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Department for Legal Affairs



FREEDOM OF ACCESS TO INFORMATION ACT

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FREEDOM OF ACCESS TO INFORMATION ACT

CHAPTER I

PRELIMINARY PROVISIONS

Article 1.

Purpose

The purpose of this Act is:

- (a) to establish that information in the control of public authorities is a valuable public resource and that public access to such information promotes greater transparency and accountability of those public authorities, and that this information is essential to the democratic process;
- (b) to establish that every person has a right to access this information to the greatest extent possible consistent with the public interest, and that public authorities have a corresponding obligation to disclose information, and
- (c) to enable every natural person to request the amendment of, and to comment on, his personal information in the control of a public authority.

Article 2.

Interpretation

This Act facilitates and promotes the maximum and prompt disclosure of information in the control of a public authority at the lowest acceptable cost.

Article 3.

Definitions

Under this Act:

- (1) “information” is any material which communicates facts, opinions, data or any other content, including any copy, or portion thereof, regardless of form or characteristics, as well as when it was created and how it is classified.
- (2) “public authority” is any republican authority, city authority, municipal authority or any authority in the Republika Srpska as follows:
 - (a) an executive authority;
 - (b) a legislative authority;
 - (c) a judicial authority;
 - (d) a body appointed or established by law to carry out a public function;

- (e) any other administrative authority;
 - (f) a legal person that is either owned or controlled by a public authority.
- (3) “control” means either possession of information or control of the access to information.
- (4) “personal information” is any information relating to a natural person who can be directly or indirectly identified by facts such as but not limited to, an identification number or that person’s physical, mental, economic, ethnic, religious, cultural, or social identity.
- (5) “competent authority” is a public authority that has control of the requested information and that is the public authority by whom or for whom the information was brought into existence. If the public authority by whom or for whom the information was brought into existence cannot be determined then the public authority whose function most closely relates to the requested information shall be the competent one.

CHAPTER II

ACCESS TO INFORMATION

Article 4. Right of Access

Every natural and legal person has the right to access information in the control of a public authority and each public authority has a corresponding obligation to disclose such information. This right of access may only be subject to such formalities and restrictions as prescribed by this Act.

Article 5. Determination of an Exemption

Exemption from disclosure of requested information shall be determined only in the cases when a competent authority:

- (a) claims an exemption under Articles 6, 7 or 8 for all or part of the information; and
- (b) determines, upon applying the public interest test provided for in Article 9, that the disclosure of information is not in the public interest.

Article 6. Exemptions for Functions of Public Authorities

A competent authority may claim an exemption [in cases] when the disclosure of the information may be justly expected to cause substantial harm to the legitimate aims of the following categories in the Republika Srpska:

- (a) the defense and security interests, as well as the protection of public safety;

- (b) crime prevention and crime detection, and
- (c) the protection of the deliberative process [the decision making process] of a public authority in the giving of an opinion, advice or recommendation by a public authority, employed person in a public authority, or any person acting for or on behalf of a public authority and does not involve factual, statistical, scientific, or technical information.

Article 7.

Exemption for Confidential Commercial Information

When a competent authority justly determines that a request for access to information involves the confidential commercial interests of a third party, the competent authority shall by the notice forthwith inform the third party of the specifics of the request. The notice shall inform the third party that the disclosure of the information is imminent unless the third party, within 15 days of receipt of the notice, responds in written form that it considers the information to be confidential and gives reasons for the harm that would result from disclosure of the information. Upon receipt of such a response the competent authority shall claim an exemption.

Article 8.

Exemption for the Protection of Privacy

A competent authority shall claim an exemption when it justly determines that the requested information involve the personal privacy interests of a third person.

Article 9.

Public Interest Test

- (1) A competent authority shall disclose the requested information notwithstanding the exemption claimed, if it is justified in the public interest and it shall have regard to any benefit and any harm that may accrue from that.
- (2) In rendering a decision whether disclosure is justified in the public interest a competent authority shall consider circumstances such as (but not limited to), any failure to comply with a legal obligation, the existence of any offence, miscarriage of justice [court error], abuse of authority or neglect in the performance of an official duty, unauthorized use of public funds, or danger to the health or safety of an individual, the public or the environment.
- (3) If it is determined that the disclosure of the requested information for which a competent authority has claimed an exemption under Articles 7 or 8 is in the public interest, the competent authority shall, by notice, inform the third party that the information shall be disclosed upon the expiry of 15 days from the day of the receipt of the notice. The third party shall also be informed, by notice, of the right to appeal, the competent authority to whom the appeal should be addressed along with the necessary information for contacting that authority, as well as the deadline for and cost of filing an appeal. The third party shall also be informed by the notice of his or her right to address the Ombudsman of the Republika Srpska and this notice shall contain all necessary information for contacting this Office.

Article 10.
Severing Information into Parts

If part of the requested information is determined to be exempt, the competent authority shall sever that part and shall disclose the remainder of the information unless the severance has rendered it incomprehensible.

CHAPTER III

ACCESS TO INFORMATION PROCEDURE

Article 11.
Submission of a Request

- (1) Requests for access to information shall be submitted to the public authority the requester believes is the competent.
- (2) A public authority shall neither ask for nor require any reasons for justification of the request. A request for access to information must:
 - (a) be in writing in one of the official languages of Bosnia and Herzegovina;
 - (b) contain sufficient data with regard to the nature and/or contents of the information in order to enable the public authority to undertake regular activities for the purpose of finding the requested information; and
 - (c) include the requester's name, as well as the information for contacting the requester.
- (3) If a request relates to a personal information then the request shall, in addition to satisfying the requirements provided for in subsection (2), only be made by the natural person to whom the request relates, or by the requester's legal representative or a person whom the requester authorized in written form to access the information. If the request is made by the person to whom it relates, that person shall sign the request and show his or her personal legal photo-identification. If the request is made by the requester's legal representative or by the person authorized to access the information, that person shall sign the request, show his or her personal legal photo-identification, proof of legal representation or authorization, as well as a copy of the requester's personal legal identification.

Article 12.
Inability to Comply with a Request

- (1) Should a public authority be unable to comply with a request owing to the absence of formal requirements as provided for in Article 11(2) and (3), it shall, as soon as possible, and no later than 8 days from receipt of the request, notify the requester in writing, when such notification is possible, that the request cannot be processed for that reason. This notice shall inform the requester of the availability of appeal to the specific body to whom the appeal should be addressed, including the necessary information for contacting that body, as well as the costs of and deadlines for filing an appeal. The notice shall also inform the requester of his or her right to address the Ombudsman of the Republika Srpska, and shall contain all the necessary contact information.

- (2) For requests that are not in accordance with Article 11(2)(b) the notice provided for in subsection (1) shall also contain any specific questions that may clarify a request, as well as a copy of the guide provided for in Article 20(a).
- (3) The notice provided for under this Article shall inform the requester that a reformulated request will be treated as a new request.

Article 13.
Determination of Competent Authority

- (1) Should the respondent authority not be competent, it shall, within 15 days from the day of receipt of a request, transfer the request to the competent authority and inform the requester by the notice thereof. The request shall not be transferred if, within the aforementioned time period, it is determined that the requested information is in the control of the respondent authority and the competent authority, upon being notified of the specifics of the request, has no objections to the respondent authority processing the request. The respondent authority shall be deemed to be the competent authority and shall process the request in accordance with Article 14 of this Act.
- (2) Should the competent authority not be locatable and in the case that the respondent authority has control of the requested information, the respondent authority shall be deemed to be the competent authority. Should the competent authority not be locatable and in the case that the respondent authority does not have control of the requested information, the respondent authority shall, within the time period provided for in subsection (1), inform the requester, with a notice, that the request cannot be processed for this reason.

Article 14.
Procedure Upon Receipt of a Request by the Competent Authority

- (1) Upon receiving a request for access to information, the competent authority shall take all regular measures to collect the requested information and shall consider all facts and circumstances pertinent to the processing of the request.
- (2) If access to the information is granted, either in whole or in part, the competent authority shall inform the requester with notice thereof. The notice shall:
 - (a) inform the requester that the information is available for access in person at the premises of the competent authority, and
 - (b) inform the requester of the availability of duplication, the estimated costs of the duplication, and that the duplication shall be provided to the requester after the payment is made. When the duplication of the information is very complex or time-consuming, the duplication shall be provided to the requester at a time that is acceptable to both, the requester and the competent authority; and/or include a copy of the requested information when it is provided at no cost as provided for under Article 16 of this Act.
- (3) If access to the information is denied, either in whole or in part, the competent authority shall inform the requester with notice thereof. The notice should:

- (a) contain the legal grounds for the exempt status of the information including the Articles of this Act being relied upon, as well as all material issues relevant to the decision including public interest factor taken into account; and
 - (b) inform the requester of the right to file an appeal, the specific body, including the necessary contact information for that body, the deadline for filing an appeal as well as the costs of filing an appeal. This notice shall also inform the requester of the right to address the Ombudsman of the Republika Srpska and contain the necessary information for contacts with this Office.
- (4) The deadline for notifying the requester as provided for in subsection (2) and subsection (3) of this Article shall be 15 days from the day of the receipt of the request. For requests that are processed under Article 7 and/or Article 9(3), this deadline shall be extended by the time period provided for in those Articles. The requester shall immediately be informed, with a notice, of the extension of the deadline as well as of the reasons for that extension.

Article 15.
Language in Which the Information Is Accessible

- (1) Access to information shall be provided in one of the official languages of Bosnia and Herzegovina, as well as in the original language, if different than one of the official languages, if possible to do so.
- (2) The competent authority shall not be obliged to translate information from one into another official language in Bosnia and Herzegovina.

Article 16.
Duplication Costs

A public authority shall not levy fees or taxes for submission of requests or for notices under this Act. Compensations shall be charged only for the actual cost of duplication, and shall be established by the Instruction of the Ministry of Justice, issued under this Act. For standard size photocopies, there shall be no charge for the first ten pages.

CHAPTER IV
PERSONAL INFORMATION

Article 17.
Right to Amend or Comment on Personal Information

- (1) Every person has the right to ensure that his personal information in the control of a public authority is correct or, with regard to the purpose for which the information was collected or is to be used, is current, complete, relevant to the legitimate purpose for which it is archived, or is not in any other way incorrect.
- (2) Upon granting the access to personal information, a requester may proceed as provided for in subsection (1) by submitting:

- (a) a request for amendment. The request for amendment may only be denied if the competent authority determines that the information to which the request relates satisfies the conditions of subsection (1). If the request is denied, the competent authority shall inform the requester, with a notice, thereof, and this notice must conform with the requirements provided for in Article 13(3)(b) of this Act, and/or
- (b) a commentary which shall be appended to the personal information. The commentary must be signed by the requester and must relate to the information to which it will be appended. The competent authority shall, within 15 days from the date of receipt of the commentary, inform the requester, with a notice, that the commentary has been appended to the information.

CHAPTER V

RESPONSIBILITIES OF PUBLIC AUTHORITIES

Article 18.

Duty to Assist

A public authority shall undertake all regular measures of assistance to any natural or legal person seeking to exercise any right under this Act.

Article 19.

Information Officer

Each public authority shall appoint an Information Officer who shall process requests made in accordance with this Act. Upon the appointment of the Information Officer, his or her name and information for contact shall be submitted to the Ombudsman of the Republika Srpska.

Article 20.

Requirement to Disseminate

Each public authority shall disseminate:

- (a) a guide which enables any person to access information in control of the public authority including but not limited to, the information necessary for addressing the public authority and its Information Officer, essential elements of the procedure of submission of a request together with a sample request in written form, information regarding the categories of exemptions, access to information procedure, duplication costs, access to legal remedy, and any relevant deadlines. The guide shall also refer to the indexed register as provided for in clause (b), as well as the manner of the access to the register.
The guide shall be submitted to the Ombudsman of the Republika Srpska, every public and every legal library in Bosnia and Herzegovina and, when possible, on the Internet, and shall be available upon request. This guide shall be free of charge.
- (b) an indexed register, the type of information in the control of the public authority, the form in which the information is available, as well as where that information may be accessed. This indexed

register shall be made available in accordance with the dissemination requirements as provided for in clause (a) of this Article;

- (c) statistical data, in a quarterly report, concerning but not limited to, the number of requests received, the types of information requested, exemptions claimed, as well as any decisions made during the procedure and final decisions. These statistical data shall be submitted to the National Assembly of the Republika Srpska and to the Ombudsman of the Republika Srpska, and shall be available upon request;
- (d) annual report, in which the functions, policies, operations and organizational structure and financial affairs of the public authority are included in detail, including but not limited to their proposed budget and annual financial statement that contains the details concerning actual prior year revenues and expenditures. This report shall be submitted to the National Assembly of the Republika Srpska, and shall be available upon request.

CHAPTER VI

THE OMBUDSMAN

Article 21.

The Ombudsman

The Ombudsman of the Republika Srpska shall perform its functions in relation to this Act and in accordance with its mandate and responsibilities as established under Article II paragraph 1 of the Constitution of Bosnia and Herzegovina and Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina, as well as in accordance with any subsequently adopted regulations that regulate its competence and responsibility.

Article 22.

Activities of the Ombudsman

In performing its functions in relation to this Act, the Ombudsman of the Republika Srpska may *inter alia* consider:

- a) creating and disseminating information such as Guides and general recommendations for facilitating the implementation and use of this Act;
- b) including in its annual report a special section regarding its activities in relation to this Act; and
- c) proposing instructions on the application of this Act to all competent ministries within the Republika Srpska, in cooperation with the ombudsman institutions of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina.

CHAPTER VII

FINAL PROVISIONS

Article 23. Cooperation

Every public authority in the Republika Srpska has the duty to provide assistance to public authorities of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina when the application of the respective freedom of information legislation requires their cooperation.

Article 24. Responsibility for Application of the Act

- (1) The Government of the Republika Srpska shall, within three months of the day of the entry into force of this Act, sign mutual agreement with the Council of Ministers of Bosnia and Herzegovina and the Government of Federation of Bosnia and Herzegovina for a purpose of applying Article 23 of this Act.
- (2) The Ministry of Justice shall undertake all appropriate measures, including but not limited to the issuing of Instruction, to ensure the proper and effective implementation of this Act. The Ministry of Justice shall, within three months from the day of the entry into force of this Act, promulgate the Instruction that regulates duplication costs as provided for under Article 16 of this Act.

Article 25. The Act in Relation with other Laws

- (1) If the provisions of the Law on the State Administration, the Law on General Administrative Procedure, the Law on Administrative Disputes, or other laws that are in force in the Republika Srpska, are in contravention of this Act, the provisions of this Act shall be applied.
- (2) This Act shall not diminish a person's rights and obligations that relate to access to information as regulated under the laws on judicial procedure, including the evidence procedure, under the laws relating to professional legal privileges, or under the laws on administrative taxes, including taxes for the obtaining of original documents, but excluding taxes for the making of a request or the obtaining of a decision. In particular, this Act shall not diminish the rights of a natural or legal person that relate to filing an appeal in administrative procedure and the right on review of the case/matter before the court.
- (3) Any contravention of this Act shall be subject to sanctions in accordance with the Criminal Code of the Republika Srpska, the Law on Minor Offenses, administrative laws, and in accordance with other laws that are in force in the territory of the Republika Srpska.
- (4) Legislation passed subsequent to this Act, whose aim is not amending this Act shall not restrict the rights and obligations established by this Act.

Article 26. Transitional Provisions

Every public authority, within three months from the day of the entry into force of this Act, has the duty

to apply Article 20 (a) and (b).

Article 27.
Entry into Force

This Act shall enter into force 8 days after its publication in the “Official Gazette of the Republika Srpska”, and shall start being applied 6 (six) months after the entry into force.

Number: 01-572/01
Date: 02 May 2001

PRESIDENT OF THE
NATIONAL ASSEMBLY
Dr Dragan Kalinić