



**MONITORING
DEMOCRATIC
DEVELOPMENT IN
BOSNIA AND HERZEGOVINA:**

**ACCESSIBILITY INDEX
OF PUBLIC
INSTITUTIONS,
ORGANISATIONS AND
AGENCIES**



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Sarajevo, 2006

FOREWORD

Our proverbial unreadiness to accept the international democratic heritage as our basic need, rather than accepting it only as a form which is often offered and even more often imposed, is also confirmed by two obvious facts related to the Freedom of Access to Information Acts.

The Acts themselves - since we do have three Acts at three levels in Bosnia and Herzegovina, which in essence are not much different - are not the result of the local initiative or intellect, just as are not the numerous seminars, workshops and round tables organised just before this Act was passed and during the first couple of years after it was adopted. Thus far, mostly foreign intellect, international organisations and foreign money have stood behind it.

Local participants of different trainings and seminars sometimes did not even know why they are invited, or why this Act is so important. On one occasion, a municipal official openly asked: Why, when we have so many new laws, do you tell us only about this one (?!). In the beginning, the journalists were perhaps the most enthusiastic, but this soon, and not entirely justifiably, dwindled, when they became aware of all the technical limitations to their profession.

Training sessions for high-level officials, as well as journalists, and most often the local authorities' information officers have not entirely been fruitless. Curiosity and the interest of citizens, who are the reason that such laws exist, nowhere in sight during the first and second years, today are, however, becoming a political reality to the extent to which they cannot be ignored and which the authorities cannot off-headedly underrate.

Training sessions have not been without impact, particularly in terms of the executive authority as a whole and the executive authority at the municipal level. With all the difficulties and weaknesses, the municipal authorities which are the closest to the citizens and, as a rule, control the most sources of information in which the citizens are interested, are best organised and prepared. The majority of questionnaires and research initiatives, including this one presented here, as well as experiences of the Federation BiH Ombudsman, confirm this as well. It is true that even today there are public authorities who do not receive even a minimal number of requests per year, some do not even receive a single request, but it is also true that a vast majority of public authorities - government, ministries, municipalities, courts, public companies, public institutions, institutes and agencies - do get tens, even hundreds of requests.

The process of establishing a significantly new relationship between the authorities and the citizens has commenced in Bosnia and Herzegovina as well, and regardless of how slow and imbalanced, this is unstoppable. Now that seminars, workshops, and round tables are behind us, though they would be welcome even at this time, practical education is underway. It is underway on newspaper pages and on air, on radio and television programmes - which discuss good and bad practice - as well as in everyday communication between the public and the authorities, according to the usual pattern 'citizen-authority-ombudsmen'.

Each request to access information, each response the authorities send out and even when they do not respond, each intervention and recommendation by the Ombudsman, are cases of 'living' training and promotion. After each successful intervention there is always at least one public body less which resists disclosing information and there are at least one to two new requests by people who understand that they can obtain information under control of the public authorities through legal procedure and legal tools.

The highest -level state authorities can do even more than this. They can and they actually should publish a list of public bodies which are obliged to apply in full the provisions of this Act and thus remove any dilemma about this issue. They can also in every other way make access to information easier for all citizens and thus become accessible to the extent that it would make the authority accountable and transparent and the public highly interested. They can and they should do much more.

This is what this report is about. It gives a full and graphic overview of how accessible public institutions, organizations, and agencies are and a review of their conduct in relation to the obligations imposed by this type of Act. It provides even more than that - a series of quite precise and valuable recommendations.

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**MONITORING DEMOCRATIC DEVELOPMENT IN BOSNIA AND HERZEGOVINA /
ACCESSIBILITY INDEX OF PUBLIC INSTITUTIONS, ORGANISATIONS AND AGENCIES**

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4



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CONTENTS

FOREWORD	2
EXECUTIVE SUMMARY	7
1. INTRODUCTION	10
1.1. Project background	10
1.2. Project objectives	11
1.3. Methodology	12
1.3.1. Overview and comparative analysis of the legal framework.....	12
1.3.2. Empirical research	12
2. OVERVIEW AND COMPARATIVE ANALYSIS OF LEGAL FRAMEWORK	14
2.1. International standards regulating access to information in control of public authority	14
2.2. Freedom of access to information act in BiH / FBiH / RS	18
2.2.1. Objectives of the Freedom of Access to Information Act	19
2.2.2. Definitions.....	19
2.2.3. Procedure	19
2.2.4. Exemptions	20
2.2.5. Appeals and requests	20
2.2.6. Transitional provisions	21
2.2.7. Differences among BiH, RS and FBiH Acts.....	21
2.3. Reports, analysis and evaluation of the legal framework and the level of the FAIA implementation in Bosnia and Herzegovina	22
2.3.1. Ombudsman activities	22
2.3.2. Other research in BiH	23
3. EMPIRICAL RESEARCH	24
3.1. Research on the extent of implementation of the freedom of access to information act	24
3.1.1. Sample	24
3.1.2. Research findings	27
3.2. Telephone interviews with representatives of public authorities	33
3.2.1. Sample	36
3.2.2. Research findings	36
4. CONCLUDING DELIBERATIONS	43
4.1. Legal framework.....	43
4.2. Implementation	43
5. RECOMMENDATIONS	45
5.1. Legal framework- recommendations to legislative authorities.....	45
5.2. Implementation	45

TABLES & GRAPHS

Table 1	Field of work of the public body	24
Table 2	Operation level of the public body	25
Table 3	Number of questions addressed to different public bodies, sorted by categories	26
Table 4	Type of received responses	28
Table 5	Breakdown of responses by type of public authority	30
Table 6	Types of responses received from different government levels at which public bodies operate	32
Table 7	Model for telephone interviews sample	36
Table 8	Structure of the telephone interviews sample	36
Diagram 1	Application of the public interest test	16
Graph 1	Ratio between responded and unresponded requests	27
Graph 2	Ratio between responded and unresponded requests	27
Graph 3	Responses of the public bodies	29
Graph 4	Agreement of responses with legal provisions	30
Graph 5	Breakdown of responses by type of the public authority	31
Graph 6	Comparison of responses of the "traditional" authority and the public sector	31
Graph 7	Operation level of the public body	32
Graph 8	Administrative area of operation	33
Graph 9	Compliance with deadline prescribed by the Act	33
Graph 10	Compliance with deadline prescribed by the Act	34
Graph 11	Comparison of compliance of the "traditional" authority and the public sector	34
Graph 12	Breakdown of responses by request submitters	35



EXECUTIVE SUMMARY

Project:

- For the purposes of evaluating the level of transparency and accountability of the public administration in BiH, the Mediacentar Sarajevo has conducted research entitled ***Monitoring Democratic Development in Bosnia and Herzegovina: ACCESSIBILITY INDEX OF THE PUBLIC INSTITUTIONS, ORGANISATIONS AND AGENCIES.***
- The project has included an overview and a comparative analysis of the legislative framework, as well as **empirical research.**

Overview of the legislative framework:

- The comparative analysis of the existing legislation at the state and entity levels has revealed deficiencies in certain legal provisions. The most important of them has been that the public institutions are not obliged to respond **in the form of a decision**; the prescribed response form is a notification which does not make it possible for a requester to exercise her or his right in the appeals procedure, since the Law on administrative procedure does not recognise a notification as an administrative decision.

Evaluation of the implementation level:

- Within the empirical part of the research, a sample was formed that included **240 public bodies at all levels of authority** (state, entity, cantonal, municipal, Brcko District), as well as different types of public bodies (legislative, court, executive, etc.).
- Public bodies were sent requests for access to information (a total of 11 different questions) in two cycles. The first cycle included all public bodies from the sample, while in the second cycle the requests were sent again to those public bodies which failed to respond in the first cycle.
- The first cycle yielded **103 (42.9%) responses**, while as many as 137 (57.1%) public bodies failed to respond to the request for access to information.
- In the second cycle, 61 responses were received, so that the **final number of responses came to 164**, which altogether makes 68.7%.
- Further analysis and synthesis of data produced the following indicators: **58.8% responses were in line with the Act; 8.8% were in contradiction with the Act; and 31.7% of submitted requests received no response**
- **75%** of responses were received within the deadline prescribed by the Act, while **25%** violated the deadlines prescribed by the Act. Particularly alarming is that the **legislative authorities in almost 60% of the cases have violated the deadlines prescribed by the Act.**

- The research did not show there were considerable differences in the types of responses depending on the level of authority, area of operation and requesters.
- As part of the empirical research **telephone interviews with 18 representatives of public bodies** were conducted. The received data indicate that **fewer than half of the officials (N=18) went through some kind of formal training on the Freedom of Access to Information Act**. These were mostly officials from traditional public authority, while the training **sidestepped the information officers from the public sector**. Issues related to internal IT resources and mutual cooperation between different departments on the request processing are not being raised in strict terms, since the number of information requests is still extremely low.
- The conducted interviews show that the **representatives of the public bodies are committed to implementation of the Freedom of Access to Information Act**. The commitment is more evident among those officials who deal with the implementation of this Act exclusively, or with somewhat similar activities.
- The number of received requests is still very small. **Some public bodies have not received any requests** apart from the request received as part of this research. In cases where they do, some 20 requests per year are received. This situation indicates that **Bosnia and Herzegovina is in the initial phases of the implementation of the Freedom of Access to Information Act**, and that the public bodies have still not faced major challenges.

Recommendations:

Legal framework- recommendations to the legislative authority

- **Amendments to the Freedom of Access to Information Act at the state level in terms of changing Article 14**, which sets out that, in case of a negative response to the information request by a public body, the citizens should receive a notification - not a decision, in order to allow the citizens to exercise their right to access to information through an appeals procedure.
- Accept the initiative of the Transparency International BiH for an amendment of the RS Freedom of Access to Information Act, with the same objective.
- **Harmonise legal provisions** at all levels of authority to **have identical definition of legally prescribed deadlines** for delivering responses to information requests, as well as a **clear definition of exemptions based on evaluation of each individual case**.
- **Review all pieces of legislation**, passed subsequent to the Freedom of Access to Information Act, **that restrict the rights and obligations set out under this Act**. This refers in particular to the Law on Tax Administration and Criminal Procedure Code in the Federation of BiH.

Implementation

- Authorities in Bosnia and Herzegovina, the Federation of BiH and the Republika Srpska should **disseminate a list of all public bodies subject to obligations set forth in the Freedom of Access to Information Act**. At the same time, we need to stress that the list does not restrict the number of

public bodies, i.e. if a public body is not included in the list, it does not mean it is not subject to obligations under the Freedom of Access to Information Act.

- Public bodies must **carry out their obligations with regards to the implementation of the Act in terms of appointing Information Officers, developing indexed register and a guide**, and report information as set out under the Act to the responsible bodies of the Parliamentary Assembly. In addition, it is necessary to make the collected data available on the web site of the Parliamentary Assembly, which at the moment is not the case.
- Public bodies should **more actively use the existing resources such as the web site, newsletters, and information points**, to make information on the Information Officer, guide, indexed register, and the annual work reports, available to the public.
- Ministries of Justice should, in cooperation with the responsible Ministries, **notify the public sector bodies** (health institutions, public television stations, elementary and secondary schools, faculties, etc.) **that the Act refers to them as well**, and that they are obliged to familiarise themselves with the Act and to implement it. This step is necessary, as a large number of bodies from this sector do not have appropriate legal departments and the FAIA to implement legal provisions published in the Official Gazette, while at the same time the information on the requirement to implement them has not been received through the regular communication channels.
- **Encourage further education of citizens on the Freedom of Access to Information Act**, as only through active engagement with this Act we can expect to achieve a greater level of implementation. In this sense, public bodies should take particularly active role by promoting the Act **through their web sites, newsletters, information points and other existing resources**.
- Continue with the commenced education programmes for the public officials to introduce them to the objectives of the Act, its scope of operation and prescribed procedures. **Special attention should be paid to include representatives from the public bodies of the so-called public sector in the education process, since they have been sidestepped by the education programmes carried out so far.**

1. INTRODUCTION

1.1. PROJECT BACKGROUND

By the invitation of the Open Society Fund Bosnia and Herzegovina, the Mediacentar Sarajevo has started a project entitled *Monitoring Democratic Development in Bosnia and Herzegovina: ACCESSIBILITY INDEX OF THE PUBLIC INSTITUTIONS, ORGANISATIONS AND AGENCIES*. The Project stems out of the Open Society Fund BiH strategy for the period 2005-2006, partly also focusing on the evaluation and continuous monitoring of the democratic development in BiH. In this context, the Project has used the methodology and analytical tools aimed at evaluating the level of implementation of the Freedom of Access to Information Act in BiH.

Bosnia and Herzegovina is a country with one of the most complex administrative structures in the world. As a result, it is unable to run itself efficiently, and at the same time, generally lacks the basic capacities for the development of sustainable democracy and efficient governance. This is especially evident when it comes to transparency and accountability of the public administration, where, in spite of a very progressive Freedom of Access to Information Act, there are no decisive steps taken towards enhancing accessibility of the public institutions, organisations, and officials for the requests coming from the public and nongovernmental sector. In a large number of cases, access to information held by the public administration is either not allowed or is limited by numerous obstacles and by ignorance of the public officials and institutions.

All this suggests that Bosnia and Herzegovina should start establishing objective mechanisms of monitoring and evaluation of the democratic development. One of the most important aspects for evaluation is the role of different public bodies in the democratisation process.

1.2. PROJECT OBJECTIVES

The overall objective of the project was to evaluate and monitor the level of *accessibility and transparency* of the public bodies at all levels of authority - municipal, cantonal, entity and state. In that sense, the attention was focused on the Freedom of Access to Information Act in BiH (FAIA), which defines the rights and obligations with regards to the provisions for citizens to obtain information held by the public authorities.

In addition to evaluating the level of the FAIA implementation, the project objective was also to promote the use of objective and independent indicators of measurement, gradation and comparison of the accessibility level of different public bodies, which actually provide the results on the current level of implementation of basic democratic standards at different levels of authority.

The third important project objective was the promotion and the application of the policy - research and advocacy as tools for monitoring and evaluation of the democratisation process, especially having in mind the implications that the existing complex state structure has for the democratic development of the state as a whole.

Finally, the fourth project objective was to give recommendations (based on collected information and the grasping of the full context) for political reforms that would be in line with the basic democratic principles of citizen participation, transparency of public bodies, legislative procedures and standards.



1.3. METHODOLOGY

The Project included (1) overview and comparative analysis of the legal framework and (2) an empirical research¹.

1.3.1. Overview and comparative analysis of the legal framework

This part of the study has included a review of the existing systems that regulate the area of access to information. In addition, it has also considered other relevant aspects of the implementation of this Act. The review included the following:

1. international standards regulating the area of access to information held by the authorities;
2. current BiH legislation on free access to information;
3. Reports, analysis and evaluation of the legal framework and implementation level in Bosnia and Herzegovina.

1.3.2. Empirical research

The analytical tool used for the purpose of the empirical research was the so-called 'Index of Accessibility and Transparency', which has derived the basic indicators for measurement from the very Freedom of Access to Information Act. The indicators of accessibility and transparency are set out in Article 14 of the FAIA, which identifies obligations of the public authorities upon receiving the access to information request. In this sense, the indicators have enabled the following measurements:

- is the response to the submitted request positive (YES/NO) and to what extent (FULLY/PARTIALLY)
- has the response arrived within the deadline set out under the Act (YES/NO)

With partial responses, we have registered the reasons (if given) provided by the public authorities as a justification for giving only a partial response.

With negative responses, the following indicators were measured:

- The reasons for negative response. Whether the response cited the legal grounds for the decision taken, or any other relevant reasons related to public interest test.
- Whether the requester was informed of the availability of appeal. Namely, in case the access to information is denied the FAIA (Article 14) provides for the public authority to notify the requester of the right to submit an appeal, as well as specific body to whom the appeals should be addressed, including necessary contact information, and the deadline for and the cost of filing an appeal.

¹

This division should be taken with a certain caveat. It was made because it was difficult to find an appropriate term for research about the level of implementation of the Act (not a traditional poll). Still, we need to keep in mind that the review of the legal framework is also an empirical research, as it is not questioning the legal concepts but, rather, concrete texts.

- In addition, we have also looked into whether the public authority notified the requester of his or her right to apply to the Ombudsman, and included the necessary contact information.

Also, given that under Article 19 of the Freedom of Access to Information Act the public authority is required to appoint an Information Officer, data was recorded on whether this obligation was fulfilled, and the collected information which included contact information for the appointed officers are published in the Annex to this report.

Based on these indicators an analytical tool was developed. The principal method used to collect information was through sending written requests to access information held by certain public authorities. Having in mind the complex structure of the BiH administration, a quota sample was created with 15 situation variables. This included a wide spectrum of public authorities to which the **Freedom of Access to Information** applies.

A total of 240 requests were sent out. Request for access to information were sent out in two cycles.² The first cycle included all units from the sample, while in the second, requests were sent only to those public authorities that did not respond to the first request. Half of the requests were sent out on behalf of the Mediacentar Sarajevo, while the other half was sent by two Mediacentar employees on their own behalf.

At the end, in an attempt to provide a deeper insight into the issue of the FAIA implementation, interviews with public authority representatives were conducted. A quota sub-sample was devised, which included 10 percent of the sample on which the research was conducted. The results enabled a better understanding of the reasons for the FAIA implementation, or lack thereof, and created the grounds for adopting recommendations aimed at political reforms that correspond to the basic democratic principles.

² Actually, a smaller number of requests from the first cycle (40) were sent out on 4 July 2005, while the remaining 200 were sent out on 21 July 2005. Though the first 40 requests were not a classical 'pilot project' case, the received answers still did confirm that the initial request was done right, so that the other 200 were submitted in the same form.

2. OVERVIEW AND COMPARATIVE ANALYSIS OF LEGAL FRAMEWORK

2.1. INTERNATIONAL STANDARDS REGULATING ACCESS TO INFORMATION IN CONTROL OF PUBLIC AUTHORITY

The right to free access to information falls under the group of the third generation human rights which went through the evolution from the right to freedom of thought and expression, through the right to be informed, to the right to free access to information.³ As part of the right to expression, freedom of access to information is a precondition for exercising all other human rights. Thus, it can be limited only under special circumstances. The cornerstone of this right is Article 19 of the Universal Declaration on Human Rights, adopted by the United Nations General Assembly in 1948. It binds all member countries to guarantee freedom of expression and information.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁴

However, only at the end of the last century, the right to access to information has been recognised as a basic human right. Under the auspices of an international non-governmental organisation Article 19, the UN Special Envoy for the freedom of thought and expression, the OSCE representative for freedom of the media and the Envoy of the Organisation of American States for the freedom of expression, have adopted a Joint Declaration in 1999, which reads:

The freedom of expression implicitly contains the right of public to open access to information, as well as the right of people to know what governments do on their behalf. Without this, the truth will grow weak, and the participation within governance will remain partial.⁵

On the European continent a significant initiative for recognising the right to information came from the Ministerial Committee of the Council of Europe, in the form of Recommendation⁶ to all

³ Compare Milenković, D. (2005), *Freedom of Access to Information*, FOI News, no. 1-2, Yucom, SCG

⁴ Text quoted according to Bakšić-Muftić, J. and Mijović, Lj. (ed.) (2001:407), *Čitanka ljudskih prava*, University Human Rights Centre, Sarajevo

⁵ Quoted according to Mendel, T. (2003:3), *Freedom of Information*, UNESCO

⁶ Recommendation no. R (81) 19 on access to information held by public authorities, passed on 25 November 1981.

member countries. The Recommendation recognises the right of every citizen of the member countries to obtain, at request, information held by the public authorities. In 2002, the EU Ministerial Council passed a Recommendation for the member countries expanding the right to information also to the citizens who are not residents of the Union.

Member countries should guarantee everyone who submits a claim the right to access to official documents in the control of public authorities. This principle should be applied without any discrimination, national origin included.⁷

The oldest national law on the access to information is the Swedish law from 1776. However, probably one of the most influential ones is the US law passed in 1966, which has served as a model for many countries in the development of their own legislation on access to information. For this reason, most national legislations on access to information held by authorities are very similar.

The basic feature of this legislation provides an opportunity for citizens to seek materials in control of the public authorities. In different places, documents are defined as documents, information or records.

This right is not conditioned on providing reasons for obtaining certain information. In addition, in a growing number of countries, access to information is open not only to citizens, but to anyone seeking information. Also, with the aim of preventing discrimination, some countries have allowed their citizens to submit the requests anonymously.

The tendency of the legislation on access to information is to encompass the largest possible segment of government structures. Thus, in many countries the law pertains to public authorities at all levels of government, while a certain number of countries allow exemption of certain authorities (e.g. judicial and legislative authority, security and secret services).

Another noticeable trend is for this legislation to include non-governmental organisations and private companies that receive money for public projects. Legislators in countries with such provisions have enabled both citizens and government structures to obtain information from private companies, should this be needed to ensure the respect of human rights.

It is important to mention that a number of international organisations have in a way been left outside the scope of the law on access to information. This is particularly worrying if we have in mind the growing influence of these organisations on global relations. The European Union, for example, despite having a rather positive approach to this legislation, in legal provisions still falls behind the legislation of the member countries.

There are many exceptions to which the Freedom of Access to information Act does not refer. Still, some of them are common to most countries. They are primarily related to the protection of national security and international relations, personal privacy, commercial interests, public order, information obtained in confidence, and internal discussions of the public authorities.

The model for the Freedom of Access to Information Act of the global nongovernmental organisation *Article 19* foresees the following limitations:

- groundless publication of personal information,
- publication of information which could not subsequently be used as evidence in court,

⁷ Quoted according to Mendel, T. (2003:9), *Freedom of Information*, UNESCO

- business or confidential information whose publication would lead to the violation of confidence and disclosure of business secrets, or whose publication would probably to a grave extent harm the business or financial interests of third parties,
- confidential information obtained from another country or international organisation which cannot be published without seriously harming the relationship with these entities,
- publication of the information which would likely jeopardize life, health or safety of a person,
- documents of law enforcement agencies whose publication would probably bring serious harm to the agency activities (e.g. activities related to crime prevention and detection, capturing or prosecuting offenders, etc.),
- information which would probably jeopardize country security or defence,
- economy related information whose publication could undermine the ability of state to run the country's economy or probably cause serious harm to legitimate business or financial interests of the public authorities,
- information whose publication would probably cause serious harm to effective creation or development of government policy.⁸

Application of the public interest test

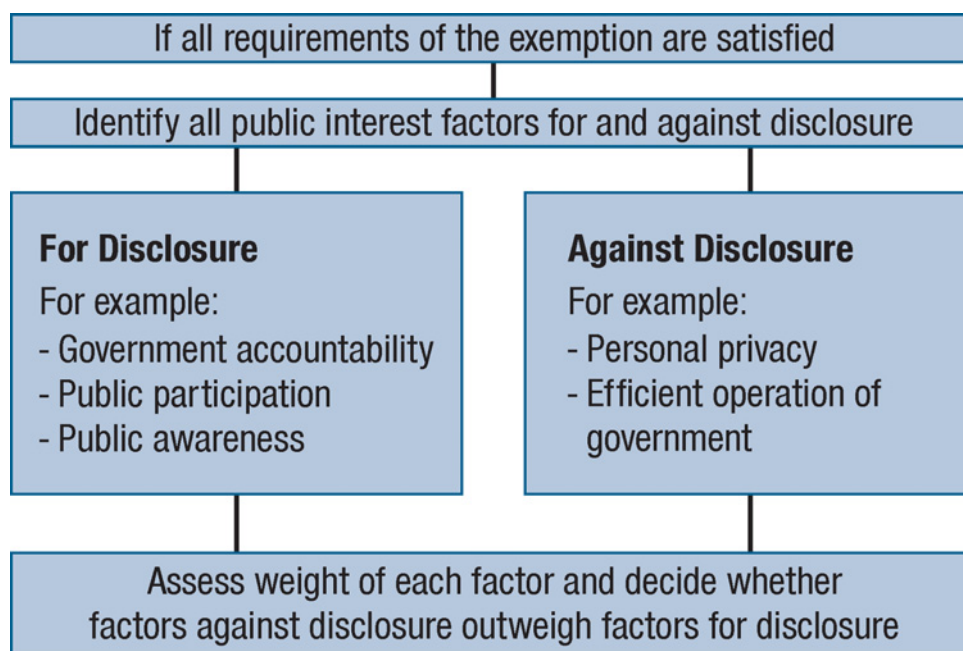


Diagram 1

Most laws foresee the use of test to prove harmfulness and public interest, which understand that harmfulness must be proven prior to taking decision not to publish, or that the information may be published if the public interest prevails, even when the harmfulness of the publication is proved. These tests are extremely important, and wherever the legal provisions on access to information exists - there are these tests as well. The Australian Information Regulatory Commission, showed on a diagram, indicates how the public interest test is applied⁹. The diagram shows the basic principles of the test administering.

The appeals procedure is carried out on several levels. The most frequent method of reviewing the decisions made consists of an internal process conducted by a high-level organ from the institution itself. The next instance is an external body. In many countries it is the Ombudsman, who, in principle, does not have the authority to pass a binding decision. Still, in most countries, the Ombudsman's opinion is influential and public authorities follow the recommendations made by this institution. Instead of the Ombudsman's office, several countries have set up independent information commissions working either as fully independent bodies or as part of already existing legislative or executive government structure. Authorities of such commissions are at positions similar to authorities of the Ombudsman, whilst in some countries their decisions are binding. The ultimate levels of appeal in almost all countries are the courts, which reach binding decisions.

A common feature of the Freedom of Access to Information Act is the duty of government agencies to disseminate routinely some type of information, such as the structure and the functioning of the organisation, internal rules and decisions, a list of principal employees, annual reports, etc. More recent laws require publishing a register of information held by the public authorities, as well as making information available on the internet.

Basic principles of legislation on the access to information in the world*

1. Maximum accessibility, which sets up accessibility as a principle, considering non-disclosure an exception.
2. Promoting accessible authority, which requires all public authorities to take on active approach in order to accomplish accessibility. This includes government sessions open to public, as well as proactive publication of the basic information.
3. Limited field of exemptions, which orders exemptions to be precisely and clearly defined and subject to strict public interest test and proof of harmfulness.
4. Administrative procedures facilitating access to information, meaning that the request processing should be quick and fair, while any refusal to provide information is subject to an independent review.
5. Minimal costs, which would not prevent the citizens from using the law.
6. Priority of law on access to information over other laws, which sets the scene for the laws inconsistent with the maximum access principle to get amendments or get abolished.
7. Protection of employees who disclose information from the exemption category, which refers to abuses, corruption and similar.

* see: Mendel, T. (2003), *Freedom of Information*, UNESCO



2.2. FREEDOM OF ACCESS TO INFORMATION ACT IN BIH/FBIH/RS

Access to information held by the authorities in Bosnia and Herzegovina is defined based on the Freedom of Access to Information Act, which was adopted in three, somewhat different, text versions at the state and entity levels.

It was published in the Official Gazette of Bosnia and Herzegovina on 17 November 2000, in the Official Gazette of the Republika Srpska on 18 May 2001, and in the Official Gazette of the Federation BiH on 24 July 2001. The Acts entered into force six months after being published.¹⁰

The Act was passed upon an explicit initiative of the international community representatives in BiH. On 30 July 1999, the High Representative for BiH Carlos Westendorp ordered the BiH authorities to draft Acts on freedom of information in line with the highest international standards in this area. He also stressed this Act must be drafted under the direct leadership of the OHR and the OSCE Mission to BiH. In light of this, a Working Group was established, made up of international and domestic experts, which in June 2000 produced a Draft Bill based on some of the best international practice.¹¹

It is interesting that the local governing structures displayed no resistance in the process of passing the FAIA. Actually, according to Mehmed Halilović, the Deputy Ombudsman for the Media in the FBIH: '[n]ot a single law before or after this one was adopted so smoothly and without a single voice of opposition.'¹² It seems to be a case of politicians not understanding what kind of law this was. Namely, as Halilović explains, they most probably thought this was an Act which would allow politicians to 'be rid off annoying journalists'¹³ and this was the reason they unanimously supported the Act.

Unfortunately, the initiative for passing this Act did not come from the local civil society sector, as it is usually the case when passing similar laws in many countries around the world. For example, in neighbouring Croatia, a coalition of 19 nongovernmental organisations under the name 'Public Has the Right to Know' initiated the passing of FAIA and to this day they carefully monitor the implementation of this Act and give suggestions as to how to improve it. On the other hand, the failure of civil society sector in BiH to generate such an initiative has resulted in a rather indolent attitude towards the FAIA in the years that followed. Thus an OSCE research project from June 2004 shows that the citizens of Bosnia and Herzegovina in general know very little about this Act. According to the OSCE research, out of 1,550 respondents, 63.6 percent has never heard of the Freedom of Access to Information Act.¹⁴ This signals that the authorities, the media, as well as the civil society sector have failed sufficiently to raise awareness about the Act among the citizens. Still, with time, the number of citizens using the FAIA to support their activities is increasing, as is evident from the statistical data of the public authorities. In addition, the Republika Srpska saw an initiative for amendments to the existing Freedom of Access to Information Act, which shows somewhat more proactive approach to this issue.

¹⁰ Given that differences among the three Acts are not essential, in further text we shall refer to a single FAIA. Differences among them shall be explained in a separate section.

¹¹ Banisar, D (2004:15), "Freedom of Information and Access to Government Record Laws around the World", The Freedominfo.org Global Survey. Draft bill published on 28 June 2000.

¹² Halilović, M (2005:3), "Misconceptions about the Freedom of Access to Information Act", www.netnovinar.org - accessed on 15 November 2005.

¹³ Halilović, M (2005:3), "Misconceptions about the Freedom of Access to Information Act", www.netnovinar.org - accessed on 15 November 2005.

¹⁴ OSCE (2004), "Public Opinion Poll - June 2004", www.oscebih.org



2.2.1. Objectives of the Freedom of Access to Information Act

Defining the basic FAIA objectives in BiH, legislators start from recognising the value of information in control of public authorities, and define it as a "public resource" adding public access to such information is essential to the democratic process. The first article reads that

Every natural or legal person has a right to access this information to the greatest extent possible, consistent with the public interest, and that public authorities have a corresponding obligation to disclose information;

In addition, the Act is aimed at allowing natural persons to seek amendments to and comment on personal information held by the public authorities.

The interpretation of this Act foresees facilitating and encouraging the maximum and prompt disclosure of information in the control of public authorities, at the lowest reasonable cost, meaning that public authorities should make information available to the requester at minimal cost.

2.2.2. Definitions

Information means any material that communicates facts, opinions, data or any other content, including any copy or portion thereof, regardless of form, characteristics, when it was created, or how it is classified.

Public authority means legal person in Bosnia and Herzegovina / FBiH / RS, more specifically: a legislative authority, an executive and a judicial authority, an administrative authority, a body appointed or established by law to carry out a public function, and a body that is either owned or controlled by a public authority.

The Act also defines competent authority - a public authority that has control of the requested information and is the authority by whom or for whom the information was brought into existence. If the latter cannot be determined, the competent authority shall be the public authority whose competency most closely relates to the requested information.

2.2.3. Procedure

Access procedure to the requested information is clearly defined. It specifies that the request must be submitted in writing in any of the official languages of Bosnia and Herzegovina, and that it should include the requester's name and address, namely contact information. To enable the public authority to identify the requested information, the public authority should be provided with sufficient details about the information sought.

Insisting on the request to be submitted in writing is surely not included in the best practices from the democratic societies. This provision makes access to information more difficult for persons who cannot write (illiterate, persons with disabilities, etc.). However, since the Act prescribes the obligation of the public authority to take all reasonable measures to assist the natural or legal person submitting the request, we may say that the negative effects of such provision have been decreased.

The FAIA specifies that the public authority is not authorised to ask for any justification of the request or reasons for submitting the request from the requestor.

Also, the Act specifies that if the public authority receiving the request is not the competent authority, it is obliged to transfer the request to the competent authority, without delays, and no later than 8 days (15 days in the RS) from the receipt of request, and notify the requester in writing about this.



The public authority shall not levy a fee or tax for requests submitted, or notices provided under this Act. Charges may only be levied for duplication costs. First ten pages are free of charge, while each subsequent page is charged 50 pfenings, at the state level and in the FBiH, and 20 pfenings in the RS.

The FAIA foresees that the requested information may be accessed in person at the premises of the competent authority, or receiving duplication at home address.

The public authority has the obligation to respond to the requester as soon as possible and no later than 15 days from the receipt of request.¹⁵

Should the public authority deny access to the information, either in whole or in part, it shall notify the requester in writing about this. The notice shall include the legal grounds for the exempt status of the information, including public interest factors taken into account, information about the availability of appeal and the right to apply to the Ombudsman, and all necessary contact information.

The public authority is also obliged to appoint an Information Officer, who shall process requests for access to information. Also prescribed is the obligation to publish a guide, an indexed register, appropriate reports on the FAIA implementation, and annual reports on basic indicators as the performance and organisational structure of the public authority.

2.2.4. Exemptions

The Act defines exemptions, i.e. cases when the requested information is exempt from disclosure on a case by case basis. This means that there is no possibility to proclaim certain types of information exempt by default. Exemptions may be classified into three groups: (1) information related to functions of public authorities, where disclosure would cause harm to some of the functions of public authority (defence, security, public order, crime, foreign policy, etc.); (2) information related to privacy of third parties, and (3) confidential commercial information.

In addition, the Act foresees the public interest test, i.e. that the information may be exempt from disclosure, after the test, unless it is in the public interest. Interpreting this procedure, the Federation Ombudsman says:

The legal responsibility for the authority to apply the "public interest test" in every concrete case obligates the party in the possession of an information to disclose it - even when the public authority establishes that it may be included as possible exemption and that its disclosure may cause harm - if assesses that greater benefit for the society may be achieved in that way. In determining whether the disclosure of information is justified in the public interest, public authorities shall have regard to considerations such as the existence of failure to comply with a legal obligation, of any offence, miscarriage of justice, abuse of authority or neglect in the performance of an official duty, etc.¹⁶

2.2.5. Appeals and requests

The Freedom of Access to Information Act sets out rights and obligations of the Ombudsman with regards to the implementation of this Act. The Ombudsman has no authority to pass decision that

¹⁵ Deadlines for request responses vary from country to country, from 24 hour deadline in Norway and Sweden, and seven working days, with the possibility of extension for another five days in Peru, to 30 calendar days, with possibility of extension for another 30 days in South African Republic. However, more and more countries, especially in the South-eastern and Eastern Europe, adopt a 15-day deadline.

¹⁶ Ombudsman FBiH, Recommendation for the Implementation of the Freedom of Access to Information Act, 14 January 2002, www.bihfedomb.org/bos/report/special/secretfiles.htm

would be binding for public authorities, but her/his opinion, the same as in any highly developed democratic society, would be highly valued.

Requesters submitting appeals refer to laws on administration, and the laws on administrative procedure and administrative matters, i.e. sanctions from these laws also refer to the Freedom of Access to Information Act.

2.2.6. Transitional provisions

The laws passed subsequent to this Act, which are not specifically aimed at amending or supplementing this Act, will in no way restrict the rights and obligations set out in this Act.

2.2.7. Differences among BiH, RS and FBiH Acts

Comparison of the Acts at three levels of authority produced the following:

- There are differences in how the requesters are notified - the FAIA in the FBiH foresees the notification in the form of a decision, and the form of notification in the RS and BiH. The result of the provisions at the level of BiH and the RS is that the requester is unable to appeal in an administrative procedure, as the BiH Laws on Administration do not recognise notification as an administrative decision (Articles 9.3; 12.1; 14.3; 17.2.1, i.e. 17.2.a at the state level).
- Article 5 of the Federation BiH and state level FAIA sets forth determining an exemption on a case-by-case basis. On the other hand, the same article of the RS Act leaves out that provision and settles down with defining it as "only in those cases". The importance of examining each individual case is evident in the fact that this prevents the possibility of certain types of information being automatically recognised as exemptions. So, in cases when certain information falls under exemptions defined by law, based on evaluating each individual case it is determined whether that information should or should not be disclosed.
- There are also differences in established deadlines within which the public authority has to respond to requests submitted. Article 13.1 sets out obligations of the public authority in cases when it is not the competent authority to notify the requester in writing about this no later than eight days from the receipt of the request at the level of BiH and the FBiH, and not later than 15 days in the RS. In addition, a 15-day deadline is set out in Articles 13.1, 14.4, 17.2.2, i.e. 17.2.a, at the level of BiH and the FBiH, detailing that public authorities have to take action with regards to requests, which is also a final deadline, while the recommendation is to disclose the information as soon as possible. In the case of the Republika Srpska, the 15-day deadline is the only one set out.
- There are also differences in setting out obligations for the public authority (Article 14.1 and Article 18). BiH and FBiH Acts set out for public authority to take "all necessary measures" to appropriately process the request. On the other hand, the RS legislator prescribes taking "regular measures". Still, there are obviously semantic differences between the terms "necessary" and "regular", as the syntagm "necessary measure" points more to the realisation of the task, while in the case of "regular measures" that can be, but does not necessarily have to be, the case.
- Article 11.2.2. in BiH and the FBiH sets forth that the request has to include the address of the requester. On the other side, the RS Act sets forth contact information.
- Only the FAIA on the state level (Article 23) clearly sets forth that the requesters have the right to appeal, while the entity Acts settle for setting out legal sanctions for the FAIA violators.

2.3. REPORTS, ANALYSIS AND EVALUATION OF THE LEGAL FRAMEWORK AND THE LEVEL OF THE FAIA IMPLEMENTATION IN BOSNIA AND HERZEGOVINA

2.3.1. Ombudsman activities

The Freedom of Access to Information Act also defines the role of the Ombudsman as an independent body concerned with the implementation of the Act. Although there are Ombudsman Institutions at all three levels of authority in BiH, their performance in terms of the FAIA implementation varies. In the first place we should stress that the Ombudsman of the Federation of BiH is a beacon, being in their activities several steps ahead of both institutions of the government and other Ombudsman Institutions. Especially important are the FAIA interpretations provided by the Federal Ombudsman as well as reports on the lack of harmonisation among the subsequently passed laws with the Freedom of Access to Information Act.¹⁷ Thus it has been pointed out that certain provisions of the Criminal Procedure Code and the Law on the FBiH Tax Administration limit the rights prescribed by the FAIA. However, the Federation authorities took no actions after this. Also, according to data from this body, 151 public authorities in the Federation have fulfilled either in full or partially the obligation of appointing the Information Officer, and disclosure of an indexed register and a guide. In this year, the Ombudsman have received 110 complaints and, in 95 percent of cases, have managed to bring about positive outcome using their authority.

Activities of the RS Ombudsman are of somewhat lesser intensity in this field. This body has offered one Special report¹⁸ recommending to the National Assembly to require from all those who failed to appoint the Information Officer and disseminate indexed register and guide to do so within two months. Competent authorities were also asked to check on the extent of the implementation of the Act, as well as to initiate education activities aimed at presenting the FAIA provisions. According to RS Ombudsman information, the obligation of providing information (FAIA, Article) was fulfilled by 17 out of 63 municipalities of the Republika Srpska, all government ministries, and another 13 public bodies, mostly from the judicial branch. In addition, from the start of the FAIA implementation to date this office has received 177 appeals related to this field.

Activities of the Ombudsman of Bosnia and Herzegovina with regards to the implementation of the Freedom of Access to Information Act have not been recorded. It should be stressed as a curiosity that in an earlier research¹⁹ this institution was one of those public authorities which did not at all respond to the sent request.

¹⁷ See: Recommendation for the Implementation of the Freedom of Access to Information Act, 14/01/02; Instruction on implementation of the Freedom of Access to Information Act in Prisons, 11/3/02; Recommendation for the Implementation of the Freedom of Access to Information Act (2), 12/9/02; Special report on lack of harmonisation of Criminal Procedure Code and Law on Tax Administration with the Freedom of Access to Information Act in FBiH, 17/12/04; Special report on lack of harmonisation of Criminal Procedure Code and Law on Tax Administration with the Freedom of Access to Information Act in FBiH - following a warning to FBiH Government and Ministry of Justice, 27/6/05;

¹⁸ 1/10/03

¹⁹ Research of the Centre for Free Access to Information in BiH, 2005.

Also, in this section, we should stress that there is no appropriate court practice and case law which would provide valid interpretation of the Act, in particular the interpretation of some less clear provisions. According to the Office of the FBiH Ombudsman, five appeals related to the FAIA were prepared, but were all rejected on formal grounds, namely, persons submitting appeals did not possess a decision of refusal to provide information but only notifications, and for this reason could not initiate the procedure. The lack of court practice is surely a great shortcoming of the implementation of the Freedom of Access to Information Act in Bosnia and Herzegovina and quite definitely it is only after the court rulings that we will have a more precise idea on the meaning of the Act in practice.

2.3.2. Other research in BiH

Since the entry into force of the Act, several research projects were conducted related to the extent of its implementation, as well as dealing with citizen awareness with regards to this Act and its provisions.

In the research conducted related to the IREX ProMedia on a sample of 70 requests addressed to 60 public institutions, only 19 responses were received, containing the requested information, which is 27 percent (%).²⁰

The research by the Transparency International BiH from 2004, on a 100-request sample produced much better results. Altogether 59% of requests received responses, while 41% remained without any kind of response.²¹

In 2005, the Centre for Free Access to Information, in cooperation with the Helsinki Committee from Croatia and the nongovernmental organisation Yucom from Serbia, using 110 requests sample, received responses from 63 public authority bodies, that is 57 percent (%), while 47 requests (43%) remained unanswered.²²

The OSCE research from June 2004, conducted in the form of personal interviews, on a sample of 1,550 citizens, showed that 63.6 percent of citizens have not heard of the FAIA.²³



20 Quoted from Report of the Transparency International BiH, from 2004.

21 Report by Transparency International BiH from 2004, www.ti-bih.org

22 Campaign for availability of information as the best tool for fight against corruption - research on implementation of the Freedom of Access to Information Act in Croatia, Bosnia and Herzegovina and Serbia, www.hho.hr/zppi.

23 OSCE, Public Opinion Poll, June 2004, Democratisation department, www.oscebih.org.

3. EMPIRICAL RESEARCH

3.1. RESEARCH ON THE EXTENT OF IMPLEMENTATION OF THE FREEDOM OF ACCESS TO INFORMATION ACT

3.1.1. Sample

The empirical part of the research started with determining the size and type of sample, followed by creating a coding list to facilitate the preparation of data for statistical processing.

Since there is no single registry of public authorities to which the Act refers at any level of government, it was difficult to determine the size of population on which the research is to be conducted. Using different sources of information, a database of contact information for a total of 568 public authorities was created. The database, of course, does not include all the bodies to which the FAIA refers, as such a list should include as many as several thousands public authorities.²⁴ Thus, based on a collected number of public authorities, an appropriate quota sample was created which included 240 public bodies.

Particularly significant task was the creation of an appropriate multilayered sample, since that is the method used for presenting an imaginary population in an adequate manner. The selected criteria included the level of authority (state, entity, cantonal, municipal and Distrikt Brčko as a separate unit) and the type of public authority (legislative, executive, judiciary, public companies and media, institutions of education and culture, art and sport organisations), which allowed to get the best possible insight into BiH complex administrative structure.

Table 1 shows the sample structure by field of work of the public authority.

TYPE OF PUBLIC BODY	FIELD OF WORK OF THE PUBLIC BODY				TOTAL
	BiH	F BiH	RS	Brčko District	
Legislative authority	6	6	2	1	15
Executive authority	12	40	28	5	85
Judicial authority	3	23	8	1	35
Public companies	4	7	8	1	20
Public media	2	10	7	1	20
Universities		12	8		20
Elementary and secondary schools		9	9	2	20
Health institutions		5	5		10
Cultural and art institutions	1	4	5		10
Sports institutions	3		2		5
TOTAL	31	116	82	11	240

²⁴ According to the Federation Ombudsman for Media that number in the Federation BiH is several thousands.



Table 2 shows sample structure by government level at which the public body operates.

TYPE OF PUBLIC BODY	FIELD OF WORK OF THE PUBLIC BODY					TOTAL
	State level	Entity level	Cantonal level	Municipal level	Distrikt Brčko level	
Legislative authority	6	4	4		1	15
Executive authority	12	26	11	31	5	85
Judicial authority	3	6	5	20	1	35
Public companies	4	4	1	10	1	20
Public media	2	3	3	11	1	20
Universities		8	12			20
Elementary and secondary schools				18	2	20
Health institutions			5	5		10
Cultural and art institutions	1	3	4	2		10
Sports institutions	3	2				5
TOTAL	31	56	45	97	11	240

A total of 240 questions, classified into 11 different categories, were sent out to public bodies. In selecting questions, we tried to stick to simple questions which should be more or less routinely responded by the public bodies. Of course, it is difficult to talk about absolutely simple questions, as what is routine for a highly developed institution, may be hard and lengthy effort for an organisation functioning on mostly voluntary basis. Also, although a primary objective of the research was not to measure results by type/content of the question, still we must note that certain questions could also be classified as sensitive, although this also varies from one public body to the other, namely, the evaluation of the public body whether the question is sensitive or not (e.g. employees ethnic breakdown, monthly salaries, list of debts, amount of government money spent on marketing services, or even a number of research papers may be sensitive questions, in certain social contexts).

On behalf of the Mediacentar, 121 requests were sent out, while the other 119 requests were sent out by two Mediacentar employees on their behalf. In this way we wanted to measure if there were significant differences in the number and type of responses received between the requests sent on behalf of an established media organisation and those sent by anonymous citizens. In addition, the requests sent on behalf of the employees had one deficiency - instead of a full address of the requester, as required by the Law on Administrative Procedure, the requesters put down PO Box number. Ultimately, this resulted in a certain number of negative responses.

The requests were sent in two cycles. The first cycle included requests addressed to all public bodies from the sample. This was carried out on two dates: 4 and 21 July 2005. Forty requests were sent out on the first date and after the first answers started arriving the other 200 requests were also sent out.

After the deadlines for responding to the received requests expired, as under the FAIA, on 29 August 2005, requests were sent again to those public bodies which failed to comply with their legal obligations in the first cycle of requests. This request was not sent out as an appeal, but served exclusively as a reminder for public bodies which did not respond to the submitted requests asking them to do it after the deadline expired.

In the end, for the purposes of processing statistical data a coding list was created into which data from the received responses were entered.



Table 3: Number of questions addressed to different public bodies, sorted by categories

TYPE OF PUBLIC	BODY QUESTION ADDRESSED TO A PUBLIC BODY											TOTAL
	Rulebook the institution	Amount employee monthly salaries in 2004	Official vehicles specification in 2003	Assistance allocated in 2003	2004. budget	Ssistance to District in 2003	Number of domestic violence cases processed in 2003	List of liabilities on 31 December 2004	Amount of money spent by government bodies on marketing in 2004	Number of research papers in 2004	Employees ethnic background	
Legislative	5	9	2									16
Executive		52	17	4	10	1						84
Judicial		6	3				26					35
Public companies								20				20
Public media									20			20
Universities		8								12		20
Elementary and secondary schools											20	20
Health											20	20
Culture and arts		10										10
Sport		10										10
		5										5
Total	5	100	20	6	10	1	26	20	20	12	20	240

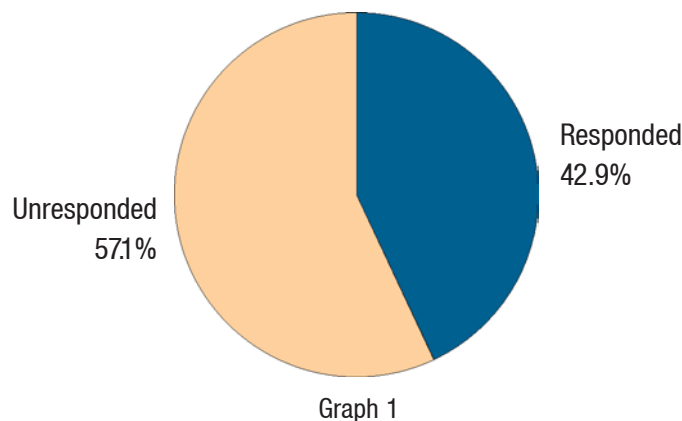


3.1.2. Research findings

3.1.2.1. Number of received responses

A total of 103 (42.9%) responses were received to the requests from the first cycle, while as many as 137 (57.1%) public bodies ignored the requests for access to information. This finding is, more or less, in agreement with the findings from other research projects about the FAIA implementation in Bosnia and Herzegovina²⁵, and it shows that a disturbingly large number of public bodies still simply ignore the received requests. This information is particularly disturbing when we have in mind that these Acts went into effect four years ago, and a logical question is what time should actually pass for at least a majority of public bodies to fulfil their obligations under the law, that is to respond to submitted requests in any form.

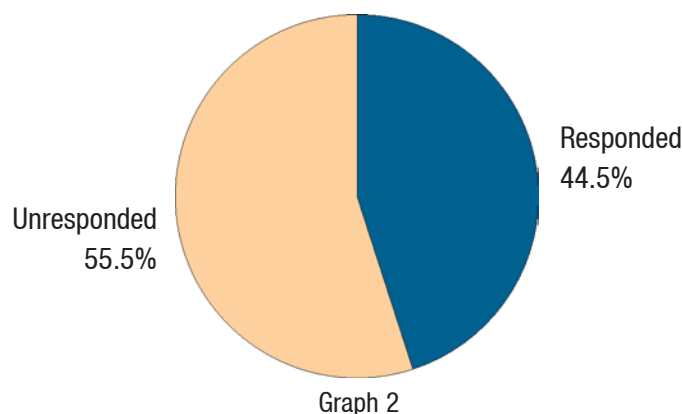
1st cycle - Ratio between responded and unresponded requests (%) N=240



Graph 1 shows results obtained from the first cycle of sent requests

After sending the second cycle of requests, which included all public bodies which had not responded to requests from the first cycle, we received somewhat better results (see graph 2). The

2nd cycle - Ratio between responded and unresponded requests (%) N=137



²⁵ Although research of the Transparency International BiH and Centre for Free Access to Information indicate that 59%, that is 57%, of public authorities have responded to the requests submitted, these findings should be taken with a certain caveat, since the sent requests, although sent by a diverse group of requesters, were stamped by the given organisations. Thus, the public bodies were made aware this was some kind of a test, that is research, so that a larger number of responses could be expected.



purpose of this cycle was to test the effectiveness of the cheapest and probably the quickest way to obtain the requested information. The results still leave room for optimism, that is, they show that the conducted procedure resulted in a significant number of responses. Thus, additional 61 (44. 5%) responses were received, to a total of 137 requests. Unfortunately, over half of the public bodies again ignored the request (76 i.e. 55. 5%).

3.1.2.2. Type of received responses

Received responses were classified into five categories:

- **Positive:** Response is fully positive.
- **Partially positive:** Response which includes some of the requested information, while other parts are not stated.
- **Negative response.**
- **Transfer:** Response in which the public body notifies the requester that it does not possess the requested information and advises her/him to address a different public body. Of course, such practice is in contradiction with the FAIA, which under Article 14 sets forth the obligation of the public body to forward the request to other public bodies they believe have the requested information, and notify the requester about this in writing. The graphs this response is put down as 'transfer'.
- **Request forwarded to a different body which did not respond:** Response in which the public body notifies the requester in writing that it has acted in accordance with the FAIA (Article 14) and has transferred the request to the competent public authority, however, the requester has not received their response at her/his address.

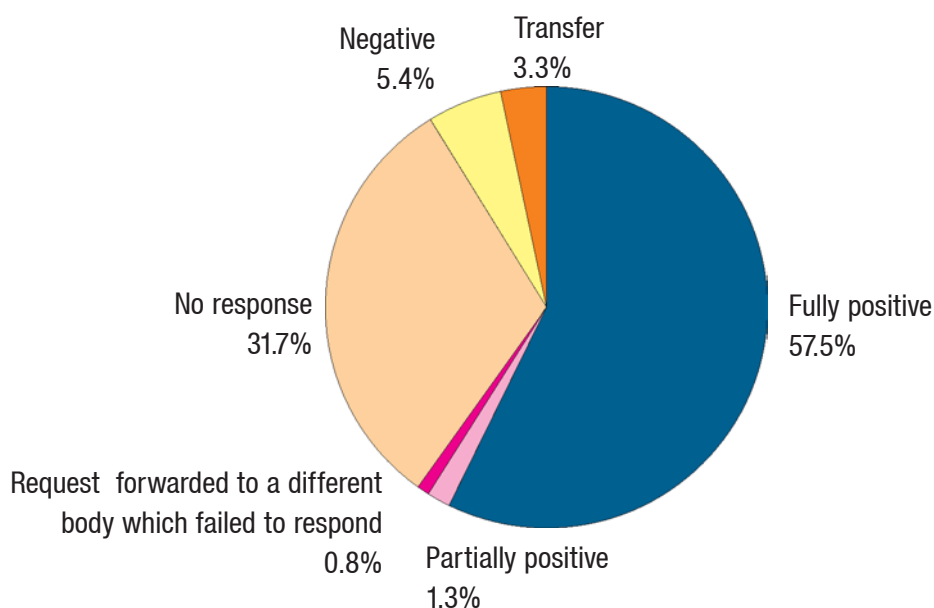


	RESPONSE TO ADDRESSED REQUEST IS:			
	Frequency	Percentage	Valid percent	Cumulative percent
Completely positive	138	57,5	57,5	57,5
Partially positive	3	1,3	1,3	58,8
Negative	13	5,4	5,4	64,2
No response	76	31,7	31,7	95,8
Notification to contact a different address (transfer)	8	3,3	3,3	99,2
Request forwarded to a different body which failed to respond	2	0,8	0,8	100,0
TOTAL	240	100,0	100,0	

The received data shows that partially positive responses (N=3), as well as notifications that the request was transferred to a different body which failed to respond (N=2) make up extremely low percent of responses. In addition, it is likely that responses of this type could easily turn into positive responses if there was an additional intervention, such as a telephone call to the public body.

Responses of the public bodies notifying the requesters they do not hold the requested information and instructing them to contact another public body are somewhat more frequent (N=8). These responses do not indicate lack of accessibility within public bodies, but show lack of knowledge about the FAIA provisions.

Responses of the public bodies (N=240)



Graph 3: Types of responses

Negative responses (N=13) can be classified into two groups. One group includes responses with legal grounds, and the other is in contradiction with the Act. Three responses have legal grounds. They cite the Law on Administration and ask the requester to give her/his full address, instead of a PO box number. One of them, in addition to the requestor's address, also asks for data to be stated more precisely.

Negative responses in contradiction with the Act most frequently insist (N=6) that the requester should state the purpose for which she/he requires the information. In addition to asking for the purpose of information request, more information about the requester is commonly asked, although the Act does not require the requester to provide such information.

The remaining four negative responses quote either secrecy of commercial data or the interpretation of the Act, according to which they are not responsible for responding to the specific questions. Responding to a question about monthly salaries of their employees (with the breakdown of offices held), a government agency states:

With regards to your request...I would like to use this opportunity to inform you that under the Freedom of Access to Information Act...we are not required to provide the information on monthly salaries of the Secretariat employees. (*Executive authority at the entity level*)

In another case, a public TV station avoids the obligation to disclose information quoting contract secrecy. So the question about how much money they make from marketing services provided under contracts made with government bodies gets the following answer:

Radio-television...by signing contracts with its clients, agrees to keep their contents in secrecy. (*Public television at entity level*)

Therefore, though these are two bodies (Government and public television) which are all about working for the public and on behalf of the public, important data about transparency is proclaimed a business secret.

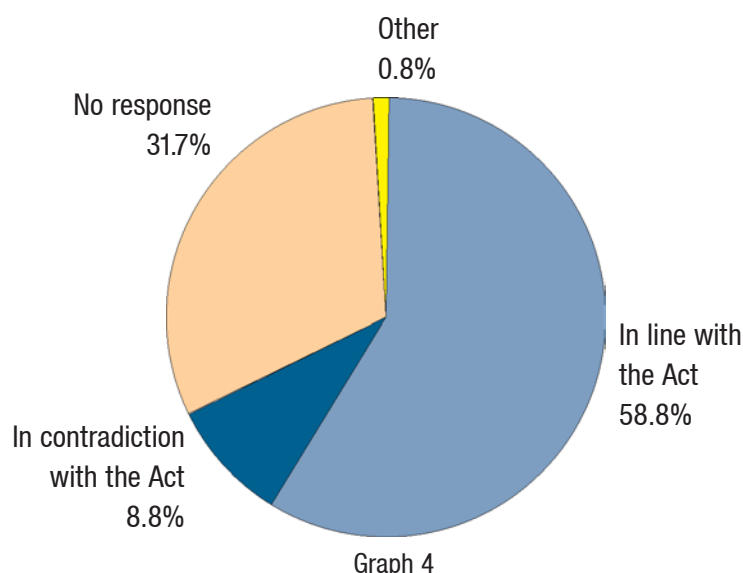
Following the analysis the obtained data was classified into four categories:

- No response,



- Responses in line with the Act,²⁶
- Responses in contradiction with the Act,
- Other (transferred requests, no further response),

Agreement of responses with legal provisions (N=240)



3.1.2.3. Breakdown of responses by type of public authority

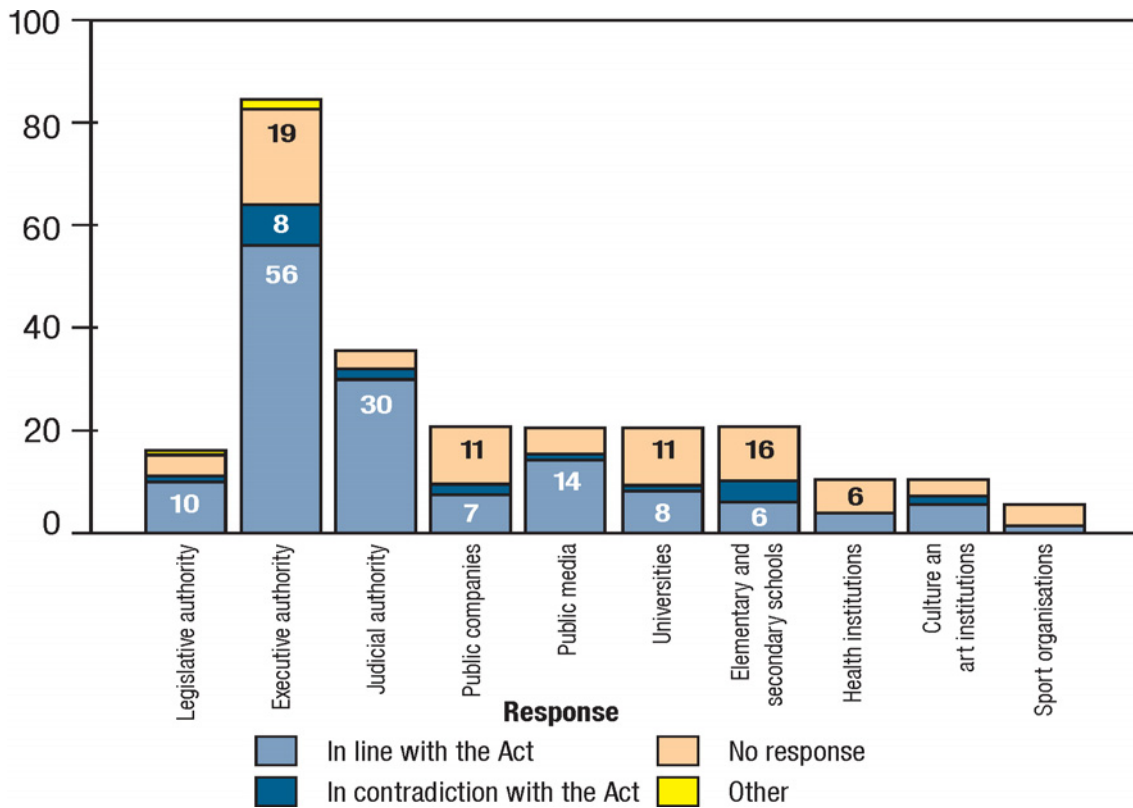
Classified by type of the public authority, the responses are as follows:

TYPE OF PUBLIC INSTITUTION	RESPONSE TO SUBMITTED REQUEST				TOTAL
	In line with the Act	In contradiction with the Act	No response	Other	
Legislative authority	10 62,5%	1 6,3%	4 25,0%	1 6,3%	16 100,0%
Executive authority	56 66,7%	8 9,5%	19 22,6%	1 1,2%	84 100,0%
Judicial authority	30 85,7%	2 5,7%	3 8,6%		35 100,0%
Public companies	7 35,0%	2 10,0%	11 55,0%		20 100,0%
Public media	14 70,0%	1 5,0%	5 25,0%		20 100,0%
Universities	8 40,0%	1 5,0%	11 55,0%		20 100,0%
Element. and second. schools	6 30,0%	4 20,0%	10 50,0%		20 100,0%
Health institutions	4 40,0%		6 60,0%		10 100,0%
Culture and art institutions	5 50,0%	2 20,0%	3 30,0%		10 100,0%
Sport organisations	1 20,0%		4 80,0%		5 100,0%
Total	141 58,8%	21 8,8%	76 31,7%	2 ,8%	240 100,0%

²⁶ In determining this category the form of response (notification-decision) was not considered, and all positive responses were included in this category.



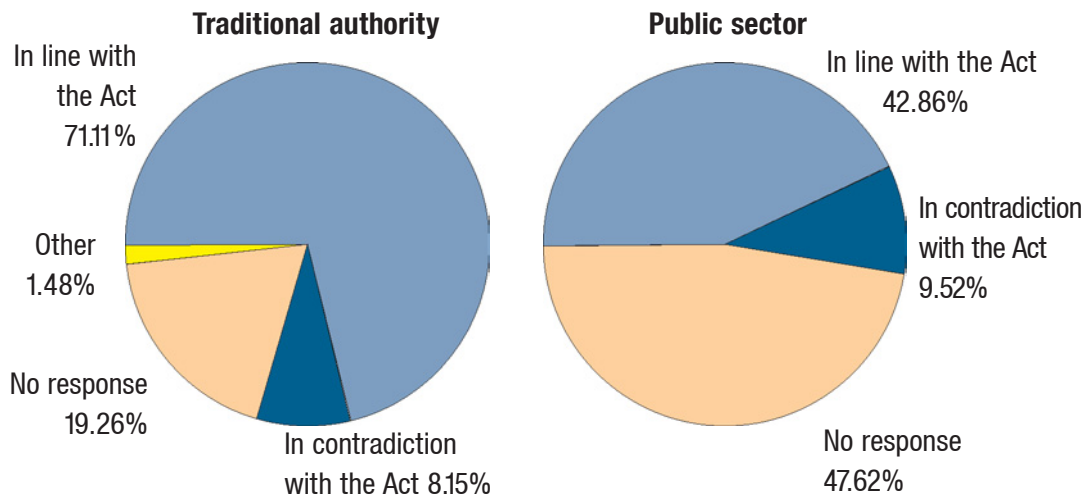
Breakdown of responses by type of the public authority



Graph 5

Since the size of sub-samples is very small, and there are considerable differences in their size, it is difficult to bring relevant statistical conclusions. Somewhat clearer image is available if we group on one side data for all public bodies founded by the government, that is controlled by the government or established by law (public sector), and on the other side the remaining three types of traditional authority - legislative, executive and judicial - grouped in a special group (public bodies).

Comparison of responses of the "traditional" authority and the public sector (N=240)



Graph 6

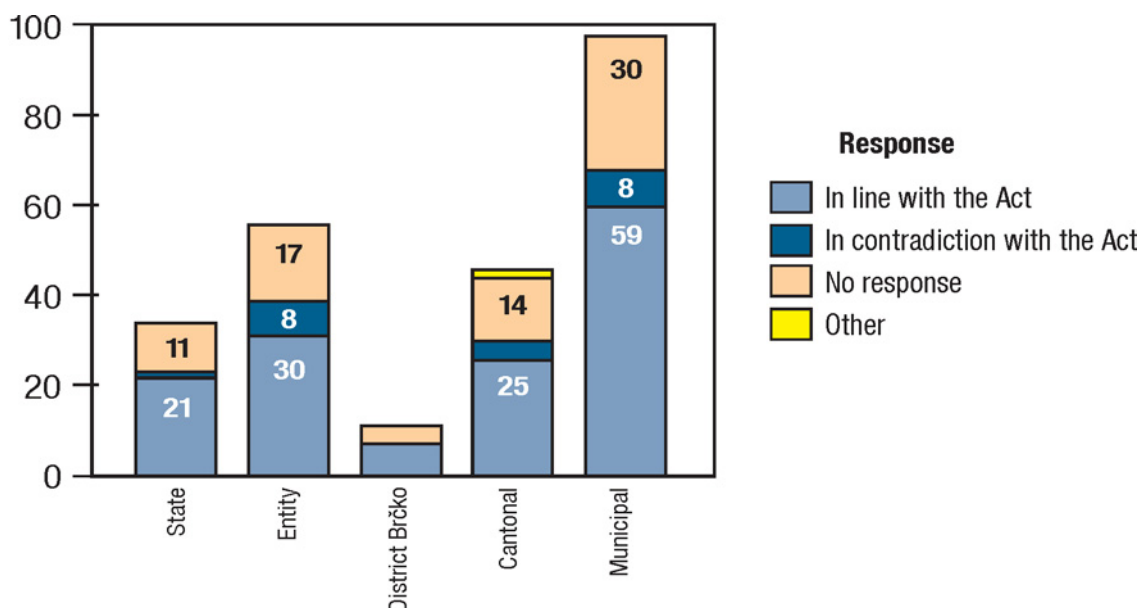


We can notice - of course, in terms of trends, since we still do not have equal size samples - that public sector bodies show worse tendencies as per all indicators. Thus almost half of the requests addressed to this sector remained unresponded (47.6%), and almost 10% of responses were in contradiction with the Act. Having in mind that these were not elected representatives, and that their work is not so much under the public attention as is the case with legislative, executive and judicial authority, the obtained results are not surprising. Since the factor of political will, in terms of implementation of the Act, does not have a big role among these institutions, as a rule, we can conclude that the received results indicate lack of awareness about the FAIA provisions setting out that these bodies also fall under the provisions of this Act and lack of education among the representatives of this sector about implementation of the legal procedure; which is suggested by a large number of requests processed in contradiction with the Act.

The following table shows types of responses received from different government levels at which public bodies operate:

PUBLIC INSTITUTION LEVEL OF ACTIVITY	RECEIVED RESPONSES:				TOTAL
	In line with the Act	In contradiction of the Act	No response	Other	
State	21 63,6%	1 3,0%	11 33,3%		33 100,0%
Entity	30 54,5%	8 14,5%	17 30,9%		55 100,0%
District Brčko	6 60,0%		4 40,0%		10 100,0%
Cantonal	25 55,6%	4 8,9%	14 31,1%	2 4,4%	45 100,0%
Municipal	59 60,8%	8 8,2%	30 30,9%		97 100,0%
Total	141 58,8%	21 8,8%	76 31,7%	2 ,8%	240 100,0%

Operation level of the public body

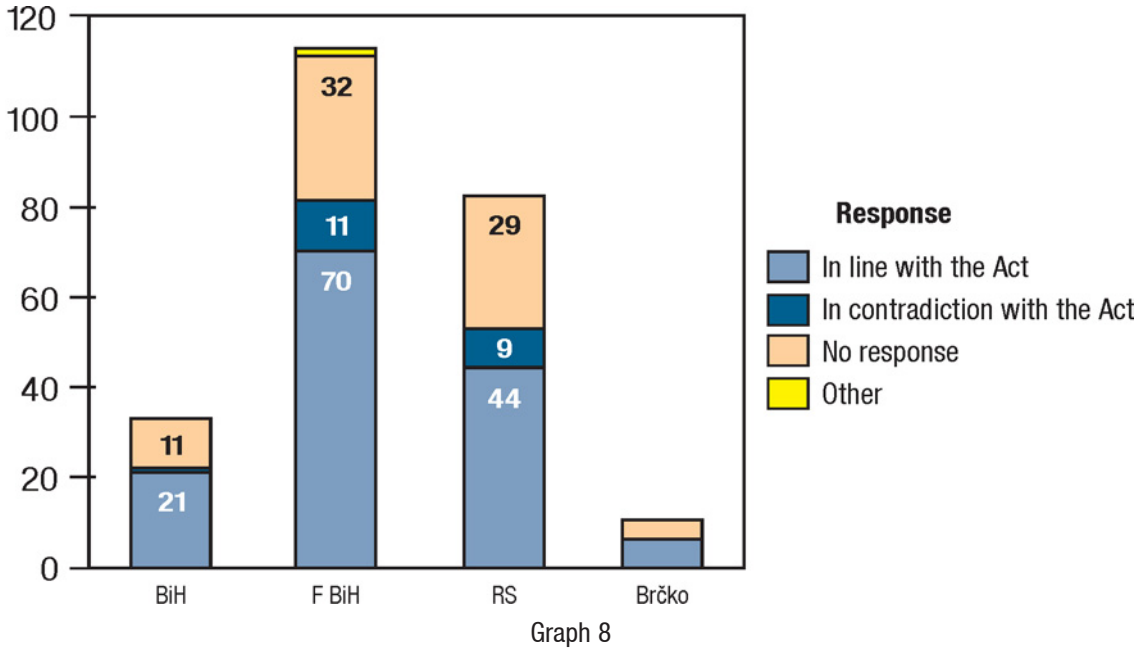


Graph 7

Since the size of sub-samples varies, no significance should be attributed to the differences existing among them. Thus our research failed to show significant differences in types of responses, in comparison with the government level at which the public body operates.

We have similar situation when data is classified by administrative field of operation.

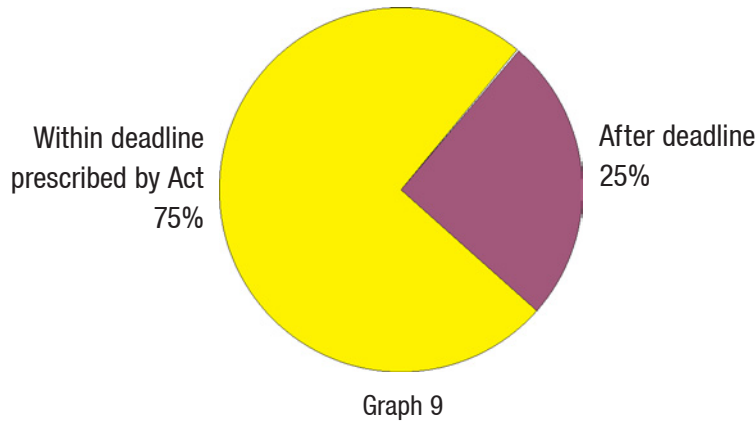
Administrative area of operation



3.1.2.4. Complying with response deadline prescribed by the Act

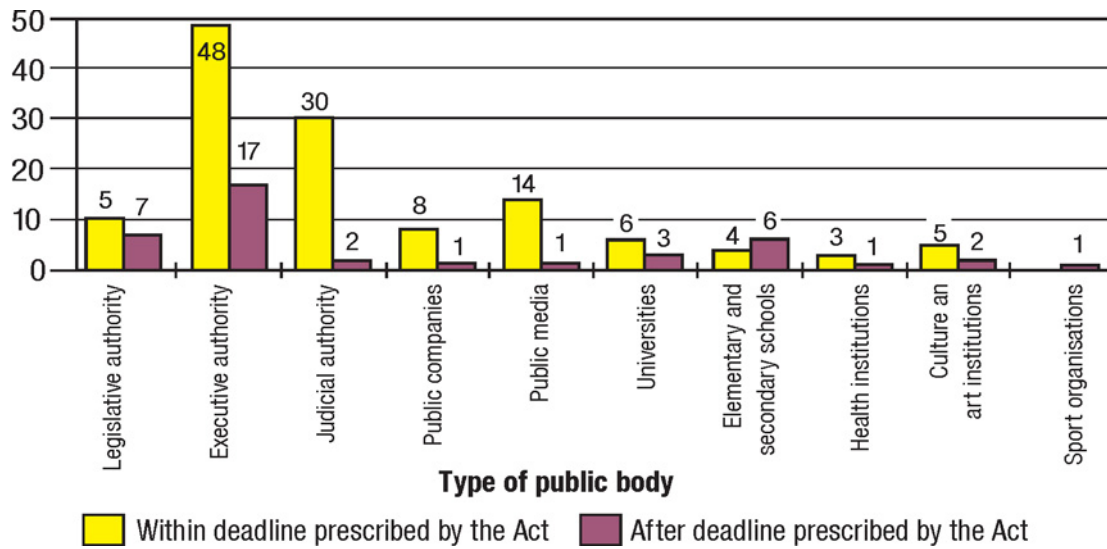
Having in mind the given limitations of bringing conclusions based on statistical analysis exclusively, we can notice that two groups differ from the rest of the sample. These are categories of legislative authority and elementary and secondary schools²⁷. While in all other cases the number of requests processed within

Compliance with deadline prescribed by the Act (N=240)



²⁷ We received only one response from the addressed sports organisations, so it is pointless to talk about trends.

Complying with deadline prescribed by act (N=240)

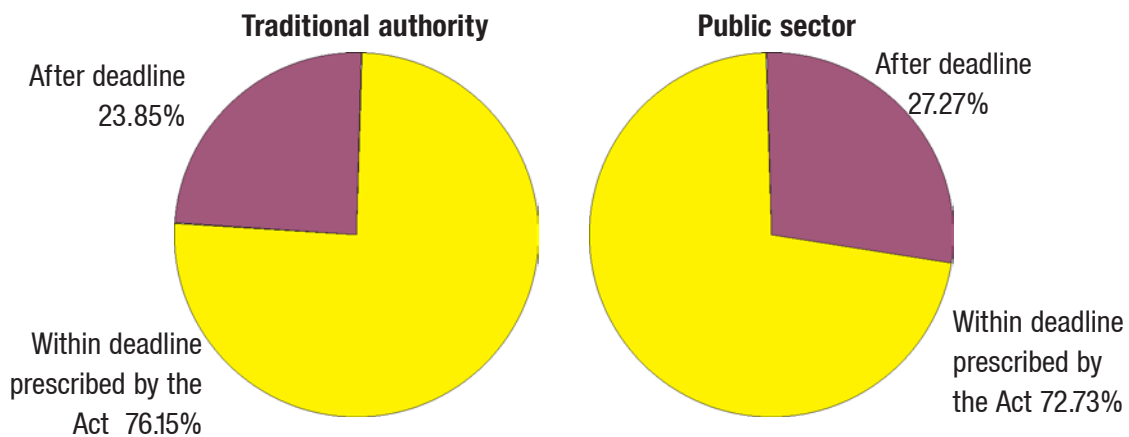


Graph 10

deadline prescribed by the Act makes up for over two thirds of the received responses, in case of the public bodies from these two categories the number of responses received after the deadline prescribed by the Act is larger. In case of the legislative authority, we have cases (58. 3%), and in case of schools six (60%). While we could make some excuses to justify the actions of the schools, particularly the fact that time of requests partly coincided with school holidays, it is very difficult to find any excuse for the legislative authority, particularly if we have in mind that representatives of this very authority have unanimously passed the existing Act regulating the field of access to information.

Also, data grouped into categories (1) of traditional authority and (2) public sector show no significant differences in terms of the trend of complying with deadlines prescribed by the Act.

Comparison of compliance of the "traditional" authority and the public sector (N=240)



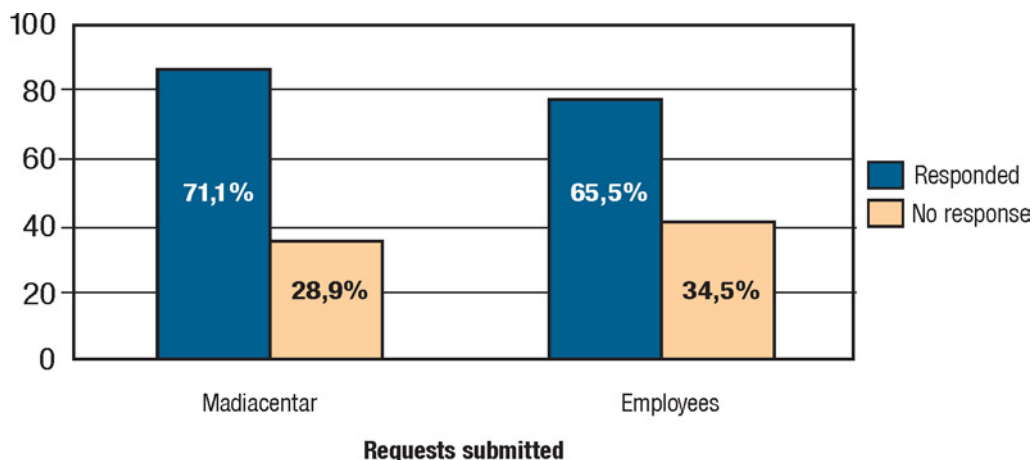
Graph 11

3.1.2.6. Breakdown of responses by request submitters

We should note that there are no significant differences in public bodies' actions in terms of requests submitted by an organisation, in comparison with those submitted by citizens. This is evident from the following graph.



Breakdown of responses by request submitters (N=240)



Grafikon 12

3.1.2.7. Form of communication of public authorities

There are two important things regarding the form of communication that the public authorities use when responding to the requests. First of all, public authorities from the Federation BiH have mostly responded in the form of notification, although the FBIH FAIA requires them to respond in the form of a decision. Out of 83 received responses only six were delivered in the form of a decision.

On the other hand, it is important to stress that the method of communication may correspond with the 'spirit' of the Act in terms of defining information as an essential element of democratic process, or may be in complete dissonance, despite meeting the conditions required by the Act. In this sense, experiences with the received responses are two-fold. On the one side, we have responses which truly overcome all expectations and provide even more than the required information. On the other side, the responses of some public bodies are dreadful and demonstrate bureaucratic high-handedness. One of the responses quotes:

I was very surprised with the urgency in the requests you had sent during the period which is very unusual for keeping correspondence, that is period when teaching staff usually goes on vacation,

The other, hand written response says:

Dear Sir, your request has nothing to do with the Freedom of Access to Information Act, and salaries fall under the responsibility of the competent Ministry, which you are free to address.



3.2. TELEPHONE INTERVIEWS WITH REPRESENTATIVES OF PUBLIC AUTHORITIES

To have a better understanding of how requests for information are processed and to become familiar with the challenges that public authorities encounter in the implementation of the FAIA, we have conducted a survey based on telephone interviews. In these interviews, public authorities were given a chance to explain how requests for information are processed and respond to specific situations set up by survey (for instance, in case of failure to respond to the request or responding in contradiction with the Act). For the purpose of a more efficient implementation of the FAIA, we tried to identify the needs of public authorities, as well as challenges and problems they encounter in the implementation of the Act through interviews with authorised employees.

3.2.1. Sample

In defining the sub-sample, results of this research were used as a model.

Authority	Type of response (%)			
	In line with Act	Against Act	No response	Other
Traditional authority	71%	8%	19%	1%
Public sector	43%	10%	47%	

However, since it was not possible to reach some public authorities, the sub-sample was to a minor extent modified. Its appearance is showed in the table below.

Authority	Type of response (%)					
	In line with Act		Against Act		No response	
Traditional authority	6	55%	1	9%	4	36%
Public sector	3	43%	1	14%	3	43%

A total of 18 representatives of the public authorities at different levels were interviewed. Interviews were conducted with employees responsible for implementation of the Freedom of Access to Information Act within their respective public bodies. In majority of cases interviewed individuals were Information Officers, while in other these were other employees tasked with the implementation of this Act.

Through interviews with representatives of the public authorities we attempted to get a clear picture on the following three aspects:

- A level of implementation of the provisions set out in the Freedom of Access to Information Act;
- Administrative capacities of the public authority;
- Approaches to the Act and its implementation.

3.2.2. Research findings

The interviews demonstrated that a large number of public authorities are committed to implementing the Act, and in this regard they have undertaken appropriate steps as set out in the Act,



such as: appointment of the Information Officer, development of a guide for access to information, dissemination of indexed registers with a list of available information, reporting relevant data to the Ombudsman and libraries, etc. However, some authorities have failed to do any of the mentioned. Furthermore, 3 out of 18 interviewees have not even had the opportunity to see the Act.

3.2.2.1 The extent of implementation of the legal provisions

To learn more about the level of implementation of the established provisions, we asked the questions related to legally prescribed obligations to appoint an Information Officer, develop a guide and an indexed register, produce annual reports and submit relevant data to the Ombudsman, libraries and the public.

Out of 18 interviewed representatives of public authorities, 12 have appointed an Information Officer, i.e. a person tasked with implementation of this act. This step actually represents the most significant step in the implementation of the Act, and it further indicates an intention of the public authorities to implement the Act. Failure to appoint the Information Officer is in direct relation with a way an institution responds to the requests submitted. Out of five public bodies that have failed to appoint the officer, four did not even respond to our requests for information (sent in the earliest stage of the research), while one responded, but its response was deemed to be in contradiction with the Act.

The majority of authorities which did appoint Information Officers also developed a guide for access to information. Ten of them did this, five did not and in case of three of them it was impossible to establish whether they have fulfilled this obligation.

The situation with the indexed registers is much different. Seven public authorities produced appropriate list of information which are available to public, nine failed to do so and for the other two it was impossible to establish whether they have done so. Somewhat worse situation in terms of the indexed register, in comparison with the guide, is a result of different amount of work necessary to develop it, as well as general efficiency of the public authority. Namely, a guide is a pretty simple thing to make, and can be produced by a competent employee based the Act, following formats developed by other public authorities who had already disseminated the guide. On the other side, in order to develop an indexed register, cooperation between numerous departments, services or ministries is required, as only they individually know which types of information their institution holds. For many authorities, that is a rather complicated task. A representative of one authority told us that they have been preparing the indexed register for the entire government for a long period of time. When she addressed the Assembly with a request for the members to forward information to include them into indexed register, they rejected her in a harsh manner saying they would make their own index, despite the fact that according to her information no action has been taken on their side to do this.

Even though the Freedom of Access to Information Act sets out that public authorities shall forward certain type of information to the Ombudsmen (information on the officer, guide, indexed register, quarterly statistical reports), it appears that a number of public authorities have not taken this obligation seriously. Out of 12 bodies which have appointed the Information Officer, only 7 informed the Ombudsman about this, while only three out of 18 bodies submit quarterly statistic reports to this institution. Officers have justified a failure to send the statistical reports by small number of the received requests, saying they have nothing to report. On the other side, the failure to submit reports on officers' part could be explained by the fact that certain public authorities are still at the early stages of the implementation of this Act, and thus do not take this obligation as a priority.

We are practically still at the beginning, we have not even developed the register, and a name of the (officer) is available at the web site (*Information Officer, executive authority at the cantonal level*)

All public authorities publish annual reports (12 of them responded to this question, all answers are positive). Nevertheless, in the majority of cases, citizens cannot easily access these reports; namely, they are generally available and could be obtained by submitting a request, however in the practical sense public authorities do not use existing resources (web sites, information desks and alike) to make these reports accessible. In principle, the interviewed officers have nothing against the public seeing reports, but it appears that they have not given much thought to making them more accessible. The Information Officer from one of the ministries has told us that the report is not on the web site, even though such site exists, and that the annual report could be obtained only by request.

It is not really available to public in a sense of (report) being publicised somewhere, but whoever submits a request can see it... (*Information Officer, executive authority at the state level*)

As a rule, Information Officers or persons responsible for the implementation of the FAIA perform some other duties within the public authority. Out of 12 appointed officers, only 1 works exclusively on implementation of this Act, while all others have other duties. Most often, these include public and media relations (sometimes this also involves duties of a spokesperson), but also contacts with beneficiaries of the services, i.e. citizens. In some cases, a Secretary of the public body is responsible for implementing the Act. This multifunctional approach in work of the officers has been primarily dictated by a small number of requests which deal strictly with the Freedom of Access to Information Act; therefore it is too expensive for the public authority to employ an officer who receives approximately 20, or in some cases only few, requests per year. On the other side, citizens often address public authorities requesting information, but fail to call on this particular Act, thus the Information Officers naturally process these requests as well. With regards to public relations, situation is to some extent different. Namely, there is a potential conflict between public relations and the information department. While primary duty of the public relations department is to represent the public authority in the best possible light, especially through selection of information and methods of their presentation, the Information Officer has a task to find and disseminate requested information, regardless of its nature. In this sense, public relations officers are not the best solution for the implementation of the FAIA. If an officer performs both duties, they should at least be separated. The press release issued by the Office of the Federation Ombudsman reads:

The Federation Ombudsmen therefore recommend to all public authority organs to comply with the Act and appoint the Information Officers and to separate their duties from duties and tasks performed by the press officers and spokesmen/spokeswomen in organs that have such personnel. The Information Officer (according to the Freedom of Access to Information Act) may be the same person performing duties of the press officer or spokesperson, if that is necessary and rational, however this person and public authority organ must see these duties as two separate posts with specific obligations and procedures.

Despite this, through interviews with employees we did not get an impression that they see any contradiction between these two departments. Stated in words of one officer:

In principal, those are two very similar, perhaps even equivalent duties. It is just a question of who calls it what name. (*Information Officer, public company at entity level*)

Similar explanation was offered by another officer:

In either case, I am in the service of the institution because the institution is in service of the public. There is no collision, as respecting the law is an obligation for both the institution and the public. (*Information Officer, public company at entity level*)

Furthermore, some officers pointed out that the position of public relations officers, especially through contact with the media, allows them an insight into different information which makes their job of the

Information Officer easier. Also, on account of the reputation they gain through contact with media, it is easier for them to obtain required information within the public authority structure. One officer explained to us:

I cover the work of the Government; I have all the latest documents and decisions. I know where to find them if I don't have them. If I was not a spokeswoman, I would certainly not have all information needed. (*Information Officer, executive authority at cantonal level*)

3.2.2.2. Administrative capacities

Measuring administrative capacities of the public authorities included discussions on competency of the Information Officers, their authorities, ways of recording information within public body and cooperation between Information Officers and other departments in the public body.

Eight officers underwent formal training on the FAIA. This mainly included seminars organized by the international organizations working in BiH. Officers in general rate these seminars highly, as they have provided them with the insight as to how the Act can be implemented as well as the chance to exchange experiences. However, it is obvious that officers working in traditional authorities (executive, administrative, judicial) underwent the training, while the representatives of the public sector authorities were not included (only one officer from this sector completed formal training about the FAIA). This partly explains the findings of this research, according to which authorities from the public sector have mostly ignored the requests for access to information. (47% of requests in public sector did not receive any response, while 19% of traditional authorities did not respond to the requests). Therefore, the next stage in the training of information offices must not bypass this sector.

Generally speaking, officers believe they have the competencies required to perform the duties of the Information Officers. Most often they hold a degree in social sciences and have relevant experience in working with the media and/or citizens. One officer told us she believed she did not have relevant educational background to perform that duty, as the Information Officer should have legal background, and she does not. In another case, the Information Officer completed only high school, and his supervisor thought he was not qualified enough for that position.

In most cases, the appointed officers have formal authority to make independent decision on disclosing the requested information, unless requests are of complicated or sensitive nature. However, in reality, only half of them do so. In other cases, it was formally decided that officers must consult their supervisors even when disclosing some routine information, while some rulebooks specify that all publications must be approved at the senior level. The interviewed officers explained the need for consultation with their wish to carry out the tasks without errors, and protect themselves from possible mistakes. A supervisor of an Information Officer explained the procedure by saying:

Well, in principle he consults even though he is free to disclose it on his own. In a way, I want to be included; it is not about control of what he is to disclose but to see whether it was done well. To determine whether correct information was passed on, whether he responded to citizens in an appropriate manner. (*Information office, executive authority at cantonal level*)

It is obvious that there is a direct link between the position of the Information Officer in the structure of the public authority and her/his need for consultations. Officers at higher levels of hierarchy publicise requested information without any consultations, while those at lower positions ask for supervisor's approval. Relatively limited experience with processing requests for information also add certain amount of insecurity to the Information Officer. One officer told us she did not know how to respond to our query (sent in earlier stage) on monthly salaries of employees. In order to find an answer, among others, she contacted the OSCE representatives.

Nine appointed Information Officers expressed their satisfaction with the level of cooperation by other departments of the public body in processing information requests. In two cases officers believe that the cooperation should/could be improved. Nevertheless, these statements on cooperation should be considered in light of the fact that there is a small number of requests for information, thus it is too early to conclude that further questioning of the quality of internal cooperation is unnecessary. Considering that there are some rather inefficient public bodies and that IT resources are generally in poor state, it can be expected that the issue of internal cooperation in public bodies shall become more important once the number of requests for information increases.

Half of the interviewed have expressed their dissatisfaction with the internal IT resources, i.e. databases and free access to information. They stress that documentation is spread among different departments and there is no single database which would enable easier access to the requested information. One officer told us that he does not even have a computer in his office. In more complex public bodies this complicates officers' work, and having in mind difficulties in tracking down information within a public body they find legal deadlines for responses to information requests too short.

3.2.2.3. Attitude to the Act and its implementation

In principle representatives of public authorities are committed to implementation of the Freedom of Access to Information Act. This commitment is more evident with officials who deal with implementation of this Act exclusively, or with somewhat similar activities (work with citizens, media, etc.). A director of a TV station holds that the implementation of the Act would be greater if there were a person within each company responsible to do this job only.

If I have money to pay one person to do only this, then the person in charge takes care whether the people requesting information are satisfied. *(Director of a public TV station, municipal level)*

Moreover, some officials openly express regret that the citizens do not know more about the Freedom of Access to Information Act so that it could be implemented in full. According to one official, one of the basic obstacles to better implementation of the Act is the lack of interest among the citizens for the FAIA.

The other problem is that citizens here are not really interested in this Act. As soon as you have to wait a certain period of time for some information, they think it is slow and not got, so they do not use it... *(Information Officer, executive authority at the municipal level)*

According to the interviewed officials, the most frequent obstacles to the implementation of the Act include:

- Lack of IT equipment necessary for requests processing (computers, computer network, database, etc.),
- unclear requests,
- Lack of harmonisation between the requests and the Act, especially in cases of journalists' requests, which according to the interviewees quote this Act and request information to be forwarded within very short deadlines.
- Lack of awareness about the Act in public.

Information Officers think that for the purposes of having a more efficient FAIA implementation, it is necessary to organise various education programmes, not only for them but also for other employees in public bodies who greatly affect the level of FAIA implementation, so that they would be aware of the obligation to implement this Act. Some officers stress it is necessary for journalists to learn more about



the Freedom of Access to Information Act, to be able to use it properly. In addition, a great number of officers holds it necessary to obtain modern IT equipment that would make processing of the requests for access to information easier.

* * *

The level of FAIA implementation is obviously closely connected with the general efficiency of the public body. The more efficient the public body, the greater their ability to implement the FAIA. In this sense, the size of the public body is not a decisive factor. So, for example, some cantonal governments and ministries, although they have considerable material resources at their disposal, for some time have failed to appoint a person in charge of the FAIA implementation. To our attempts to find out why this is the case, they have failed to respond to our requests sent as part of this research, or we were simply transferred from one official to the other, which indicates a rather chaotic situation in these institutions. Some of the interviewed officials admitted (directly or indirectly) that the internal lack of order in these institutions was the reason they did not respond to requests for information addressed as part of this research.

It was sent once to the Government Secretary, got held up there for a long time, and we did not have any information about it. The second time we had information, we should have responded. Not because we did not want to, but we were totally confused as to how to respond, because we have just started encountering such request, it was not our intention to deny any information. I even asked the OSCE officers how to respond to this, and then the deadlines expired and we did not get round doing it. *(Information Officer, executive authority at the cantonal level)*

Minister delegated it to someone to respond and you will surely receive the response within a day or two, and we shall look into that. We received it now and I can assure you that you will get a response. *(Secretary of the Ministry, executive authority at the entity level)*

The level of implementation is affected by the position of the Information Officer in the internal structure of the public body. Some Information Officers are on the margins of the internal structure and they have to struggle for basic conditions to do their jobs (computer, office), so they are in a worse position when it comes to responding to received requests. However, the problem of position of Information Officers in the internal structure of the public bodies has not been raised in strict terms, as there the number of requests for information is still not large. On the other hand, better positioned officers obtain the requested information much easier. A well positioned Information Officer has in a rather authoritative manner explained her cooperation with other department on requests processing.

They cooperate because I ask and insist, I am persistent and so on. Perhaps they would not cooperate, but I insist on asking because of my nature. Perhaps if I were different I wouldn't ask them much and they would not respond. But the situation is such - I ask and I get it. I cooperate in any case. *(Information Officer, executive authority at the cantonal level)*

Bodies in the so-called public sector are generally less familiar with the Freedom of Access to Information Act, as well as the fact that it directly concerns them as well. Responding to a question whether he heard of the Freedom of Access to Information Act and what he knows about it, a Director of an elementary school gave a brief answer:

On TV (...) have not heard anything (...) there is business information, information for the public... *(Headmaster of an elementary school, Central Bosnian Canton)*

We should seek the reasons of such a condition primarily in the fact that representatives of this sector have been largely sidestepped in different seminars on the FAIA. That is why a Director of a small TV station thinks this Act refers to them only nominally.

That is something that refers to the state, and we are a company of 18 employees *(Director of a public TV station, municipal level)*

In addition, the usual practice was for these public bodies (especially non-commercial companies) to implement the legal provisions at the request of the competent ministry or some other government agency.

Education laws are important for us and we are familiar with them (...) We get information through Ministry of Education, Pedagogical Institute and Official Gazette, but you know how it is with us - what is current and what interests you, you keep it somewhere, work on it follow it up ...
(Headmaster of the Secondary School, Tuzla Canton)

This is understandable as these public authorities often do not have any employees with legal background, so they avoid interpreting laws on their own and apply laws published in the Official Gazette. For this reason, it would be necessary for the competent ministries to notify these public bodies that they too are subject to obligations set out in the FAIA, and ask them to implement the Act accordingly.

In the end, the presented findings should be considered in light of very few numbers of requests for information. Some of the interviewed representatives of the public bodies have not received a single request (apart from the one we sent out during the research), and the largest number of some 20 requests per year were registered only by few public bodies. Surely the increased number of requests for information will bring changes to public bodies, in terms of raising awareness of the FAIA, the establishment of more effective internal procedures of request processing, the harmonization of responding under the Act, but it will also shed light on those bodies that ignore the Freedom of Access to Information Act.

4. CONCLUDING DELIBERATIONS

4.1. LEGAL FRAMEWORK

- Legal provisions at the levels of Bosnia and Herzegovina and the Republika Srpska are to a certain extent inadequate. Primarily due to the fact that public bodies under law have to respond to information requests in the form of a notification, which hampers the appeals procedure based on the Law on Administrative Procedure.
- Also, the FAIA of the Republika Srpska does not define clearly that exemptions from disclosure of information are not determined automatically, but based on individual case evaluation. This could lead to interpretations which apriori exempt some types of information from publishing.
- In addition, the Freedom of Access to Information Act in the Republika Srpska sets out somewhat longer deadlines for response by the public bodies, with a 15-day deadline set out as the only deadline, without the 'as soon as possible' provision.
- Lack of court practice is surely a great shortcoming in the implementation of the Freedom of Access to Information Act in Bosnia and Herzegovina. Only after court decisions will we have adequate interpretations of some less clear provisions of the Act.

43



4.2. IMPLEMENTATION

- The research has revealed the largest problem in the implementation of the Act in some public authorities completely ignoring request for access to information. After the first cycle of requests (N=240), 57.1% of them received no response. The situation somewhat improved with the re-sending of the information requests to the public bodies that had not responded, so that the number of unanswered responses reduced to 31.7%. Since Bosnia and Herzegovina is in the 5th year of the implementation of this Act, such an attitude is a cause for concern.
- Another issue concerns responses not in line with the Act (8.8%, N=240). Responses of the public bodies (ungrounded transfer or refusal) indicate lack of knowledge about the Act, in both positive and negative ones, and the most frequent problem are misconceptions about the competencies of the body and/or its status with regards to the Act. That is, from the conducted interviews with representatives of public bodies it is evident that a certain number of them - especially from the public sector - have not even seen the Freedom of Access to Information Act. We should add to this information obtained from the conducted interviews,

which indicates that one third of public bodies from the sub-sample (N=18) have not appointed Information Officers. There are even fewer of those who have complied with other obligations set out in the Act (designing a guide and an indexed register). It is the public bodies from this group that have not responded to the submitted requests, or have sent responses in contradiction with the Act.

- Although three quarters (3/4) of responses did arrive within the deadline set out in the Act, there is still a high number of those who are unnecessarily delaying, especially if we have in mind that the asked question fall under the category of 'simple'. Particularly worrying is the lack of timeliness in legislative bodies.
- The research has shown that re-sending requests (2nd cycle, in this research) is a relatively good method to exercise the rights under this Act. Namely, the number of received responses has gone from moderate 42.9% to respectable 68.3%. In addition, this is surely the cheapest and quickest way of obtaining the requested information.
- Public bodies more or less treated all the requesters equally, whether submitted by 'ordinary' citizens or by a media organisation. This information is encouraging, since citizens as a rule have fewer options to exercise their rights in the appeals procedure.
- Public bodies, regardless of the administrative area in which they operate, in correspondence with requesters use almost exclusively the form of a notification. Such responses are in contradiction with the FBiH FAIA, which sets out that responses must be sent in the form of a decision. Requesters cannot appeal on the basis of a notification in an administrative procedure, since it does not recognise a notification as an administrative decision. For this reason a few appeals were rejected in the Federal courts.
- Conducted interviews have indicated that fewer than half of employees (N=18) have been through some type of formal training about the Freedom of Access to Information Act. The training was mostly organised for employees from the traditional public bodies, while the Information Officers from the public sector were mostly sidestepped in this training. Issues related to internal IT resources and mutual cooperation between different departments on the request processing are still not being raised in strict terms, since the number of information requests is still extremely low.
- Conducted interviews show that the representatives of public bodies are committed to the implementation of the Freedom of Access to Information Act. The commitment is more evident among those officials who deal with the implementation of this Act exclusively, or are engaged in somewhat similar activities. Moreover, some officials openly express regret that the citizens do not know more about the Freedom of Access to Information Act, and do not use it more.
- The number of received requests is still small. Some public bodies have not received a single request, apart from the one we sent out during this research. At best, they receive around 20 requests a year. This situation indicates that Bosnia and Herzegovina is in the initial phases of the implementation of the Freedom of Access to Information Act, and that the public bodies have still not been faced with major challenges.

5. RECOMMENDATIONS

5.1. LEGAL FRAMEWORK- RECOMMENDATIONS TO LEGISLATIVE AUTHORITIES

- Make Amendments to the Freedom of Access to Information Act at the state level in terms of changing Article 14, which sets out that, in case of a negative response to the information request by a public body, the citizens should receive a notification - not a decision, in order to allow the citizens to exercise their right to access to information through an appeal procedure.
- Accept the initiative of the Transparency International BiH for an amendment of the RS Freedom of Access to Information Act, with the same objective.
- Harmonise legal provisions at all levels of authority to have identical definition of legally prescribed deadlines for delivering responses to information requests, as well as a clear definition of exemptions based on the evaluation of each individual case.
- Review all pieces of legislation passed subsequent to the Freedom of Access to Information Act that restrict the rights and obligations set out under this Act. This refers in particular to the Law on Tax Administration and Criminal Procedure Code in the Federation of BiH.

45



5.2. IMPLEMENTATION

- Authorities in Bosnia and Herzegovina, the Federation of BiH and the Republika Srpska should disseminate a list of all public bodies subject to obligations set forth in the Freedom of Access to Information Act. At the same time, we need to stress that the list does not restrict the number of public bodies, i.e. if a public body is not included on the list, it does not mean it is not subject to obligations under the Freedom of Access to Information Act.
- Public bodies must carry out their obligations with regards to implementation of the Act in terms of appointing Information Officers, developing indexed register and a guide, and report information as set out in the Act to the responsible bodies of the Parliamentary Assembly. In addition, it is necessary to make the collected data available on the web site of the Parliamentary Assembly, which at the moment is not the case.
- Public bodies should more actively use the existing resources such as the web site, newsletters, and information points, to make information on the Information Officer, guide, indexed register, and the annual work reports, available to the public.

- Ministries of Justice should, in cooperation with the responsible Ministries, notify the public sector bodies (health institutions, public television stations, elementary and secondary schools, faculties, etc.) that the Act refers to them as well, that they are obliged to familiarise themselves with the Act and to implement it. This step is necessary, as a large number of bodies from this sector do not have appropriate legal departments and the FAIA to implement legal provisions published in the Official Gazette, while at the same time the information on the requirement to implement them has not been received through the regular communication channels.
- Encourage further education of citizens on the Freedom of Access to Information Act, as only through active engagement with this Act can we expect to achieve a greater level of implementation. In this sense, public bodies should take particularly active role by promoting the Act through their web sites, newsletters, information points and other existing resources.
- Continue with the ongoing education programmes for the public officials so as to introduce them to the objectives of the Act, its scope of operation and prescribed procedures. Special attention should be paid to include representatives from the public bodies of the so-called public sector in the education process, since they have been sidestepped by the education programmes carried out so far.

