

# Analysis of the Right of Access to Information in Bosnia and Herzegovina

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## Introduction

Freedom of Information (FoI) forms part of the corpus of political rights and third-generation fundamental human rights and freedoms. It constitutes a key mechanism within national and global anti-corruption policies, enhancing participatory democracy, transparency and accountability in the public sector, while upholding the principles of good governance. This right has evolved in response to growing demand from the media and the public for access to information held by public authorities, alongside the democratic imperative for openness and accountability within government institutions. Recognised in international law as a fundamental human right, it is regulated through a range of key instruments, most notably the United Nations Universal Declaration of Human Rights (Article 19), the International Covenant on Civil and Political Rights (Article 19), the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10), the Aarhus Convention and relevant Council of Europe recommendations.

As a constituent element of the right to freedom of expression, freedom of information serves as a vital indicator of a state's level of democratic development, enabling individuals, in their capacity as citizens, to play a more active role in public affairs. Accordingly, the legal framework in Bosnia and Herzegovina (BiH) should ensure that both natural and legal persons have full access to information concerning the work of public authorities and their representatives, while fostering and encouraging their participation in decision-making processes – one of the most significant aspects of democratic development.

This analysis of the right of access to information in BiH is based on comprehensive research aimed at evaluating the legislative framework and its practical implementation. The right itself represents a central tool for enhancing transparency in institutional operations, which is indispensable for advancing democratic standards and accountability in public administration.

The methodology applied includes a multi-layered analysis of FoI legislation across all levels of government, with particular emphasis on identifying similarities and differences, detecting deficiencies and proposing improvements to the regulatory framework. In addition, the work of inspection authorities over the last five years has been examined, alongside an assessment of whether sanctions for violations of the right of access to information are effective or, conversely, remain a dead letter.

Furthermore, the implementation of the legislation was assessed by analysing the actions of institutions in response to freedom of information requests submitted by Transparency International in BiH and Vaša

prava BiH. The data gathered in this segment offer insight into the effectiveness of institutions in handling requests and highlight the practical challenges encountered by both applicants and institutions.

A dedicated segment of the research is devoted to case law concerning disputes related to the right of access to information, including an analysis of the types of decisions rendered, the duration of administrative disputes and the costs of proceedings. The purpose is to assess the extent to which judicial redress for this right is accessible to citizens and whether there are barriers that discourage the pursuit of legal remedies.

The concluding section analyses the implementation of recommendations issued by the Institution of Human Rights Ombudsman, assessing the extent to which institutions demonstrate responsibility and willingness to implement the measures proposed. This element of the research indicates the degree of openness of public institutions towards enhancing transparency and accountability.

Through the integration of qualitative and quantitative analysis, based on the review of legislation, statistical data and relevant case law, the methodology provides a comprehensive understanding of the legal framework and its practical application in BiH. The results form the basis for the development of recommendations aimed at improving access to information for citizens and strengthening the accountability of public institutions in the country.

## Methodology

The methodology employed in the preparation of this analysis is based on comprehensive research, incorporating a multi-layered evaluation of the legal framework at all levels of government, an assessment of the implementation of FoI legislation, relevant case law and the established practice of the Institution of the Human Rights Ombudsman of BiH. The approach is structured into the following steps:

### Review of the FoI legal framework

This component examines FoI legislation across all levels of government in the country, including state-level law and entity-level regulations. It identifies fundamental similarities and divergences among these laws to delineate the core features of the legal framework in BiH. The analysis encompasses legal concepts, procedural standards, statutory deadlines and the scope of exemptions, thereby providing a more detailed understanding of potential obstacles and deficiencies within the legislative framework. Furthermore, it addresses the enforcement of inspection provisions in instances of alleged violations of the right of access to information. This segment presents data on inspections conducted following citizens' complaints, including measures taken and sanctions imposed. The objective was to determine whether the penal provisions for violations are effectively applied in practice or remain a dead letter.

### Assessment of FoI legislation implementation

The second step examines the manner in which institutions at the state and entity levels implement FoI legislation. This section analyses data on FoI requests submitted to institutions by Transparency International in BiH and Vaša prava BiH to gather information on response deadlines, the types of decisions rendered, outcomes of administrative procedures and the challenges encountered by both authorities and applicants in applying the law. The analysis provides insight into the actual practices of institutions in handling FoI requests, thus enabling an evaluation of their efficiency and effectiveness in statutory application.

### Analysis of FoI case law

Drawing on the database of court rulings compiled by Transparency International in BiH, case law concerning the right of access to information over the period 2019–2023 was examined. The review covered the types of rulings rendered (upholding, rejecting or dismissing claims), the duration of administrative disputes across various courts and the level of institutional compliance with judicial rulings. Particular

emphasis was placed on the costs incurred by parties in these proceedings, which are frequently unrecoverable due to lacunae in the regulatory framework.

#### Analysis of the implementation of Ombudsman recommendations

Based on data regarding complaints submitted by citizens to the Ombudsman Institution over the preceding five years, the implementation of recommendations concerning access to information was assessed. Institutional compliance with these recommendations was monitored to evaluate the Ombudspersons' impact on institutional transparency. The results indicate whether institutions adhere to or disregard such recommendations, which may signal systemic weaknesses in institutional accountability.

The aforementioned segments were analysed using secondary research methods, including a desk review of legal instruments, available databases, reports and relevant case law. The data collected were processed through quantitative and qualitative methods to identify key trends and patterns, providing robust conclusions on the effectiveness of the legal framework and the need for its improvement. This methodology provides a comprehensive basis for assessing both the legal framework and its implementation in BiH, supporting the formulation of recommendations aimed at enhancing access to information and strengthening institutional accountability.

## Review of the FoI legal framework

### The importance of the Freedom of Information Law

The right of access to information is enshrined in major international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms. It constitutes an integral part of the human rights catalogue and is afforded specific protection as a constituent element of the right to freedom of expression.

Access to information is regarded as a fundamental prerequisite for ensuring the accountability and transparency of public authorities. The extent and quality of citizen participation in political processes are directly contingent upon the level of awareness regarding information of public interest. As the majority of such information is held by government bodies or public institutions under their direct control, its disclosure represents a vital practice contributing to open government and the democratisation of decision-making processes.

Access to information in BiH is currently regulated by three laws – one at the state level and two at the entity level, namely in the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS). However, Brčko District has yet to adopt legislation establishing a specific administrative procedure for access to information. Previously, the BiH Freedom of Information Law was applicable in Brčko District; however, it ceased to have effect upon the entry into force of the new state-level Freedom of Information Law.

The first Freedom of Information Law was adopted by the BiH Parliamentary Assembly in 2000, followed by entity-level legislation in 2001. These laws were introduced under the significant influence of the international community in BiH, without the participation of the civil society sector. This indicates that the move towards government openness was not driven by internal political dynamics or domestic pressure. Simultaneously, the absence of substantive resistance from government representatives is noteworthy and

is generally attributed to a limited comprehension of the scope and significance of FoI legislation. Although considered progressive at the time, these laws reflected the influence and pressure exerted by the international community during the post-conflict reconstruction period rather than the prevailing political reality.

In the ensuing period, the primary weakness of the existing legal framework was the absence of provisions regarding proactive transparency. Legislators failed to introduce mandatory proactive disclosure obligations across all three FoI laws, which would have reduced the reliance on reactive mechanisms by public authorities. Provisions on proactive transparency remained minimal and inadequate, while subsequent amendments at the BiH and FBiH levels did not result in any significant liberalisation of the right of access to information.

This deficiency prompted the initiation of the process to adopt a new Freedom of Information Law at the level of the institutions of BiH in 2021. The drafting of the new law was necessitated by BiH's international obligations to align its legislation, implementation and enforcement with Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information. The adoption process was concluded in August 2023, amidst numerous objections from civil society organisations and certain institutions. These objections pertained to both the substance of the draft law and the public consultation process, during which civil society submitted over 200 comments and proposals, none of which were incorporated.

## Law on Freedom of Access to Information at the Level of the Institutions of Bosnia and Herzegovina

### Scope and key features

The new BiH Freedom of Information Law (full name: Law on Freedom of Access to Information at the Level of the Institutions of Bosnia and Herzegovina) entered into force in September 2023. It establishes a fundamentally revised procedural framework, distinct from both the previous legal framework and the procedures governing access to information within the two entities.

A primary distinction is evident in the provision defining the material scope of the Law. The new legislation regulates not only the right of access to information but also the right to the re-use of documents held by BiH institutions, legal entities established by them, and independent BiH bodies established under special legislation. Furthermore, it prescribes two distinct administrative procedures: one for requests for access to information and another for requests for the re-use of documents.

The right of access to information includes both rights and obligations – specifically, the right to seek and receive information and the duty of BiH institutions to ensure access to the requested information. Institutions are also required to disclose information proactively where mandated by law or other regulations (proactive transparency).

Under the Law, the re-use of documents refers to the use of documents held by BiH institutions for commercial or non-commercial purposes other than the original purpose for which they were produced.

Another distinctive feature of the Law is the transposition of the provisions of Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information. This Directive is significant as it establishes minimum rules for the re-use of information and

defines thematic categories of high-value datasets, including geospatial, meteorological, statistical, earth observation, environmental, company ownership and mobility data.

## Principles

The new Law is underpinned by eight explicitly defined principles, which are fundamental to its interpretation and practical implementation. BiH institutions are obliged to adhere to the following principles when processing requests for access to information and the re-use of documents:

1. The principle of transparency and openness, gender equality, non-discrimination and personal data protection
2. The principle of freedom of access to information
3. The principle of open government
4. The principle of timely access to information and the completeness and accuracy of information
5. The principle of equal treatment of users
6. The principle of information disposal
7. The principle of mutual respect and cooperation
8. The principle of free-of-charge information

## Proactive disclosure obligation

The Law establishes proactive disclosure as a distinct obligation for BiH institutions. This represents a significant shift, as such requirements were not previously regulated in this manner; prior obligations of public authorities were largely limited to compliance with rules governing special administrative procedures. In addition to obligations arising from administrative procedures, institutions are now mandated to regularly publish and update information within their remit via their websites or other appropriate channels, no later than 15 days from the date of the information's creation. Furthermore, they are required to submit relevant documentation to the Central Public Information Portal to ensure its permanent accessibility.

Under the Law, the following categories of information must be disclosed and updated on a regular basis: details regarding the BiH institution, its organisational structure and its operations; decision-making processes and mechanisms for public participation; sources of funding and grants awarded by the institution; public procurement processes and advertised open calls; services provided to users, as well as registers, databases and catalogues maintained by the institution; information concerning the right of access to information and any other information for which disclosure is under a special law or other regulation.

In addition to proactive disclosure, BiH institutions are required to inform the public regarding their sessions and agendas, their methods of operation, the possibilities for direct public access to their work and the specific number of individuals to whom such access may be granted.

## Restrictions to the right of access to information

BiH institutions may restrict access to information. Such restrictions are explicitly prescribed by the Law and may be classified into several categories:

- Restrictions aimed at protecting the privacy of natural persons and the personal data of users and third parties.
- Restrictions applicable where disclosure would result in serious harm to protected interests – including national security and international relations (where the information is classified), public order and security (where the information is classified), ongoing inspection, control or supervision carried out by a BiH institution, commercial and other economic interests, and environmental concerns.
- Restrictions concerning information of relevance for the equal treatment of parties in judicial proceedings and the efficiency of the judiciary, as well as ongoing pre-trial criminal or disciplinary proceedings conducted by competent authorities.
- Restrictions relating to information that is still in the process of drafting within a single BiH institution or across several BiH institutions, working groups or commissions.
- Restrictions where the information constitutes a tax-related secret in accordance with applicable legislation or is protected by regulations governing intellectual property rights.

In terms of statutory restrictions, it is important to note that the Law stipulates that a BiH institution must issue a formal decision rejecting a FoI request only in specific cases where access to information is to be restricted. These situations include cases where disclosure would cause serious harm to protected interests (such as national security, international relations, public order or security), where the information is still being drafted within a single BiH institution or jointly among several institutions, working groups or commissions and disclosure could significantly undermine that process, or where the information constitutes a tax-related secret or is protected under intellectual property regulations.

In other instances – such as restrictions relating to the equal treatment of parties in judicial proceedings, the efficiency of the judiciary, or pre-trial criminal or disciplinary proceedings conducted by competent authorities, as well as situations where disclosure would hinder the effective, independent and impartial execution of a decision or sanction, or where access is limited in order to protect the privacy of natural persons and the personal data of users and third parties – the Law does not expressly require BiH institutions to issue a formal decision rejecting the request.

However, it may be inferred that, even in such cases, BiH institutions still issue a formal decision. When ruling on a request, if the institution establishes the existence of a restriction to the right of access to information (termed in the Law as an “established exemption”), it is obliged to carry out a proportionality and public interest test. Depending on the outcome of this test, the institution determines whether the requested information will be disclosed and notifies the applicant of its decision through a formal decision.

Overall, it is evident that the list of exemptions provided for in the Law is notably extensive and complex. In addition, BiH has not established an independent information commissioner, which in practice already results in situations where access to a considerable volume of information is almost impossible. For instance, the restriction relating to the equal treatment of parties in judicial proceedings and the efficiency of the judiciary is now interpreted by some authorities as preventing the disclosure of court decisions or confirmed indictments, even though such documents were accessible prior to the entry into force of the new Law.

## Proportionality and public interest tests

The Law stipulates that a BiH institution may disclose requested information despite the existence of an exemption established thereunder, provided that such disclosure is justified by the public interest and that any resulting benefit and harm are taken into consideration. Nevertheless, this provision is both incomplete and terminologically inconsistent with the rest of the Law, as it refers to an “exemption” rather than a

“restriction”. Its incompleteness lies in the absence of a clear obligation to assess all potential benefits and harms that may result from the disclosure of information classified as an “exemption”, which should precede any decision on disclosure. A literal reading suggests that the BiH institution may take these factors into account, whereas it would be more accurate to require that it must do so, given that disclosure should occur only where the public interest is determined to prevail over harm to other protected interests.

In applying the public interest test, BiH institutions are obliged to take into account all relevant facts and circumstances pertaining to the handling of the request. This obligation is not expressly set out in the provisions regulating the proportionality and public interest test, but rather follows from other provisions governing the resolution of requests. Conversely, the Law does provide, within the provisions dedicated to the proportionality and public interest test, that BiH institutions, when determining whether disclosure is justified in the public interest, must take into account considerations such as any breach of legal obligations, existence of misconduct, miscarriage of justice, abuse of authority and similar factors. It would be advisable to systematise and consolidate the provisions relating to this legal concept within a single section, which would facilitate their consistent application by officials. The final provision concerning the proportionality and public interest test lacks clarity, as it states that information may be classified as an exemption (restriction) in the public interest, which is inconsistent with the nature of the concept, since information is designated as an exemption not in the public interest but in order to protect other legally protected interests.

## Procedure for exercising the right of access to information

As noted earlier, this is a special administrative procedure that differs from the general administrative procedure in terms of the manner of exercising the right, the manner of submitting requests, administrative fees and charges for access to information, procedural deadlines, decision-making by BiH institutions, the possibility of requesting information amendment and correction, and the right to remedies before a second-instance authority and the court.

The unique aspect of this special administrative procedure lies in the obligation of BiH institutions to provide access both through the proactive disclosure of certain information on their own initiative in a suitable and accessible form, including the submission of documents to the Central Portal of Public Information (proactive transparency), and through the processing of FoI requests submitted by interested persons (reactive transparency).

## Exercising the right of access to information

Applicants may obtain access to information from a BiH institution in several ways:

- Direct provision of the information.
- Provision of the information in written form.
- Granting access to documents containing the requested information, including the possibility of making copies.
- Provision of a copy of a document containing the requested information.
- Any other method appropriate for exercising the right of access to information.

## Specific requirements for requests

The Law stipulates that a request must be submitted in writing to the competent institution, with electronic submissions being treated as written requests. Such a request must include: the name and address of the BiH institution, details enabling the identification of the requested information, and the name, surname and address of the natural person, or the name and address of the registered office of the legal entity submitting the request.

Another distinctive element of the procedure is that the Law expressly defines what does not qualify as a request for access to information. The following are therefore excluded:

- Requests for opinions, explanations or instructions concerning the exercise of a right or obligation.
- Requests for the analysis or interpretation of regulations.
- Requests involving the creation of new information.

With regard to media reports alleging that a senior civil servant had committed corruption-related offences, Transparency International in BiH requested information from the BiH Prosecutor's Office on whether an order had been issued to initiate an investigation in the specific case. The Prosecutor's Office responded by stating that the request did not qualify as a request for access to information, but rather as a request for the creation of new information. The Appeals Panel at the BiH Council of Ministers dismissed the appeal, noting that the request should have been reformulated to seek access to an existing document, following which Transparency International in BiH initiated an administrative dispute before the Court of BiH.

Decisions on requests for access to information are taken by the BiH institution holding the requested information. Where the receiving institution does not hold the information, it must forward the request to the competent institution within eight days of receipt and inform the applicant accordingly. In such cases, the deadline for handling the request begins on the date the competent institution receives it.

Where the BiH institution does not hold the requested information and cannot, with reasonable effort, identify the competent institution, it shall, within eight days of receipt, issue a conclusion rejecting the request on grounds of lack of competence. An appeal against such a conclusion may be lodged with the Appeals Panel at the BiH Council of Ministers. The Law also addresses situations involving classified information, requiring the BiH institution to forward such requests to the institution holding the classified information.

#### Administrative fees and charges for access to information

The Law provides that no administrative fee is payable for submission of a request for access to information. However, fees are payable where an appeal is lodged against a first-instance decision and where remedy is sought before a court, which runs counter to the principle of free provision of information. This principle requires that the holder of information ensure access free of charge. However, in practice it is not uncommon for BiH institutions to disclose information only after an appeal has been upheld, requiring the appellant to pay an administrative fee, and after the conclusion of an administrative dispute, where the plaintiff must pay court fees both for initiating the dispute and, upon its completion, for the judgment. If the plaintiff succeeds in the suit and the court upholds the claim for recovery of litigation costs, those costs should subsequently be reimbursed by the defendant institution.

With regard to actual material costs – such as duplication, scanning or data carriers – BiH institutions are entitled to seek reimbursement from the applicant. The amount of such charges and the method of payment, aligned with market prices, are to be determined by a decision of the BiH Council of Ministers.

Transparency International in BiH participated in the e-consultation process and submitted comments to the BiH Ministry of Finance regarding the Draft decision on the reimbursement of material costs under the Law on Freedom of Access to Information at the Level of the Institutions of Bosnia and Herzegovina. It pointed out that the proposed fees were excessively high, particularly for CDs and USB devices, which did not reflect actual market prices. It further stressed that, in determining the costs, the competent authority must ensure that both the amount and the method of charging are aligned with market conditions. In this case, the proposed fee of BAM 20 per data carrier was significantly higher than the prevailing market price, while the proposed delivery charge of BAM 10 substantially exceeded actual postal costs.

## Procedural deadlines

The Law stipulates that a BiH institution must decide on a request within 15 days from the date of submission of a complete request, which represents a departure from standard practice. In the general administrative procedure, response deadlines run from the date of receipt of the request rather than the date of submission, as these dates may differ, particularly where requests are sent by post. The 15-day deadline may be extended by a further five working days in cases where a single request covers a larger number of different pieces of information. Where the institution fails to decide within the prescribed deadlines, the applicant is entitled to lodge a complaint on grounds of administrative silence.

Since the entry into force of the new Law, Transparency International in BiH has lodged two complaints on grounds of administrative silence due to the failure of BiH institutions to act within statutory deadlines – one against the BiH Ministry of Defence and the other against the BiH Administrative Inspectorate.

## Deciding on the request

In deciding on a request, a BiH institution is obliged to take all necessary steps to obtain the requested information and to assess all relevant facts and circumstances related to the handling the request. A notable feature of the new Law is that it clearly distinguishes between situations in which the institution does not issue a decision, those in which it issues a decision, those in which it issues a conclusion and those in which it rejects a request by decision.

A BiH institution shall not issue a decision on a request in the following cases:

1. Where it informs the applicant that the same information has already been delivered and that 90 days have not elapsed since the submission of the previous request.
2. Where it informs the applicant that the information is already publicly available.
3. Where it informs the applicant that, because they are a party to proceedings, their access to the information is subject to a special procedure (administrative, judicial or other).
4. Where it informs the applicant that the information is subject to confidentiality or secrecy obligations.
5. Where it informs the applicant that the submission does not qualify as a request for access to information (such as requests for opinions, explanations or instructions concerning the exercise of rights or obligations, the preparation of analyses or interpretations of regulations, or the creation of new information).

In these situations, although no formal decision is issued, the BiH institution is required to notify the applicant within eight days of receiving the request, explaining the reasons why the request will not be considered, and to inform the applicant of the right to appeal to the Appeals Panel.

A decision is issued by the BiH institution when access to information is granted. The request shall be rejected by conclusion where the institution does not hold the information and cannot, with reasonable effort, identify the institution that does.

The BiH institution shall deny access to information in the following circumstances:

1. Where the conditions for restricting access to information (clearly defined restrictions) are fulfilled.
2. Where it establishes that the grounds for information amendment or correction no longer exist.
3. Where the request concerns content that does not qualify as information.
4. Where one or more applicants manifestly abuse the right of access to information (for example, by submitting repetitive requests, requests for the same information or requests involving an excessive volume of information).

Upon a request for access to information filed by Transparency International in BiH, the BiH Presidency issued a decision<sup>1</sup> denying access to information on total expenditures for gross salaries and allowances for 2022 and 2023, information on employees with whom employment contracts were concluded during 2022 and 2023, and copies of service contracts concluded in 2021, 2022 and 2023. In the reasoning of the decision, the Secretariat of the BiH Presidency stated that the request should be refused on grounds of abuse of the right of access to information, as it involved a substantial volume of detailed information covering a lengthy period, thereby burdening the operations and regular functioning of the institution. The Appeals Panel upheld the appeal submitted by Transparency International BiH and instructed the BiH Presidency to provide access to the requested information.

### Information amendment and correction

Another important feature of the special administrative procedure is the possibility of requesting the amendment and/or correction of the information provided. If an applicant receives information that they consider incomplete or inaccurate, they may request its amendment or correction within 15 days from the date of receipt. Depending on the case, the applicant submits such a request to the BiH institution, which is obliged to decide within 15 days of receiving the request.

This legal provision may be viewed positively, as it reduces the need to lodge an appeal with the Appeals Panel on grounds that the first-instance body failed to deliver complete or accurate information. As a result, it alleviates the burden on the Appeals Panel by reducing the number of appeals, while also providing the first-instance body with an opportunity to review its actions. Nevertheless, this mechanism may also be misused by both the official conducting the procedure and the applicant. Officials may intentionally refrain from deciding on parts of a request or provide incomplete or inaccurate information, knowing that the applicant, upon identifying such deficiencies, will be required to file a new request with the institution instead of appealing to the Appeals Panel.

Transparency International BiH made use of this mechanism by submitting a request for amendment of information to the BiH Communications Regulatory Agency (CRA). The initial request sought information

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<sup>1</sup> Decision of the BiH Presidency No. UP1-05-37-2-1140-2/24 of 7 May 2024.

on total expenditures for gross salaries and allowances for 2022 and 2023, information on employees with whom employment contracts were concluded during 2022 and 2023, and copies of service contracts concluded in 2021, 2022 and 2023. In response, the CRA issued a decision<sup>2</sup> granting access to the requested information; however, the information was incomplete, as the copies of service contracts were not included. A subsequent request for amendment was therefore submitted, which the CRA accepted, subsequently providing the complete information.

## Right to appeal

An appeal against a first-instance decision is submitted to the Appeals Panel at the BiH Council of Ministers, which functions both as the second-instance body and as the body responsible for initiating the adoption, amendment and improvement of regulations aimed at implementing and advancing the right of access to information.

According to the Law, an appeal must be lodged with the Appeals Panel within 15 days of receipt of the first-instance decision. In addition, the applicant is entitled to lodge an appeal on grounds of administrative silence in cases where the authority fails to act on the request. The Appeals Panel is obliged to decide on the appeal within 30 days of receipt, which includes issuing a second-instance decision and delivering it to the appellant through the first-instance body.

These are the following situations: In specific circumstances, the Appeals Panel may rule on an appeal within extended deadlines. These include:

- Where, in the course of deciding on the appeal, it is necessary to verify the correctness of the proportionality and public interest test. In such cases, the Appeals Panel must adopt and deliver its decision within 60 days of receipt of the appeal.
- Where, in the course of deciding on the appeal, it seeks an opinion from the BiH Ministry of Security in cases where access to information has been restricted and disclosure would cause serious harm to national security or international relations. In such cases, the Appeals Panel must adopt and deliver its decision within 90 days of receipt of the appeal.

It is reasonably expected that the second-instance authority, as a higher-level body than the first-instance authority, will decide on appeals within the deadlines established by the Law on Administrative Procedure, which provides for a 30-day time limit. Extending these deadlines is unacceptable, as it directly contradicts the principle of timeliness, under which BiH institutions must ensure a swift and effective procedure for access to information at both first-instance and second-instance levels.

The distinctive feature of the second-instance procedure becomes evident where the Appeals Panel finds the appeal to be justified. In such circumstances, the Panel adopts a decision instructing the BiH institution either to provide the appellant with access to the requested information or to decide on the submitted request, depending on whether the appeal is directed against a first-instance decision or arises from administrative silence, and determines an appropriate deadline for compliance by the first-instance authority.

Where a BiH institution does not comply with the Appeals Panel's decision, or fails to act within the prescribed time limit, it shall be deemed to have obstructed or restricted access to information. The Law further provides for misdemeanour liability in such cases, prescribing fines ranging from BAM 1,000 to BAM 10,000 for the responsible person within the BiH institution who fails to act in accordance with the decision or within the deadline established by the Panel.

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<sup>2</sup> Decision of the BiH Communications Regulatory Agency No. UP1:07-29-3-438/24 of 29 April 2024.

## Remedies

The decision of the Appeals Panel is final and cannot be challenged by appeal, but it may be contested through an administrative dispute before the Court of BiH. Such a dispute must be initiated within 60 days from the date of receipt of the Panel's decision, while the Court is obliged to issue its ruling within 60 days, given the urgent nature of the proceedings.

An analysis of the provisions governing remedies reveals two distinctive aspects compared to other administrative procedures. The first is the possibility that an administrative dispute, in addition to being initiated by the applicant, may also be brought by the BiH institution that issued the first-instance decision, which is not standard practice within the BiH legal system.

The second aspect concerns the rule that initiating a dispute suspends the execution of a decision granting access to information. In practice, this means that an applicant whose appeal has been upheld and who has been granted access to information at second instance must wait until the administrative dispute – initiated by the BiH institution – is concluded before obtaining the requested information, as the initiation of the dispute suspends the execution of the decision. This situation is likewise unusual and contrary to the principle of finality in general administrative procedure, under which second-instance decisions granting a party's request are final and enforceable.

Transparency International in BiH requested from the Appeals Panel statistical data on the handling of appeals submitted since the entry into force of the new Law, up to 27 August 2024. In this period, the Appeals Panel handled a total of 65 appeals, of which:

- 8 appeals were dismissed (12.3%)
- 34 appeals were denied (52.3%)
- 23 appeals were upheld (35.4%)

Within the same timeframe, only three administrative disputes were initiated against Appeals Panel decisions in access to information procedures. The Court of BiH rendered a judgment dismissing the claim in one case, while proceedings in the remaining two cases are still pending.<sup>3</sup>

Formally, the Appeals Panel at the BiH Council of Ministers resolved nearly all appeals submitted by Transparency International in BiH within the statutory 30-day deadline. However, the data show that most decisions resulted in rejection, and that only a small percentage of appellants pursued further judicial review before the Court of BiH.

During the consultation process preceding the adoption of the new Law, Transparency International in BiH argued that the second-instance function would be more effective if performed either by an independent commissioner-type body, as in neighbouring countries, or left with the heads of institutions, as provided under the previous legislation. The main reasons why it was considered that the Appeals Panel would not be able to successfully fulfil its role as a second-instance body were delays in its work and functioning, which led to stagnation of procedures, breaches of statutory deadlines and, consequently, violations of human rights, as well as the fact that the members of the Panel are appointed by the executive branch, thereby casting doubt on the independence of this body.

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<sup>3</sup> Decision of the Appeals Panel at the BiH Council of Ministers No. UP1ŽV-07-24-1/24 of 9 September 2024.

## Inspection oversight and misdemeanour provisions

The Administrative Inspection of the BiH Ministry of Justice is responsible for overseeing the implementation of the Freedom of Information Law, with supervision undertaken:

- Upon receipt of a request from the applicant.
- At the proposal of a third party.
- Ex officio.

During inspection oversight, the inspector examines whether a BiH institution fulfils its proactive disclosure obligation, including informing the public about sessions, their agendas, scheduling and format, as well as opportunities for direct access to its work. Furthermore, the inspector reviews whether the institution maintains records of requests, procedures and decisions, applies the legal provisions correctly and publishes information concerning the reimbursement of costs for access to information and the re-use of documents.

Inspection oversight may be either direct or indirect. Upon completion, the inspector draws up a record detailing the established facts, any breaches of laws or secondary legislation and any identified irregularities or shortcomings in performance. The record includes an assessment of the situation, measures ordering the removal of identified unlawful conduct within a specified deadline, recommendations for remedying irregularities and deficiencies, an obligation to report to the inspector on the implementation of measures, and instructions on the right to appeal. The record is submitted to the head of the supervised BiH institution. If no breaches, irregularities or deficiencies are identified, the inspector notifies the head of the BiH institution of this finding.

The inspector may, through a report, impose the following measures:

- Order the implementation of measures to remedy identified breaches of the Law and regulations adopted on the basis of the Law.
- Prohibit conduct that is contrary to the law.
- Recommend measures for the elimination of irregularities and deficiencies in work.
- Recommend measures aimed at improving the functioning of the supervised institution.

The head of the supervised institution is required to implement the imposed measures within the deadline set out in the record and to notify the inspector accordingly by submitting a report together with evidence of their implementation. Where the supervised institution fails to carry out measures intended to eliminate unlawful conduct, the Chief Administrative Inspector shall inform the BiH Council of Ministers and the founding authority of the institution.

A notable characteristic of the inspection procedure is the inspector's duty to consider complaints relating to the work of BiH institutions in the context of the application of this Law. If the inspector finds the allegations in the complaint to be justified, they may issue a warning to the BiH institution, instructing it to take corrective actions to eliminate unlawful conduct and to report on the measures undertaken. Where the inspector determines that the allegations are substantiated and finds that corrective measures are required, the inspector shall conduct inspection oversight *ex officio* in accordance with the competences provided by this Law. The inspector is obliged to inform the complainant of the established facts and the measures taken in response to the complaint.

The misdemeanour provisions establish fines applicable in two situations:

1. Where a decision of the Appeals Panel is not complied with, a fine ranging from BAM 1,000 to BAM 10,000 shall be imposed on the responsible person in a BiH institution who fails to act in accordance with the decision or within the deadline specified therein.
2. In the event of non-compliance with the provisions of the Law, the following fines are prescribed:
  - Between BAM 1,000 and BAM 10,000 for an official who damages, destroys, conceals or otherwise renders inaccessible a document containing information, with the intent to prevent the exercise of the right of access to information.
  - Between BAM 1,000 and BAM 10,000 for a natural person, and between BAM 2,000 and BAM 20,000 for a legal entity, that uses information in a manner contrary to the conditions governing the re-use of documents.
  - Between BAM 500 and BAM 5,000 for a responsible person in a BiH institution who fails to comply with an order issued by the administrative inspector, denies the inspector access to information subject to the procedure, fails to provide requested data or provides incomplete or incorrect data, obstructs the inspector in the performance of supervision, fails to remedy unlawful practices, irregularities or deficiencies within the deadline established in the record, or fails to ensure the proactive disclosure of information required by law.

It follows from the above that responsible persons in BiH institutions may incur misdemeanour liability only where they fail to act in relation to competent authorities – namely, where they do not comply with decisions of the second-instance authority or fail to act upon orders issued by the administrative inspector. The only exception arises where a responsible person damages, destroys or conceals a document. The new Law does not establish fines for failures in conduct towards citizens, i.e. parties (natural or legal persons initiating access to information procedures). As a result, the Law does not prescribe fines for failing to decide on requests within statutory deadlines, failing to issue decisions in the prescribed form, or failing to deliver decisions of the second-instance authority.

Under the previously applicable BiH Freedom of Information Law,<sup>4</sup> now repealed, fines were prescribed for misdemeanours such as failure to undertake necessary actions to collect requested information, failure to issue a decision informing the complainant of granted or refused access, breach of decision-making deadlines, and the unlawful charging of fees for submitting requests. This demonstrates that, under the former law, responsible persons in BiH institutions could be sanctioned for unlawful conduct towards parties to the procedure, which is not envisaged under the current legal framework.

Transparency International in BiH requested statistical data from the BiH Administrative Inspectorate regarding the number of inspections carried out, the number of decisions confirming violations of the Law and the number of misdemeanour proceedings initiated due to non-compliance with inspectors' orders under the former BiH Freedom of Information Law. The Inspectorate provided data for the period 2019–2023, showing that it handled 35 cases related to the application of the former Law. Violations were identified and administrative measures imposed in three cases (8.5%), while in 14 cases (40%) no irregularities were found. In 12 cases (34.2%), the supervised entities had already acted prior to inspection, in four cases (11.4%) there were no grounds for inspection oversight, in one case (2.8%) the applicant withdrew the initiative and in one case (2.8%) the matter was referred to the competent entity ministry.

On the basis of the submitted data on inspection oversight of the implementation of the BiH Freedom of Information Law, it may be concluded that inspection mechanisms have a limited impact on ensuring compliance with the Law. The data highlight several key observations:

#### Low incidence of established irregularities

Between 2019 and 2023, the BiH Administrative Inspectorate handled 35 cases relating to violations of the Law, but identified irregularities in only three cases (8.5%), reflecting a very low level of recognised and

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<sup>4</sup> Law on Freedom of Access to Information of BiH (Official Gazette of BiH, Nos. 28/00, 45/06, 102/09, 62/11 and 100/13)

sanctioned breaches. This may indicate limited effectiveness of inspection activities, potentially due to resource constraints, insufficient capacity, or a permissive approach towards non-compliance.

#### Significant share of cases resolved before inspection

In 12 cases (34.2%), the supervised entities aligned their conduct with legal requirements prior to the inspection being carried out. While this may point to a certain deterrent effect of inspection, it also suggests that compliance is often reactive rather than systematic, occurring only when oversight is anticipated.

#### Scarce use of misdemeanour proceedings

No data were provided on the initiation of misdemeanour proceedings for failure to comply with inspectors' orders. This may suggest that enforcement through sanctions is infrequent, reinforcing the perception that penalty provisions are ineffective in practice. The lack of consistent sanctioning may contribute to the continued occurrence of irregularities.

Taken together, these findings point to relatively weak inspection oversight of the implementation of the BiH Freedom of Information Law. The absence of proactive enforcement, the low detection rate of irregularities and the infrequent initiation of misdemeanour proceedings indicate a need for substantial improvements. Such improvements may include strengthening institutional capacities, enhancing transparency in inspection procedures and revising the legal framework for sanctions to ensure more effective protection of the right of access to information.

## Shortcomings of the BiH Freedom of Information Law

A thorough review of the BiH Freedom of Information Law has revealed several deficiencies that merit emphasis:

- The provisions relating to the proportionality and public interest tests lack clarity, are incomplete and display terminological inconsistencies with the rest of the Law.
- The provisions establishing the point at which the deadline for processing requests begins are not aligned with the BiH Law on Administrative Procedure. It is uncommon for the deadline applicable to a BiH institution to be calculated from the date of submission rather than from the date of receipt of the request.
- With regard to the principle of procedural efficiency, the extension of deadlines for the Appeals Panel to decide on complaints raises concerns, particularly in cases involving the application of the proportionality and public interest tests, as well as where the Panel seeks an opinion from the BiH Ministry of Security.
- The new Law fails to provide for financial penalties where responsible officials in BiH institutions do not resolve requests within the prescribed deadlines, do not issue decisions in the required form, or do not forward second instance decisions to the complainant.

## Recommendations for Improving the BiH Freedom of Information Law

In light of the shortcomings identified in the BiH Freedom of Information Law, several important recommendations for its improvement can be formulated. Their adoption would enhance the clarity and

effectiveness of the Law, improve the protection of citizens' rights and enable more accessible information, while strengthening accountability of institutions.

**Clarification of the proportionality and public interest tests:**

The provisions governing the proportionality test and the public interest test should be revised to ensure greater clarity and compliance with recognised legal standards. It is essential to clearly define the scope of these tests, the criteria applied and the procedures for their implementation. Furthermore, the terminology used should be standardised throughout the Law in order to prevent ambiguity and ensure uniform application.

**Prescribing that the time limit for acting on a request begins from the date of receipt:**

The Law should be revised so that the deadline for action by a BiH institution is calculated from the date on which the request is received, rather than the date on which it is submitted. This would bring the provision into line with general administrative practice.

**Alignment of the deadlines for the Appeals Panel with general appeal time limits:**

To ensure adherence to the principle of efficiency, it is necessary to shorten the deadlines for the Appeals Panel in cases requiring the application of the proportionality and public interest tests and the obtaining of an opinion from the BiH Ministry of Security. Instead of extending deadlines to 60 and 90 days in such cases, shorter deadlines for requesting and providing opinions should be introduced. This would expedite the procedure and allow for the timely safeguarding of applicants' rights.

**Prescribing sanctions for non-compliance with statutory deadlines:**

The Law should provide for the imposition of fines on responsible persons in BiH institutions who fail to comply with legally prescribed deadlines in procedures concerning requests for access to information, fail to issue decisions in the prescribed form, or fail to deliver decisions of the second-instance authority to the parties involved in the procedure.

**Revision of the policy of imposing fines:**

The Law should explicitly provide that fines are to be imposed immediately upon the occurrence of a violation, namely in cases of failure to decide on a request within the prescribed deadlines, failure to issue decisions in the prescribed form, or failure to deliver decisions of the second-instance authority. Imposing fines at the moment of the violation would strengthen the principle of mutual respect and cooperation between BiH institutions and users of the right of access to information.

## Freedom of Information Laws in the Federation of Bosnia and Herzegovina and Republika Srpska

Both entity Laws were enacted in 2001. In FBiH, the Law entered into force on 2 August 2001, whereas in RS it came into force on 26 May 2001, with its application commencing six months later, in November of the same year.

The two Laws are largely similar, with only minor differences, which will be highlighted later in the text. Owing to these similarities, they can be examined together. Their introductory provisions set out the purpose of the Laws, establish principles of interpretation and provide definitions of key terms.

## Introductory provisions

The objectives of both Laws are:

- To recognise that information held by public authorities constitutes a valuable public resource, and that access to such information enhances transparency and accountability while being fundamental to democratic governance.
- To affirm that every person has the right to access such information to the greatest extent possible in the public interest, and that public authorities have a corresponding obligation to disclose it.
- To allow any natural person to request amendments to, and to provide comments on, their personal information held by a public authority.

The Law must be interpreted in a manner that enables, as far as possible and without undue delay, access to information held by public authorities at the lowest acceptable cost. Both Laws further provide detailed definitions of the terms “information”, “public authority”, “personal data”, “control of access to information” and “competent public authority”.

## Right of access to information

The right of access to information implies that every natural and legal person has the right to access information held by a public authority, while every public authority has a corresponding obligation to disclose such information. Both Laws provide that this right may be restricted only in the manner and under the conditions prescribed therein.

In this context, it is important to note that the submission of a request for access to information triggers a special administrative procedure governed by the Freedom of Information Law, which must serve as the primary legal basis for resolving such requests. Since procedural matters are regulated by this specific Law, its provisions take precedence over those of the Law on Administrative Procedure, as well as over other relevant legislation, including the Law on Courts, the Law on Concessions, the Law on Personal Data Protection, etc. Accordingly, the authority is required to conduct the procedure in accordance with the Freedom of Information Law, and may rely on the Law on Administrative Procedure only where specific issues are not regulated by the former.

## Exceptions

Entity Freedom of Information Laws establish three types of exemptions:

1. Exemptions for functions of public authorities (Article 6)
  - Defence and security interests / protection of public safety
  - Crime prevention and detection
  - Protection of the deliberative process of a public authority
2. Exemption for confidential commercial information (Article 7)  
(Protection of confidential commercial interests of a third party)
3. Exemption for the protection of privacy (Article 8)  
(Protection of personal privacy interests of a third person)

Requested information may be treated as an exemption only following an individualised, case-by-case assessment. In determining an exemption, the authority is required not only to determine the existence of grounds for exemption, but also to apply a public interest test in accordance with the Law. This ensures a two-tier control mechanism and avoids automatic refusals of access. The authority first assesses whether disclosure would cause harm – for instance, to confidential commercial interests or to personal privacy. It subsequently applies the public interest test, and where it finds that disclosure would not serve the public interest, the information is designated as exempt.

## Public interest test

The Law presumes that the disclosure of information is in the public interest; however, this presumption may be rebutted, and the public authority bears the burden of demonstrating that no such interest exists. In conducting the public interest test, the authority must consider both the benefits and the possible harm resulting from disclosure. In deciding whether disclosure is justified in the public interest, the competent public authority examines factors such as breaches of legal obligations, the existence of any offence, miscarriage of justice, abuse of authority or negligence in the exercise of official duties, misuse of public funds and threats to the health or safety of an individual, the public or the environment.

### **Public interest test in relation to Article 6 (harm to legitimate aims)**

Access to information may be limited where its disclosure could reasonably be expected to cause significant harm to legitimate interests, including defence and security, crime prevention and detection, and the integrity of decision-making processes, in the following circumstances:

- Where there is a conflict between the protected interests and the requester's interest.
- Where the protected interests would be seriously harmed.
- Where the protection of a legitimate interest prevails over the public interest in disclosure.

In applying the test, the authority must first establish the existence of a conflict between the competing interests and justify its assessment. It must then evaluate whether the potential harm reaches a threshold of seriousness, meaning that it must exceed "ordinary" or minor harm. Finally, the authority must substantiate that the protection of the legitimate interest outweighs the public interest in disclosure.

### **Public interest test in relation to Article 7 (confidential commercial interests)**

In conducting the public interest test for requests involving confidential commercial information of third parties, the authority is subject to two key obligations. First, it must determine, on reasonable grounds, whether the requested information involves the confidential commercial interests of a third party. This exemption is frequently misapplied in practice – for instance, in requests concerning financial incentives allocated by public authorities to farmers or entrepreneurs from public funds, or in requests for information about service contracts concluded between authorities and third parties. Secondly, once the authority establishes that disclosure would affect such interests, it must immediately notify the third party in writing, providing details of the request. The notification must warn that the information will be disclosed unless the third party, within 15 days of receipt, submits a written statement asserting the confidentiality of the information and explaining how disclosure would result in harm. Where the authority concludes that disclosure is nevertheless justified in the public interest, it must issue a decision informing the third party – whose confidential commercial or personal interests are affected – that the information will be disclosed after 15 days from receipt of that decision.

### **Public interest test in relation to Article 8 (protection of privacy)**

An exemption from disclosure shall apply where the authority has reasonable grounds to conclude that the requested information concerns personal interests relating to the privacy of a third party. For such an exemption to be valid, the authority must establish that the information directly pertains to an individual's private sphere. It is essential to distinguish personal interests from personal data, as the right to privacy encompasses a broader range of protections than personal data protection alone. If the competent public authority determines that disclosure of the requested information – despite qualifying as an exception – is

in the public interest, it must issue a decision notifying the third party that the information will be disclosed after the expiry of a 15-day period from the date of receipt of that decision. The decision must include guidance on the right to appeal, the competent appellate body and its address, the applicable deadlines and costs, as well as information on the possibility of lodging a complaint with the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina (hereinafter: the Ombudsman), including relevant contact details.

## Severance of information

Both Laws allow for the severance of information. Where only part of the requested information is subject to an exemption, the authority is required to sever that part and disclose the remaining content, unless the result would be rendered incomprehensible. Where full access cannot be granted, the authority should consider providing at least partial access to the information. This typically occurs where a request encompasses multiple items of information, some disclosable and others exempt.

In producing copies of documents for access, the authority is required to physically redact exempt sections by applying an opaque overlay to mask the text. Anonymisation techniques such as the use of initials, pseudonyms or rounding may also be employed, with the purpose of preventing the identification of persons whose interests might be harmed by disclosure.

## Procedure for access to information

The entity Laws regulate specific aspects of the procedure for access to information, including the submission of requests, circumstances in which an authority may be unable to act, the determination of the competent authority, the actions to be taken upon receipt of a request, the language in which information is provided and the costs associated with the procedure.

## Submitting a request

The Laws set out three mandatory elements that a request for access to information must contain in order for the authority to process it:

- Written form, using one of the official languages of Bosnia and Herzegovina. While the request must be in writing, the manner of submission is not restricted – it may be sent by post, delivered in person, submitted electronically or transmitted by fax. Consequently, the applicant cannot submit the request orally or have it recorded by an authorised official. This represents a distinct feature of the special administrative procedure, as the general administrative procedure permits oral requests to be entered into the record.
- Adequate information regarding the nature and/or content of the requested information.
- The name and address of the applicant. These details must be included in the request. This is another specific feature in comparison with entity laws on administrative procedure, which require that submissions also include the applicant's handwritten signature.

## Circumstances preventing the authority from acting on a request

Both entity Laws specify circumstances in which a public authority is unable to process a request due to formal deficiencies. In FBiH, the authority must notify the applicant without delay, and no later than eight days from the date of receipt, by means of a formal decision stating that the request cannot be processed and setting out the reasons. By contrast, in RS, the applicant is informed by letter rather than by formal decision.

Depending on whether the request concerns access to information or access to personal data, different formal deficiencies may prevent the authority from acting:

- Where the request concerns access to information, the authority cannot proceed if the request is not submitted in writing, is not in one of the official languages of Bosnia and Herzegovina, does not provide sufficient information on the nature or content of the requested information, or fails to include the applicant's name and address.
- Where the request concerns access to personal data, the authority cannot proceed if the request is not submitted in the prescribed form, is not signed (as the applicant's signature is required in such requests), or is not accompanied by an identification document or a power of attorney where an authorised representative submits the request on behalf of the applicant.

### Determination of competent authority

In FBiH, if an authority determines that it lacks competence to act on a request, it must forward the request to the competent authority without delay, and no later than eight days from receipt, and inform the applicant thereof in writing. However, where a non-competent authority determines that it holds the requested information, it shall not forward the request, but shall instead inform the competent authority of the details of the request.

In RS, a non-competent authority must forward the request to the competent authority within 15 days from the date of receipt and notify the applicant thereof by letter. The request will not be forwarded if, within that time frame, it is established that the requested information is held by the authority that received the request, and the competent authority, upon being informed, raises no objection to that authority processing the request.

### Procedure by the competent authority upon receipt of a request

Upon receipt of a request, the authority must take all necessary steps to obtain the requested information, examine all relevant facts and circumstances, and only then decide whether to grant or refuse the request. The statutory time limit for processing a request is 15 days from the date of receipt, and this deadline is the same in both entities.

In FBiH, the authority is required to issue a formal decision regardless of whether the request is granted or refused, whereas in RS, the authority responds in the form of a letter. However, both the decision and the letter must contain all elements prescribed by the laws on administrative procedure, as well as additional elements stipulated by the respective entity Freedom of Information Law.

A decision or letter granting a request must include the following elements:

- Information on the possibility of accessing the information in person; and/or
- Information on the possibility of receiving photocopies of the information and the applicable costs;
- A copy of the requested information, where it is provided free of charge.

A decision or letter refusing a request must include the following elements:

- The legal basis for exempting the requested information under the Freedom of Information Law, along with the substantive reasoning relevant to the decision, including an assessment of the public interest.
- In FBiH: instructions on the right to file a complaint, specifying the competent authority and its address, the applicable deadline and costs. In RS: instructions on the right to file a complaint, specifying the competent authority and its address, the applicable deadline and costs, as well as information on the right to apply to the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina.

More than twenty years after the Freedom of Information Law entered into force in RS, a major challenge for applicants remains the practice of deciding requests by letter rather than by formal decision. Authorities frequently issue letters that lack the legally required elements and are often unsigned and without an official stamp. Such responses prevent applicants from pursuing remedies, obliging them to request a properly issued decision, which in turn results in unnecessary delays in the procedure.

## Remedies

The procedures for pursuing legal remedies against first-instance decisions on access to information requests differ under the entity Laws.

Under the FBiH Freedom of Information Law, an appeal against a first-instance decision must be submitted within eight days, with the deadline running from the day after the decision is received. The appeal is addressed to the head of the authority, and the resulting decision is final in administrative procedure, enabling the dissatisfied party to initiate an administrative dispute before the competent court.

In contrast, the RS Freedom of Information Law does not specify a deadline for lodging an appeal against a first-instance decision. Consequently, the procedure is supplemented by the application of the RS Law on General Administrative Procedure, which prescribes a 15-day time limit for filing an appeal.

## Language in which the information is accessible

Both entity Laws stipulate that access to information shall be granted in one of the official languages of Bosnia and Herzegovina, and, where feasible, in the original language if it differs from those official languages. The Laws also make clear that public authorities are not required to translate information between the official languages of Bosnia and Herzegovina.

## Costs of the procedure

Entity public authorities do not charge fees for the submission of requests or for issuing decisions and notifications in access to information procedures. Charges are limited to duplication costs and are determined in accordance with instructions issued by the entity ministries of justice. In both FBiH and RS, no fee is charged for the first ten standard-size pages.

Under the Instruction for the Implementation of the FBiH Freedom of Information Law, each additional page beyond the initial ten free pages is charged at BAM 0.50, and a fee of BAM 5 per floppy disk is levied for electronic documentation. In RS, the applicable instruction prescribes a charge of BAM 0.20 per

standard-size page, while it does not provide for costs related to the delivery of documentation in electronic form.

## Deficiencies in entity legislation

One of the principal weaknesses of the existing legal framework regulating access to information at the entity level is the lack of provisions on proactive transparency and their insufficient alignment with international standards. The provisions on proactive transparency in the current Laws are limited in scope and substance, essentially reduced to the requirement to appoint an information officer and to maintain an index register of the categories of information held by the public authority.

A further recurring concern is that the RS Freedom of Information Law still provides that a decision rejecting a request for access to information is issued in the form of a “letter”. This constitutes a complicating factor for applicants, who are frequently faced with arbitrary interpretations by the authorities processing requests.

In addition, the RS Freedom of Information Law does not include provisions governing inspection oversight. This omission creates difficulties in practice, as the RS Administrative Inspection often declines to carry out oversight, citing the absence of an explicit legal mandate to exercise such competences.

## Recommendations for strengthening entity legislation

- Promote proactive transparency by introducing obligations for the publication of a wider range of information generated by public authorities, making use of the opportunities offered by modern technologies and media.
- Develop more comprehensive provisions on inspection oversight and establish fines for non-compliance, including failure to act within legally prescribed deadlines, failure to follow the instructions of second-instance authorities and failure to issue decisions in the prescribed format.
- Revise both entity Laws to include clear provisions designating the authority responsible for carrying out inspection oversight of the implementation of the Law.

## Proposals for amending other regulations affecting access to information procedures

In FBiH, prolonged administrative disputes before certain cantonal courts – sometimes lasting up to four years – represent a major concern, along with the practice of not awarding costs even when the applicant prevails. Accordingly, the FBiH Law on Administrative Disputes should be amended to require courts, in the decision concluding the proceedings, to determine liability for costs and their amount. This would contribute to aligning the rights of parties initiating administrative disputes in FBiH with those at other levels of government, including BiH and RS.

In addition, the laws on administrative disputes of BiH, FBiH and the Brčko District should be amended to include provisions exempting parties from court costs when disputes are initiated due to “administrative silence” – a solution already provided for in the RS Law on Administrative Disputes. Where an authority

remains “silent” and fails to act on a request, imposing court fees on the applicant is unjustified, as such costs may discourage the pursuit of remedies.

## Survey on the implementation of the Freedom of Information Law

### About the survey

Transparency International BiH, in cooperation with the organisation Vaša prava BiH, conducted a survey under the project “Access for All – Strengthening Access to Information for Citizen Participation”, focusing on the implementation of the Freedom of Information Law by public authorities at various levels of government in BiH. In April 2024, both organisations submitted access to information requests to state, entity and cantonal ministries, as well as to institutions, agencies, services, directorates, institutes and funds at the BiH level, entity centres for social work and educational institutions.

The purpose of the survey was to obtain objective indicators of how public authorities apply the Freedom of Information Law in administrative procedures initiated by access to information requests. It examined the conduct of authorities in relation to both procedural and substantive requirements, identified key deficiencies in implementation and proposed practical recommendations for improvement. The survey also sought to evaluate the application of key legal mechanisms in access to information procedures, to assess the extent to which public authorities comply with statutory deadlines and other obligations, and to provide a factual basis for drawing conclusions on the overall implementation of the Law by these institutions.

### Survey methodology

Access to information requests were sent to 394 public authorities. The requests were formulated to provide sufficient detail on the nature and content of the requested information, enabling public authorities to locate the information with minimal effort. All authorities were asked to provide identical information:

- Information on total expenditures for gross salaries and allowances for 2022 and 2023.
- Information on employees with whom employment contracts were concluded during 2022 and 2023 (including name and surname, position, level of education and the corresponding basic salary).
- Copies of service contracts concluded in 2021, 2022 and 2023 (with visible names and surnames of contracted persons and remuneration amounts, while allowing for anonymisation of personal data).

The survey focused on the following indicators:

- Compliance by institutions with statutory deadlines for responding to requests.
- Whether institutions notified applicants of extensions to the response deadline.
- Whether decisions were issued in the legally prescribed form.
- Whether decisions contained all mandatory elements (introduction, operative part, explanation, instructions on legal remedies, etc.).
- Data relating to dismissed, granted and rejected requests; follow-up requests; complaints due to administrative silence; complaints against refusals; and initiated administrative disputes.

## Survey findings

### Compliance with statutory deadlines for responding to requests

Of the 394 access to information requests submitted to institutions across all levels of government in BiH, 223 were processed within the legally prescribed timeframe and resulted in a decision. This indicates that 56.5% of institutions comply with statutory deadlines. As the requests were addressed to authorities at different levels of government and with varying competences, notable differences can be observed. The highest level of compliance was recorded among agencies and other organisational structures operating at the BiH level (95.2%), as well as BiH ministries. These were followed by entity ministries, entity centres for social work, and cantonal ministries. Educational institutions, including secondary schools and faculties, showed the lowest level of compliance, with only 25.5% of decisions issued within the prescribed timeframe.

Number of requests submitted	Responses within the statutory deadline (15 days)
<b>394</b>	<b>223 (56.5%)</b>

#### BiH ministries

Number of requests submitted	Responses within the statutory deadline (15 days)
<b>9</b>	<b>8 (88.9%)</b>

#### Agencies and other bodies at the BiH level

Number of requests submitted	Responses within the statutory deadline (15 days)
<b>21</b>	<b>20 (95.2%)</b>

#### FBiH ministries

Number of requests submitted	Responses within the statutory deadline (15 days)
<b>16</b>	<b>12 (75%)</b>

#### RS ministries

Number of requests submitted	Responses within the statutory deadline (15 days)
<b>16</b>	<b>14 (87.5%)</b>

#### Cantonal ministries

Number of requests submitted	Responses within the statutory deadline (15 days)
<b>95</b>	<b>65 (68.4%)</b>

#### Centres for social work in RS and FBiH

Number of requests submitted	Responses within the statutory deadline (15 days)
<b>96</b>	<b>68 (70.8%)</b>

## Educational institutions (secondary schools and faculties)

Number of requests submitted	Responses within the statutory deadline (15 days)
<b>141</b>	<b>36 (25.5%)</b>

### Notifying applicants of inability to respond within the statutory deadline

The survey indicates that institutions most commonly notified applicants of their inability to comply with statutory deadlines by telephone, with some notifications also sent electronically. The reasons cited for delays included the absence of information officers, staff on sick or annual leave and the complexity of processing extensive documentation, particularly where anonymisation was required.

### Issuing decisions in the legally prescribed form and the content of decisions

Freedom of information legislation requires that decisions on access to information requests be issued either in the form of a formal decision or, in RS, as a letter, with clearly prescribed mandatory elements. The findings show full compliance among ministries at the BiH level, where all decisions were issued in the appropriate form. High compliance was also observed among state-level agencies and other organisational structures (95%), followed by ministries in FBiH (83.3%) and cantonal ministries (70.7%). However, significantly lower compliance rates were recorded among entity centres for social work (14.7%) and educational institutions (14.2%). Of particular concern is the situation in RS, where all responding ministries issued acts lacking the mandatory elements prescribed by the RS Freedom of Information Law. Despite the Law providing for the issuance of a “letter” rather than a formal decision, authorities frequently fail to ensure that such letters incorporate all mandatory elements.

#### Issuing decisions in the legally prescribed form

Centri za socijalni rad	Federalna ministarstva	Ministarstva Republike Srpske	Kantonalna ministarstva	Ministarstva na nivou BiH	Agencije, službe, direkcije, instituti, fondovi.	Obrazovne ustanove
<b>10 od 68 (14,7%)</b>	<b>10 od 12 (83,3%)</b>	<b>0 od 14 (0%)</b>	<b>46 od 65 (70,7%)</b>	<b>8 od 8 (100%)</b>	<b>19 od 20 (95%)</b>	<b>6 od 42 (14,2%)</b>

Statistics on dismissed, granted and rejected requests, complaints due to administrative silence, complaints against rejected requests, and initiated administrative disputes

Of the 394 public authorities to which access to information requests were submitted, 171 (43.4%) did not respond within the statutory 15-day deadline. This constitutes “administrative silence” and represents a breach of both the Freedom of Information Law and the Law on Administrative Procedure.

Number of complaints due to administrative silence

Centres for social work	FBiH ministries	RS ministries	Cantonal ministries	BiH ministries	Agencies, services, directorates, institutes, funds	Educational institutions
28	4	2	30	1	1	Pending

A total of 60 complaints (15.2%) were filed against decisions rejecting access to information, in whole or in part. The complaints largely concerned the improper application of the relevant provisions of the freedom of information legislation.

Number of complaints against refusals

Centres for social work	FBiH ministries	RS ministries	Cantonal ministries	BiH ministries	Agencies, services, directorates, institutes, funds	Educational institutions
23	4	10	22	0	1	Pending

As part of the survey, Transparency International in BiH initiated 12 administrative disputes against authorities that rejected the complaints. This indicates that complaints were upheld in approximately 80% of cases, while in 20% of cases authorities maintained that disclosure of the requested information was not in the public interest. The authorities involved in these disputes included three centres for social work from FBiH, three cantonal ministries from Herzegovina-Neretva Canton, two from Sarajevo Canton, one from Una-Sana Canton, and three ministries from RS.

Number of initiated administrative disputes before competent courts

Centres for social work	FBiH ministries	RS ministries	Cantonal ministries	BiH ministries	Agencies, services, directorates, institutes, funds	Educational institutions
3	0	3	6	0	0	Pending

Of the 394 requests submitted, public authorities approved 140 (35.5%) and granted access to the requested information. Agencies and other organisational structures at the state level performed best in approving access to information requests, with a rate of 90.4%, followed by state-level ministries, which approved requests and disclosed all requested information in 88.8% of procedures. FBiH ministries approved such requests in 50% of cases, whereas ministries in RS did so in only 25% of cases. Cantonal ministries approved 45.2% of requests, while entity centres for social work recorded a slightly higher

approval rate of 46.8%. By far, the lowest approval rate was observed among educational institutions – secondary schools and faculties – at just 9.2%.

#### Number of requests granted

Number of requests submitted	Number of requests granted (all information provided)
<b>394</b>	<b>140 (35.5 %)</b>

#### BiH ministries

Number of requests submitted	Requested information provided
<b>9</b>	<b>8 (88.8%)</b>

#### Agencies, services, directorates at the BiH level

Number of requests submitted	Requested information provided
<b>21</b>	<b>19 (90.4%)</b>

#### FBiH ministries

Number of requests submitted	Requested information provided
<b>16</b>	<b>8 (50%)</b>

#### RS ministries

Number of requests submitted	Requested information provided
<b>16</b>	<b>4 (25%)</b>

#### Cantonal Ministries

Number of requests submitted	Requested information provided
<b>95</b>	<b>43 (45.2%)</b>

#### Centres for social work in RS and FBiH

Number of requests submitted	Requested information provided
<b>96</b>	<b>45 (46.8%)</b>

#### Educational institutions (secondary schools and faculties)

Number of requests submitted	Requested information provided
<b>141</b>	<b>13 (9.2%)</b>

## Conclusion

The findings of this survey demonstrate that public authorities are generally acquainted with the Freedom of Information Laws, yet a fundamental problem lies in the inadequate application of their provisions. Frequent breaches include failure to comply with statutory deadlines, failure to issue decisions in the prescribed legal form and continued neglect of submitted requests. Moreover, arbitrary interpretation and application of the Law are evident, often resulting in unjustified refusals of access to information.

Furthermore, significant disparities are observed in the practices of different authorities. The survey shows that state-level authorities act within legally defined deadlines and approve the majority of access to information requests. Conversely, despite the fact that entity-level legislation has been in force for over two decades, transparency continues to be unsatisfactory, thereby creating legal uncertainty in access to information procedures.

Notwithstanding this, progress has been observed among entity and cantonal authorities in the formal enforcement of the Law and adherence to statutory deadlines. The number of complaints related to administrative silence shows a declining trend; however, it remains alarming that 43.4% of public authorities failing to meet legal deadlines face no accountability for such violations.

In terms of the substantive application of the Law, the findings indicate that public authorities are more inclined to deny access to information when requests concern copies of specific documents than when they relate to statistical data. The most common justification for refusal is the protection of personal data, with authorities maintaining that details such as an employee's name and surname, salary and allowance amounts, and copies of service contracts constitute third-party personal data and must therefore be withheld from disclosure.

In nearly all cases that resulted in appeals to second-instance authorities and the initiation of administrative disputes before competent courts, it is evident that public authorities refused access to information without conducting a public interest test, or without conducting it as required by law.

## Analysis of administrative disputes initiated by Transparency International in BiH (2019–2023)

### Case law and its role in ensuring freedom of information

Courts play a pivotal role in access to information procedures, as they are the only bodies authorised to issue final rulings, namely to review decisions issued by administrative authorities. While administrative disputes may not always constitute an efficient means of securing access to the requested information, they represent the sole legal avenue through which the right of access to information can ultimately be pursued, particularly in cases where authorities consistently fail to act or deny requests. In BiH, jurisdiction over such disputes varies depending on the level of government: the Court of BiH is competent at the state level, whereas district and cantonal courts exercise jurisdiction at the entity level. Between 2019 and 2023, Transparency International in BiH initiated 93 administrative disputes for breaches of the Freedom of Information Law.

#### Number of administrative disputes initiated (2019–2023)

2023	28 <sup>5</sup>
2022	22 <sup>6</sup>
2021	9 <sup>7</sup>
2020	19 <sup>8</sup>

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<sup>5</sup> ALAC Annual Report 2023 <https://ti-bih.org/wp-content/uploads/2024/03/ALAC-godisnji-izvjestaj-2023.pdf>

<sup>6</sup> ALAC Annual Report 2022 <https://ti-bih.org/wp-content/uploads/2023/03/ALAC-IZVJESTAJ-2022-Prelom-v9.pdf>

<sup>7</sup> ALAC Annual Report 2021 <https://ti-bih.org/wp-content/uploads/2022/04/ALAC-Godisnji-izvjestaj-2021.pdf>

<sup>8</sup> ALAC Annual Report 2020 <https://ti-bih.org/wp-content/uploads/2022/04/ALAC-Godisnji-izvjestaj-2020.pdf>

2019 15<sup>9</sup>

Total 93

In the same period, 93 administrative disputes were concluded, including both cases carried over from previous years and those initiated during the analysed period. Of these, 81 were resolved in favour of Transparency International BiH, nine claims were rejected, one claim was dismissed and two proceedings were discontinued after the defendant authorities issued decisions following the initiation of the dispute.

Year	Administrative disputes concluded	Administrative disputes concluded in favour of TI BiH
2023	19	17
2022	27	21
2021	10	8
2020	18	16
2019	19	19
Total	93	81

## Case law database

A case law database containing more than 200 court decisions has been published on the official website of Transparency International in BiH. This database<sup>10</sup> serves as a single integrated source of case law in proceedings before courts in BiH concerning the transparency of public authorities, companies and institutions. It was established as a result of sustained efforts by Transparency International in BiH to enhance transparency in the work of public authorities and to ensure adherence to the principles of the right of access to information, as safeguarded by freedom of information legislation in BiH.

The database contains summary descriptions of cases, details of the information requested from public authorities, data on the authorities' decisions, the date of initiation of the dispute, the date of its conclusion before the court and the court ruling demonstrating the outcome of the proceedings. It is a significant resource for legal practitioners, researchers, students, journalists and all individuals interested in this field. Additionally, it provides guidance to public authorities on the correct application of the freedom of information legislation. The inclusion of both first-instance and appellate decisions allows for comparison of judicial practice across different levels of the judiciary within a single case.

## Length of administrative disputes

The right to a trial within a reasonable time – meaning the right to have court proceedings conducted without undue delay – is a fundamental component of the right to a fair trial, protected under Article II(3)(e) of the BiH Constitution and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In analysing the duration of administrative disputes initiated by Transparency International in BiH for violations of freedom of information legislation, account was taken of all proceedings both initiated and

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<sup>9</sup> ALAC Annual Report 2019 <https://ti-bih.org/wp-content/uploads/2020/05/ALAC-GODISNJI-IZVJESTAJ-2019.pdf>

<sup>10</sup> Case law database <https://ti-bih.org/sudski-postupci/>

concluded over the last five years, as well as those initiated earlier but completed between 2019 and 2023. Overall, 49 proceedings were conducted before district courts in RS, 38 before cantonal courts in FBiH and six before the Court of BiH.

<b>Court</b>	<b>Average duration</b>
Court of BiH	1 year and 5 months
District Court in Banja Luka	8 months
District Court in Bijeljina	1 and a half months
District Court in Doboj	6 months
District Court in East Sarajevo	3 months
District Court in Prijedor	4 months
District Court in Trebinje	5 and a half months
Cantonal Court in Bihać	4 months
Cantonal Court in Goražde	4 months
Cantonal Court in Livno	5 and a half months
Cantonal Court in Mostar	2 years
Cantonal Court in Novi Travnik	1 and a half months
Cantonal Court in Sarajevo	2 years and 8 months
Cantonal Court in Tuzla	9 months
Cantonal Court in Zenica	4 months
Cantonal Court in Odžak	/
Cantonal Court in Široki Brijeg	/

Throughout the analysed period, approximately two-thirds of all disputes initiated by Transparency International in BiH were brought against public authorities within the jurisdiction of the District Court in Banja Luka (36 cases), followed by the Cantonal Court in Mostar (13 cases) and the Cantonal Court in Sarajevo (12 cases). Based on the number of disputes before the District Court in Banja Luka and other district courts in RS, it can be concluded that authorities in FBiH apply the Freedom of Information Law more effectively than those in RS. However, when examining the average duration of proceedings, the District Court in Banja Luka proves to be significantly more efficient in resolving disputes initiated by Transparency International in BiH compared to the Cantonal Courts in Sarajevo and Mostar. The average duration of proceedings is approximately eight months before the District Court in Banja Luka, around two

years before the Cantonal Court in Mostar and approximately two years and eight months before the Cantonal Court in Sarajevo.

Over the same period, six disputes were conducted before the Court of BiH, with an average duration of one year and five months. Notably, five of these disputes were brought against the public enterprise “Elektroprenos-Elektroprijenos BiH” a.d. Banja Luka, and all five were decided in favour of Transparency International in BiH.

The shortest duration of an individual dispute concerning a violation of the right of access to information was recorded before the Cantonal Court in Novi Travnik, which rendered a decision within one month in a case brought by Transparency International in BiH against the Municipality of Bugojno in 2019.<sup>11</sup> By contrast, the most prolonged dispute initiated by Transparency International in BiH for violations of the Freedom of Information Law took place before the Cantonal Court in Sarajevo. The claim against the Municipality of Novi Grad Sarajevo was filed in January 2019<sup>12</sup> following the refusal to grant access to the requested information. The Cantonal Court in Sarajevo failed to proceed with the case for several years, resulting in an appeal to the Constitutional Court of BiH, alleging a breach of the right to a trial within a reasonable time, which forms part of the right to a fair trial under the BiH Constitution and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitutional Court of BiH upheld the appeal and found a violation of the right to a fair trial.<sup>13</sup> The proceedings before the Cantonal Court in Sarajevo lasted four years, and the Constitutional Court of BiH found no valid justification for such a prolonged duration. Transparency International in BiH was awarded compensation of BAM 400 for the Cantonal Court in Sarajevo’s failure to adjudicate within a reasonable time.

## Costs of administrative disputes

Costs in administrative disputes refer to expenses incurred in connection with the conduct of the dispute, from its initiation to its conclusion. Judicial practice in awarding costs in administrative disputes remains inconsistent.

As a rule, courts in FBiH do not decide on costs of administrative disputes in judgments concluding proceedings. The reasoning provided is that such judgments do not resolve the administrative matter on the merits; rather, they uphold the plaintiff’s claim, annul the contested decision of the defendant authority and remit the case for reconsideration. This approach is explained by the fact that the FBiH Law on Administrative Disputes does not regulate the awarding of costs in such proceedings. Consequently, courts apply the relevant provisions of the Law on Civil Procedure *mutatis mutandis*, in particular Article 397(3), which prescribes that when a contested decision is annulled and the case returned for reconsideration, the decision on costs relating to the legal remedy is deferred until the final decision. Accordingly, the costs of the administrative dispute are not determined at this stage but are addressed once the party’s request in the administrative procedure, or the administrative dispute itself, is finally resolved.

Owing to this practice, a party that has prevailed in an administrative dispute, and where the defendant authority subsequently complies with the court’s judgment and grants access to all requested information in the administrative procedure, must reapply to the court by submitting a request for a supplementary ruling in order to recover litigation costs.

In a relevant example, the Cantonal Court in Zenica, following a lawsuit brought by Transparency International in BiH against the Zenica-Doboj Canton Assembly in an access to information case, issued a supplementary ruling upon the plaintiff’s request for recovery of litigation costs.<sup>14</sup> The ruling states: “Where

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<sup>11</sup> Judgment of the Cantonal Court in Novi Travnik No. 06 0 U 012624 19 U of 14 March 2019

<sup>12</sup> Judgment of the Cantonal Court in Sarajevo No. 09 0 U 033328 19 U of 27 February 2023

<sup>13</sup> Decision of the Constitutional Court of BiH No. AP-627/23 of 18 April 2024

<sup>14</sup> Supplementary Ruling of the Cantonal Court in Zenica No. 04 0 U 013442 22 U of 8 August 2022

a party's request is granted in the administrative procedure, the administrative authority is obliged to determine the costs of that procedure in accordance with the Law on Administrative Procedure. Conversely, where court-related costs have arisen, the party may seek a supplementary ruling from the court, as the administrative matter has been conclusively resolved in both formal and substantive legal terms, while no final decision has been rendered regarding the costs of the court proceedings. Such a request may be submitted, in cases where the party has been successful in the administrative procedure, to the court that handled the case at any stage of the proceedings".

In contrast, in a case involving the same factual circumstances – after the plaintiff's claim had been upheld and the defendant complied with the judgment in the case brought by Transparency International in BiH against the Cantonal Court in Sarajevo – the competent court, the Cantonal Court in Goražde,<sup>15</sup> rejected the plaintiff's request for recovery of the costs of the administrative dispute. The court justified its decision by stating that the plaintiff had succeeded in the administrative procedure on the basis of a final decision, and, invoking Article 397 of the Civil Procedure Code, held that the determination of costs falls within the competence of the administrative authority that issued the final decision. It further maintained that the court lacked jurisdiction to decide on the plaintiff's request for recovery of costs.

Following this, Transparency International in BiH submitted a request for extraordinary review to the Supreme Court of FBiH, which granted the request.<sup>16</sup> The Supreme Court found that the decision of the first-instance court was unlawful and erroneous, noting that although the request for access to information had been satisfied in the repeated administrative procedure by a final decision of the defendant authority, the plaintiff's request in this case concerned the costs of the administrative dispute, not the costs of the administrative procedure. The Court concluded that the determination of such costs falls within the jurisdiction of the first-instance court before which those costs were incurred.

As a general rule, courts in RS rule on the costs of proceedings within the same decision by which they adjudicate the claim. This practice is based on Articles 5 and 6 of the Law Amending the Law on Administrative Disputes ("Official Gazette of RS" No. 63/11), which provide: "Costs in administrative disputes are expenses incurred in relation to an administrative dispute, from its initiation to its conclusion. [...] In the decision concluding the administrative dispute, the court shall determine liability for costs and their amount."

Similarly, the Court of BiH rules on the costs of an administrative dispute in the judgment adjudicating the case. In one such instance, the court upheld the claim brought by Transparency International BiH, annulled the decision<sup>17</sup> of the defendant authority "Elektroprenos-Elektroprijenos BiH" a.d. Banja Luka and ordered the defendant to reimburse the plaintiff for the costs of the administrative dispute, stating: "The plaintiff is entitled to recovery of the costs incurred in this administrative dispute, as the claim was upheld and the contested decision annulled, in accordance with Article 61 of the BiH Law on Administrative Disputes".

## Implementation of court rulings by defendant authorities

Even where the plaintiff prevails in an administrative dispute and the court annuls the contested act as unlawful and erroneous, instructing the defendant public authority to issue a new administrative act in accordance with the court's reasoning, this does not guarantee compliance by the authority.

During the analysed period, in proceedings where judgments were issued in its favour, Transparency International in BiH had to initiate 17 further lawsuits due to delays by public authorities in acting upon court judgments or due to their failure to adhere to the court's legal reasoning in subsequent decisions. In several

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<sup>15</sup> Decision of the Cantonal Court in Goražde No. 05 0 U 001168 23 U of 14 November 2023

<sup>16</sup> Judgment of the Supreme Court of FBiH No. 05 0 U 001168 23 U of 18 January 2024

<sup>17</sup> Judgment of the Court of BiH No. S1 3 U 033225 19 U of 4 November 2022

instances, Transparency International in BiH initiated more than two lawsuits for failure to grant access to the requested information. One such example is the case against the RS Ministry of Transport and Communications, in which access was sought to a copy of the *“Concession Agreement for the construction of the Banja Luka–Prijedor motorway”*. Transparency International in BiH has been successful in three court proceedings against the Ministry, while a fourth dispute remains pending.

In the observed period, one case resulted in the initiation of misdemeanour proceedings by the acting court due to the defendant’s failure to comply with the court’s findings and undue delay in the proceedings. In this case, the District Court in Trebinje<sup>18</sup> upheld the claim filed by Transparency International in BiH and instructed the defendant, Subsidiary Company “Rudnik i termoelektrana” a.d. Gacko, to act upon the request and issue an appropriate decision. Although the defendant formally complied by issuing a decision granting access, the information disclosed did not correspond to the information requested. An appeal was filed against this decision, and subsequently, a request for the issuance of an administrative act was submitted due to the failure of the second-instance authority to rule on the appeal. As no action was taken by the defendant, Transparency International in BiH initiated another administrative dispute. The District Court in Trebinje once again ruled in favour<sup>19</sup> of Transparency International in BiH and ordered the defendant to issue an appropriate decision. As the defendant failed to provide the requested information and continued to delay the proceedings while disregarding the court’s instructions, the court requested the initiation of misdemeanour proceedings against Subsidiary Company “Rudnik i termoelektrana” a.d. Gacko, both as a legal entity and against the responsible officer. The competent administrative inspectorate acted upon this request and initiated misdemeanour proceedings.

In several instances, following a court judgment and the failure by the authorities to issue a decision within the legally prescribed deadline, Transparency International in BiH was forced to reapply to the administrative authority with a request for the issuance of an administrative act pursuant to the court judgment. Instead of complying, the authority often provided various responses aimed at avoiding the disclosure of the requested information. Thus, in 2021, an administrative dispute was initiated against JP BH POŠTA d.o.o. Sarajevo, and the Cantonal Court in Sarajevo rendered judgment<sup>20</sup> upholding the claim and annulling the contested decision. However, instead of issuing a new decision in compliance with the court judgment and granting access to the requested information, the authority requested a statement from the applicant, stating: *“In view of the passage of time, as well as Judgment No. 09 0 U 039898 21 U of 13 August 2024 issued by the Cantonal Court in Sarajevo in the administrative dispute initiated upon your claim for annulment of the decision..., you are requested to inform us, as soon as possible, whether you are still interested in the information requested under Act No. ...”*

In light of the above, it appears that public authorities, rather than complying with court judgments in accordance with the legal reasoning set out therein, frequently seek ways to avoid their implementation. This is reflected in practices such as failing to comply with court judgments altogether, providing information that differs from that originally requested, granting only partial access or requesting that the plaintiff confirm whether they remain interested in the information. As a consequence, Transparency International BiH is frequently required to pursue lengthy legal proceedings spanning several years in order to obtain access to information, and even after a successful outcome before the court, there is no guarantee that access to the information will ultimately be granted.

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<sup>18</sup> Judgment of the District Court in Trebinje No. 15 0 U 004077 18 U of 29 January 2019

<sup>19</sup> Judgment of the District Court in Trebinje No. 15 0 004351 19 U of 20 September 2019

<sup>20</sup> Judgment of the Cantonal Court in Sarajevo No. 09 0 U 039898 21 U of 13 August 2024

## Divergent interpretation of Article 14 of the RS Freedom of Information Law

While case law is not a formal source of law, consistency in judicial decision-making is crucial for maintaining legal certainty. Divergent case law exists where courts render different decisions based on identical or substantially similar factual and legal circumstances. While uneven case law is most commonly observed between different courts, this analysis highlights a specific issue encountered by Transparency International in BiH – namely, inconsistent practice within the administrative department of the same court regarding access to information cases.

Article 14 of the RS Freedom of Information Law provides that, where a request for access to information is granted, the applicant must be notified of the possibility of accessing the information in person at the premises of the relevant public authority, informed about the availability of duplication and the associated costs, and/or provided with a copy of the requested information where it is available free of charge.

In two separate instances, Transparency International in BiH sought access to different sets of information from the RS Commission for Concessions, while expressly requesting that the information be delivered by post and that the applicable duplication costs be calculated accordingly. Although the Commission formally approved access to the information, it restricted such access to on-site review, failing to forward the requested materials to the indicated postal address. Consequently, Transparency International in BiH initiated administrative disputes before the District Court in Banja Luka in both cases. Notably, the court issued two divergent decisions when ruling on these claims.

In the first case involving the RS Commission for Concessions, Transparency International in BiH sought access to certain information related to “SE Trebinje 1”, which the authority refused to provide. Upon review, the District Court in Banja Luka upheld the claim and annulled the contested act.<sup>21</sup> However, instead of adopting a new decision in compliance with the court’s judgment, the public authority issued an act titled “response to the appeal”, informing the plaintiff that it could access the file through on-site review. Transparency International in BiH lodged an appeal against this act, which was rejected by the public authority, prompting the initiation of a second administrative dispute. In deciding the second claim, the District Court again ruled in favour of the plaintiff,<sup>22</sup> reasoning that: “By the contested act, the defendant effectively granted the plaintiff access to information in the manner prescribed under Article 14(2)(a) of the Freedom of Information Law (i.e. on-site review at the premises of the public authority), which represents only one form of access. However, the defendant failed to provide access in the manner requested by the plaintiff and as provided for under Article 14(2)(b) of the same Law. Therefore, the plaintiff’s claim is well-founded, as the contested act was adopted in violation of Article 14(2)(b), rendering it unlawful and erroneous”.

In the second case, Transparency International in BiH sought information from the Commission for Concessions relating to the concession for the exploration and exploitation of brown coal at the Maslovare and Hrvaćani sites in the municipality of Kotor Varoš. While the request specified delivery by post, the Commission granted access exclusively by allowing on-site review. As the requested form of access was not provided, Transparency International in BiH initiated an administrative dispute before the District Court in Banja Luka. However, the court dismissed the claim,<sup>23</sup> reasoning that: “The defendant informed the plaintiff that access to the requested information could be exercised at its premises on working days between 10:00 and 12:00, with prior notice at least two days in advance. It should be noted that both the plaintiff and the defendant are seated in Banja Luka, meaning that no additional costs are incurred in accessing the information, which is a relevant factor in assessing the legality of the manner of access

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<sup>21</sup> Judgment of the District Court in Banja Luka No. 11 0 U 033711 23 of 8 September 2023

<sup>22</sup> Judgment of the District Court in Banja Luka No. 11 0 U 035607 23 of 14 June 2024

<sup>23</sup> Judgment of the District Court in Banja Luka No. 11 0 U 035907 24 U of 18 June 2024

granted. Furthermore, the Law does not prescribe an obligation for the authority to act exclusively in accordance with the manner requested by the party; rather, Article 14 provides the authority with the right to grant access at its premises, which has been done in this case.”

Given the above, divergent interpretations of the Freedom of Information Law, including those within the same court, create uncertainty for public authorities in handling citizens' requests. Moreover, inconsistent judicial practice contributes to legal uncertainty and may deter applicants from exercising their right of access to information, as authorities may resort to selective or inconsistent application of the law.

## Challenging a decision that has not been issued in the form of an administrative act

Pursuant to Article 14 of the RS Freedom of Information Law, where access to information is granted, in whole or in part, the competent public authority is required to notify the applicant by letter. In the absence of an explicit obligation to issue a formal decision, administrative authorities commonly utilise this provision to respond through various forms of correspondence, which in certain cases has resulted in the denial of the applicant's right to pursue legal remedies.

In 2021, Transparency International in BiH initiated an administrative dispute against an act of the Public Institution “Public Library of Pale” following the refusal to grant access to certain information. The District Court in East Sarajevo, acting in this case, rendered a decision<sup>24</sup> dismissing the claim, explaining that it had been filed against an act titled as a “response to the appeal”, which does not qualify as a final administrative act and thus cannot be challenged in administrative dispute proceedings. Transparency International in BiH then filed a request for extraordinary review with the RS Supreme Court, which upheld the request, set aside the decision of the District Court in East Sarajevo and referred the case back for reconsideration.

In the reasoning of its judgment,<sup>25</sup> the RS Supreme Court held: “The fact that the defendant formulated the contested act as a “response to the appeal” and ignored the plaintiff's request for the second-instance decision to be delivered in the prescribed form and by post to the indicated address, cannot in any manner justify denying the plaintiff – who received the contested act electronically on 16 November 2021, in accordance with Article 71a of the Law on General Administrative Procedure (“Official Gazette of Republika Srpska”, Nos. 13/02, 87/07, 50/10 and 66/18) – the right to legal remedies. Such denial occurred in this case and is inconsistent with Article 7 of the Law on Administrative Disputes, as well as Article 25, paragraphs 2 and 3 of that Law.”

## Conclusion

The analysis reveals that in 87% of cases, the courts ruled in favour of Transparency International in BiH, thereby affirming that public authorities failed to correctly apply the relevant regulations on access to information. However, as evidenced by the proceedings before the Cantonal Court in Sarajevo, administrative disputes may extend up to four years and incur substantial costs. The recovery of such costs can be complicated when a court refuses to award them, forcing the plaintiff to seek redress before the Supreme Court.

A judgment in favour of the plaintiff does not necessarily guarantee compliance by the defendant public authority. The examples outlined above illustrate that public authorities may fail to implement judicial

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<sup>24</sup> Decision of the District Court in East Sarajevo No. 14 0 U 005208 21 U of 18 January 2022

<sup>25</sup> Judgment of the Supreme Court of the Republic of Srpska No. 14 0 U 005208 22 Uvp of 22 November 2023

decisions or disregard the court's guidance – either by providing information other than that requested or by obstructing the process. For instance, following a judgment, an authority may further delay the process by requesting the plaintiff to re-confirm their interest in the information.

The protracted nature of these procedures, the financial burden of litigation and the frequent failure of public authorities to enforce court decisions are key factors that deter applicants from pursuing legal remedies. In this light, the case law compiled by Transparency International in BiH is of particular significance; it functions both as a corrective mechanism addressing the lack of transparency within public authorities and as an educational resource for lawyers, researchers, students, journalists and all citizens interested in judicial practice in this field.

## Analysis of the work of the Institution of Human Rights Ombudsman of BiH in access to information cases

### The Importance of the Institution of Human Rights Ombudsman of BiH

Access to information is a fundamental element of a democratic society and a vital mechanism for public oversight of state authorities. The right to freedom of information is a basic individual right, rooted in the principle that information is a public good which must be accessible to the citizenry, and that public authorities are obliged to provide access to the information they hold.

Ensuring freedom of information is essential for a functioning democracy. It remains the most effective and direct means for the public to gain insight into the work of public authorities and to exercise oversight over their conduct. Freedom of information is an individual right based on the principle that information is a public good that must be accessible in a democratic society, requiring authorities at all levels to ensure transparency and provide comprehensive insight into their operations to inform citizens and enable public scrutiny. BiH and all levels of government are under an obligation to ensure free access to information.

Pursuant to the legislation governing its mandate and the applicable Freedom of Information Laws in BiH, the Institution of Human Rights Ombudsman of BiH exercises broad competences. These include initiating *ex officio* investigations as well as preparing and issuing guidelines and general recommendations concerning the application and implementation of legislation in this field.

The European Commission's 2022 Report on BiH, consistent with earlier reports, indicates that recommendations from independent institutions, such as the Human Rights Ombudsman, suffer from poor implementation, thereby undermining citizens' right to good administration. The legislative framework for the right to access information remains fragmented and misaligned with international and European standards, while provisions on data protection and access to information continue to be interpreted in a manner that favours private over public interests. Consequently, the enjoyment of the right to access public information remains inconsistent – a conclusion reiterated in the 2023 Report.

The Institution of Human Rights Ombudsman of BiH highlights the following key deficiencies in the current legislative framework:

- the absence of provisions on proactive transparency by public authorities;
- the lack of a supervisory body that would perform educational, promotional and preventive roles alongside its second-instance functions;

- the lack of continuous and mandatory training for public officials responsible for implementing these regulations;
- the absence of provisions relating to open data and the re-use of public sector information;
- the lack of centralised information portals;
- unclear mandates for inspection bodies, including the absence of provisions on inspection oversight;
- the lack of penal provisions in FBiH and RS legislation;
- the fact that RS legislation has remained unchanged since 2001 and does not require public authorities to issue a formal administrative act in response to a request.

The Institution considers it particularly problematic that legislative amendments in the field of access to information at the BiH level have not been mirrored in FBiH and RS. Such inconsistencies across different levels of government in BiH may give rise to legal uncertainty.

## Annual reports and statistics of the Ombudsman Institution 2019–2023

This analysis examines complaints submitted to the Institution of the Human Rights Ombudsman of BiH between 2019 and 2023. According to the Institution's annual reports, 1,393 complaints alleging violations of the right of access to information were lodged during this period, resulting in a total of 359 recommendations issued by the Institution.

### Year 2019

275 complaints

57 recommendations

In 2019, the primary grounds for lodging complaints with the Institution included the failure to issue decisions within statutory deadlines, the inability to exercise legal remedies and refusals to grant access to information deemed by applicants to be in the public interest. The recommendations issued specifically addressed administrative silence – namely, the failure to act upon requests for access to information and appeals against first-instance decisions – as well as the omission of instructions on legal remedies in issued decisions, the misapplication of exemptions where disclosure did not constitute a legally recognised exemption, the failure to conduct or properly implement the public interest test, and the failure to appoint information officers.

### Year 2020

231 complaints

82 recommendations

In 2020, the majority of complaints were categorised as 'other' (185), while 22 complaints concerned the failure to adopt decisions within statutory deadlines, 20 related to refusals to grant access to information and four pertained to the right to a two-instance procedure. The Institution's report highlighted positive instances of compliance following its intervention and noted the constructive practice of public authorities consulting the Institution when encountering uncertainties in the application of relevant regulations.

### Year 2021

304 complaints

74 recommendations

In 2021, the Institution received 304 complaints and issued 74 recommendations. The majority of complaints concerned the failure of public authorities to decide on access to information requests within statutory deadlines, while a portion of the complaints related to dissatisfaction with the substantive merits of the decisions rendered.

2022

308 complaints

76 recommendations

In 2022, the Institution of the Human Rights Ombudsman of BiH registered 308 complaints regarding violations of the right of access to information and issued 76 recommendations. The most prevalent reasons for lodging complaints included the failure to render decisions within statutory deadlines, issues concerning the right to a two-instance procedure, the inconsistent or incorrect application of exemptions and the failure to conduct, or the inadequate execution of, the public interest test.

Year 2023

275 complaints

70 recommendations

In 2023, the Institution recorded 275 complaints and issued 70 recommendations. Most complaints related to the failure of public authorities to decide on requests within prescribed timeframes, including cases where decisions were adopted after the expiry of those deadlines (92), alongside refusals to grant access to information (27). Further complaints concerned the misapplication of exemptions, deficiencies in the application of the public interest test and violations of the right to a two-instance procedure.

## Analysis of recommendations

In its reports, the Ombudsman Institution has identified several key issues regarding the exercise of the right of access to information and the processing of complaints, relating to:

- legislation;
- institutional capacities and mechanisms;
- applicants;
- shortcomings in the implementation of the freedom of information legislation at all levels of government.

## Legislation

According to the Ombudspersons of BiH, the second-instance body appointed by the BiH Council of Ministers, as an executive authority, cannot be deemed independent. At the level of FBIH and RS, no

changes to the existing legislation have been initiated, and the deficiencies in the conduct of public authorities identified by the Ombudspersons of BiH have consequently persisted over a prolonged period.

## Institutional capacities and mechanisms

In RS, challenges have emerged concerning the mandate and competences of the Administrative Inspection regarding the implementation of the Freedom of Information Law. In one instance, the Administrative Inspection within the RS Ministry of Administration and Local Self-Government maintained that it lacked the competence to conduct inspection oversight, stating that “the supervision of the application of the Freedom of Information Law is not assigned to the exclusive competence of the Administrative Inspection, and, based on the established facts, there are no grounds for undertaking actions and measures within its competence”. The Ombudspersons cited Article 10 of the RS Law on Administrative Inspection and relevant case law, concluding that the Administrative Inspection is indeed competent to act and to impose measures in accordance with that Law. (W-BL-05-155/22, P-171/22 – Recommendation not implemented)

Over the years, the Ombudsman Institution has addressed multiple cases where cooperation with competent authorities was not achieved, even after a recommendation regarding non-cooperation had been issued. This contravenes the provisions of the Law on the Human Rights Ombudsman of BiH, which require all authorities to cooperate and provide adequate assistance during the execution of the Institution’s activities, particularly in the investigation of human rights violations. (Ž-SA-05-654/21, Ž-BL-05-689/21, Ž-BL-05-508/21, Ž-BL-05-655/21, Ž-BL-05-876/21, Ž-BL-05-811/21, Ž-MO-05-142/21)

The Ombudspersons of BiH also considered a case relating to the actions of the Independent Election and Review Board of Zenica-Doboj Canton following a request for access to information concerning the appointment procedure for the Police Commissioner of Zenica-Doboj Canton. The Independent Board failed to respond to the request, asserting that it does not constitute a public authority within the scope of the FBiH Freedom of Information Law and is not competent to issue administrative acts. Although the investigation confirmed a violation of the right of access to information and resulted in a recommendation requiring the Independent Board to reconsider the request and adopt a decision in accordance with the Ombudsperson’s opinion and the FBiH Freedom of Information Law, the Board maintained its original position. (Ž-BL-05-691/21, P-249/21 of 27.10.2021 – Recommendation not implemented)

A similar example is the case of “Elektroprenos-Elektroprijenos” Bosne i Hercegovine a.d. Banja Luka, which refused to disclose information regarding the director’s salary, citing the protection of personal data. This body maintains that it does not fall within the category of a public authority or a budget beneficiary. (Ž-SA-05-534/21, P-30/22 of 11.01.2022 – Recommendation not implemented)

## Applicants

In its reports, the Institution highlighted that public authorities encounter difficulties in processing requests for access to information, particularly when such requests are insufficiently precise or overly broad, thereby hindering the effective adjudication of individual cases. Furthermore, requests are frequently not drafted in accordance with formal requirements and lack the legally prescribed elements necessary for proper decision-making.

The Institution emphasised that applicants are required, in the exercise of their rights, to utilise ordinary legal remedies and to remain actively engaged in the procedure until its conclusion. In a notable number of cases examined by the Institution, applicants failed to maintain participation after the competent authority

had submitted its statement. The failure to provide requested comments or to respond to the authority's submission suggests that the appellant no longer has an interest in pursuing the case. (Ž-BL-05-186/23; Ž-BR-05-113/23; Ž-BR-05-114/23)

The Ombudspersons of BiH expressed the view that the format in which a request for access to information is submitted – whether as a PDF attachment or within the body of an email – is entirely immaterial and cannot justify a failure to consider the request. They further stated that email submissions satisfy the requirement of “written form” and that the Law does not impose an obligation for such requests to be hand-signed. (Ž-SA-05-358/23, Recommendation No. P-193/23 of 8 August 2023 – Recommendation implemented)

The Institution maintains that public authorities are required to interpret the Freedom of Information Law in a manner that facilitates and encourages disclosure.

## Shortcomings in the implementation of the freedom of information legislation at all levels of government

Access to information requires public authorities to make information available to the public, thereby facilitating transparency and enabling public oversight of their activities. The Ombudspersons emphasise that a systemic approach – introducing a proactive disclosure obligation for public authorities – is both more economical and more transparent than a system reliant on individual requests submitted by natural and legal persons through complex procedures.

In this regard, despite certain shortcomings, it is a positive development that the new state-level Law mandates the proactive disclosure of information by BiH institutions. The Law requires BiH institutions to regularly publish and update information within their remit on their websites or via other appropriate channels within 15 days of its creation. Until this issue is fully and effectively regulated at all levels of government in BiH, the following section highlights specific issues identified in the Institution's reports during the relevant period.

The Institution's reports indicate that the most prevalent grounds for complaints from natural and legal persons in this area is the failure of public authorities to render decisions within statutory deadlines. Legislation governing access to information at all levels requires public authorities to adjudicate on requests within 15 days of receipt.

Certain positive practices have been observed, whereby public authorities comply with their obligations following the initial intervention of the Ombudsman Institution by processing the request and issuing a decision. Conversely, in other instances, the fulfilment of legal obligations occurs only after the Institution issues a formal recommendation directing such action. (Ž-SA-05-4/23; Ž-SA-05-405/23; Ž-BL-05-7/23; Ž-LI-05-13/22; Ž-SA-05-177/23; Ž-SA-05-345/23; Ž-LI-05-10/23; Ž-BL-05-14/23; Ž-BL-05-44/23; Ž-SA-05-1/23; Ž-SA-05-38/23, Recommendation No. P-23/23 of 7 February 2023 – Recommendation implemented; Ž-BR-05-6/23, Recommendation No. 71/23 of 28 February 2023 – Recommendation implemented; Ž-BL-05-292/23, Recommendation No. P-206/23 of 7 July 2023 – Recommendation implemented; Ž-BL-05-109/23, Recommendation No. P-115/23 of 3 May 2023)

The Freedom of Information Law at the level of BiH institutions and the corresponding law in FBiH establish an obligation for public authorities to adopt a formal decision – as an administrative act – on requests for access to information, incorporating all legally prescribed elements. This differs from the legal framework in RS. Nevertheless, in practice, public authorities frequently issue responses in the form of correspondence rather than formal decisions, as the RS Freedom of Information Law does not mandate the issuance of a formal decision. This legislative gap undermines a core principle of administrative procedure – the two-

instance system – as confirmed by the judgment of the District Court in Banja Luka, No. 11 0 U 014027 14 U of 18 February 2015.

## Problems in the implementation of recommendations

Challenges in implementing the recommendations of the Institution of the Human Rights Ombudsman arise from both inadequate legislative provisions and the conduct of responsible authorities, which frequently lack sufficient awareness regarding the importance of human rights protection and the right of access to information. The current legal framework does not provide the Ombudsman Institution with adequate instruments to ensure the effective enforcement of its recommendations. Furthermore, there is no clearly established framework for the accountability of authorities or officials who fail to comply with issued recommendations.

The Law on the Human Rights Ombudsman of BiH lacks provisions that would enable the Institution to act more efficiently in ensuring the enforcement of its recommendations. Under Article 35, paragraph 8 of the Institution's Rules of Procedure (2011), a case may be closed either where a recommendation has been accepted or where it has been rejected but the Ombudsman Institution has undertaken further actions in accordance with the law. Furthermore, Article 32, paragraph 2 of the Law stipulates that the Institution may inform the competent minister or the highest governmental bodies of the progress of a case and the recommendations issued. If no resolution is reached in a case where a favourable outcome was possible, the matter is to be included in the annual or special report, specifically naming the authorities or officials concerned.

Given the complex administrative structure of BiH, this mechanism should, in principle, ensure compliance with the recommendations of the Ombudsman Institution and the disclosure of requested information. However, in practice, this is not achieved due to the absence of a clearly defined, effective, and enforceable accountability framework for officials and management within public authorities.

In countries neighbouring BiH, the competences of human rights protection institutions are generally more comprehensively defined, enabling more effective action in cases of non-compliance with legal obligations and failure to implement recommendations. For example, pursuant to Article 27, paragraph 1 of the Law on the Ombudsman of the Republic of Croatia, public authorities are required to inform the Ombudsman, within a deadline determined by the Ombudsman, of measures taken in response to recommendations or proposals. Paragraph 5 of the same Article provides that the Ombudsman may propose to the head of a public authority the initiation of appropriate proceedings against a person whose negligent actions have resulted in violations of constitutional or legal rights, or who has failed to take appropriate steps to mitigate or remedy harm, following the Ombudsman's proposal. The head of the authority is obliged to notify the Ombudsman of the initiation of proceedings for a breach of official duty within 30 days from receipt of the proposal.

Likewise, Article 44, paragraph 1 of the Law on the Protector of Human Rights and Freedoms of Montenegro provides that the Protector may submit an initiative to initiate disciplinary proceedings or proceedings for dismissal against persons whose conduct or failure to act has led to violations of human rights and freedoms.

The Law on the Protector of Citizens in the Republic of Serbia, under Article 37, paragraph 4, provides that a recommendation for dismissal of an official, or an initiative to initiate disciplinary proceedings against an employee of an administrative body where irregularities or unlawful conduct have been identified, forms an integral part of the case report. Paragraph 2 further provides the Protector with the authority to request the initiation of misdemeanour proceedings for offences defined by that law and the Law on the Prohibition of Discrimination.

Article 7(2)(j) of the Law on the Prohibition of Discrimination in BiH stipulates that the Institution of Human Rights Ombudsman of BiH has the authority to initiate and participate in proceedings for protection against discrimination in relation to violations defined by that law. This type of competence is not granted to the Ombudsman Institution under legislation regulating access to information at any level in BiH.

In addition, the Law on the Human Rights Ombudsman of BiH, under Chapter VIII – The Responsibility of Authorities and Officials, provides the Ombudsman with the authority to act in cases of unlawful behaviour. Article 31, paragraph 3 allows the Ombudsperson to initiate disciplinary proceedings against a responsible official in lieu of the competent authority or, where necessary, to initiate criminal proceedings before a court. However, it remains unknown whether the Institution of Human Rights Ombudsman of BiH has applied this authority in practice, nor whether the powers provided under Chapter VIII may be exercised exclusively during the investigation stage, as indicated in Article 29, rather than in the implementation phase of recommendations.

It appears that the legal frameworks in neighbouring countries provide more comprehensive solutions in cases of non-implementation of recommendations, although their practical application remains uncertain. Going forward, it would be necessary to more precisely regulate the responsibilities of competent authorities and responsible officials. At the same time, the Institution should be equipped with more robust legal mechanisms to respond to non-compliance with its recommendations. Without the effective implementation of recommendations issued in cases concerning the denial of access to information, the right to access information cannot be considered fully realised.

## General Conclusions of the Analysis of the Right of Access to Information in BiH

The general conclusions of the Analysis of the Right of Access to Information in BiH reveal substantial weaknesses in both the legal framework and the practical implementation of this right across all levels of government. These conclusions are derived from an examination of legal regulations, the conduct of inspection bodies and other institutions tasked with oversight and enforcement, and an analysis of case law.

The Freedom of Information Law at the BiH state level exhibits significant shortcomings that hinder its effective application. Notable ambiguities and inconsistencies in terminology have been identified, particularly regarding provisions governing the proportionality and public interest tests. Furthermore, statutory deadlines for responding to requests are not harmonised with the BiH Law on Administrative Procedure. The Law also fails to prescribe sanctions for delays and procedural irregularities, thereby undermining institutional accountability.

Inspection oversight regarding the implementation of the Law remains limited, with few identified irregularities and a negligible number of initiated misdemeanour proceedings. Over a five-year period, only three out of 35 monitored cases (8.5%) resulted in the application of infringement measures. The failure to initiate misdemeanour proceedings for breaches of the Law indicates that liability is not effectively enforced; this fosters a perception of weak oversight and renders penal provisions a “dead letter”.

Entity-level Freedom of Information Laws also contain notable deficiencies, particularly concerning proactive transparency. Current entity legislation lacks binding obligations for proactive disclosure, contrary to international transparency standards. In RS, the use of the term “letter” to denote decisions on requests presents a further challenge, as it complicates consistent legal interpretation and application. Moreover, the absence of provisions for inspection oversight in RS creates legal gaps and impedes the enforcement of the Law.

Statutory deadlines for processing requests are frequently exceeded, and decisions are not consistently aligned with legal requirements. Some public authorities repeatedly ignore requests or apply the Law arbitrarily, often resulting in the refusal of access. This issue is particularly pronounced at the entity level, where transparency and legal certainty are lower than at the level of BiH institutions, which generally comply with deadlines and are more inclined to grant access. It is of particular concern that 43.4% of public authorities that exceeded deadlines faced no consequences, highlighting deficiencies in the enforcement of accountability mechanisms.

Transparency International in BiH records a high success rate in judicial proceedings (87% of claims upheld), confirming that public authorities frequently misapply the Law. However, court proceedings are protracted (in some instances lasting up to four years) and involve significant costs, which discourages applicants from seeking judicial redress. Even when courts rule in favour of applicants, public authorities may delay or fail to fully implement decisions, further deterring applicants from asserting their rights.

The Institution of Human Rights Ombudsman of BiH registered a substantial number of complaints regarding violations of the right of access to information (1,393 complaints between 2019 and 2023), demonstrating the scale of the issue. However, only 359 recommendations were issued in response to these complaints, which may indicate the Institution's limited impact on improving the practices of public authorities.

Overall, the analysis emphasises the need to further develop legal frameworks and ensure their consistent application, alongside strengthening the accountability of public authorities for violations of the Freedom of Information Law. It is equally necessary to ensure the expeditious handling of court proceedings and the consistent enforcement of judicial decisions to guarantee citizens meaningful access to information.

These findings underline the necessity for a comprehensive reform of the Freedom of Information Law, aimed at improving implementation, enhancing transparency and increasing the accountability of institutions to the citizens of BiH.