information, it would be interesting which data base they would consult to check the address of a Canadian citizen, for example.

The institutions which required that the request was signed with a universal electronic signature and had previously stated that are the following: **the Regional Governor's Administration of Ruse, the Registry Agency, the Regional Governor's Administration of Stara Zagora.**

The administrative meaning of issuing decisions which explain in detail and also attempt at a legal argumentation that the request should be signed with a universal electronic signature and that the requested information was subject to protection under Art. 13, Para. 2 of the APIA is doubtful. The working time spent for the justification of the refusal to the request might be assessed from a financial point of view as well. This is time which citizens also pay by their taxes. Obviously, the first requirement for citizens to exercise their right of access to information is to know whom to address within the administration, including the cases when they submit requests electronically.

Fourteen institutions more have specified in their official Internet sites the necessity for a universal electronic signature for the submission of requests for access to public information: Executive Agency Maritime Administration, Executive Agency Automobile Administration, Registry Agency, Energy Efficiency Agency, Basin Directorate for Water Management in Black Sea Region- Varna, Directorate „National Park - Blagoevgrad, Rila,“ Agency for Economic Analysis and Forecasting, Bulgarian Small and Medium Enterprises Promotion Agency, the Ministry of Agriculture and Food, the Ministry of Defense, the Ministry of Labor and Social Policy, National Revenue Agency, National Veterinary Medicine Service, the Municipality of Gabrovo, the Municipality of Dolna Banya.

Apparently, for a part of these institutions the mere requirement for an electronic signature on the request is irrelevant when the requested information is of public interest. That is why part of them have answered the request without even referring to the requirement for a universal electronic signature: Executive Agency Maritime Administration, Basin Directorate for Water Management in Black Sea Region- Varna, Executive Agency Automobile Administration.

Institutions whose legal expert has apparently not read, or has misunderstood the Access to Public Information Act, or think that the APIA does not provide for submission of requests electronically, or require explanation for legal interest, or any kind of clarifications of the request. They are the following: **Regional Governor's Administration of Smolyan, Regional Governor's Administration of Vidin, Regional Governor's Administration of Kardzhali, State Agency for Refugees with the Council of Ministers.**

You can see all primary data for the submitted requests and the answers of the institutions on the web site of *Access to Information Programme*.²³

Part of the institutions which required a universal electronic signature to answer the requests have given grounds for that requirement in their decisions. That is why we think that a clarification is needed in terms of the question: Is a universal electronic signature (UES) necessary for the submission of a request electronically?

²³ www.aip-bg.org/e-register.php