DRAFT FREEDOM OF INFORMATION ACT FOR [THE ENTITY]:

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PREAMBLE

Based on Articles II and III of the Constitution of Bosnia and Herzegovina, and on Article _____ of _____the Constitution, _____ of _____ in the session of the Parliamentary Assembly of [the Entity] held on … and in the session of the _____ held on …, adopted the

FREEDOM OF INFORMATION ACT

SECTION I – PRELIMINARY PROVISIONS

Article 1
Purposes

The purposes of this Act are:

a. to acknowledge 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 authorities, and 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 or her personal information in the control of a public authority.

Article 2
Interpretation

This Act shall be interpreted so as to facilitate and encourage the maximum and prompt disclosure of information in the control of public authorities at the lowest reasonable cost.

Article 3
Definitions

For the purpose of this Act:

1. “information” means any material which communicates facts, opinions, data or any other matter, including any copy or portion thereof, regardless of physical form, characteristics, when it was created, or how it is classified.
2. “public authority” means any of the following in [the Entity]:
    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 body that is either owned or controlled by a

public authority.

3. “control” means either possession of, or access to, information.
4. “personal information” means any information relating to a natural person who can be directly or indirectly identified by reference to factors 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” means a public authority that has control of the requested information and is the authority by whom or for whom the information was brought into existence. If the latter cannot be determined the competent authority shall be the public authority whose function most closely relates to the requested information.

SECTION 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

Requested information shall be determined to be exempt from disclosure only if 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 is not

justified in the public interest.

Article 6
Exemptions for Functions of Public Authorities

A competent authority may claim an exemption where disclosure would reasonably be expected to cause substantial harm to the legitimate aim of the following in [the Entity]:

a. the defense and security interests, and the protection of public safety;
b. crime prevention and any preliminary criminal investigation; and
c. the protection of the deliberative process of a public authority insofar as it involves the expressing of opinion, advice or recommendation by a public authority, employee thereof, 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

Where a competent authority reasonably determines that a request for access to information involves the confidential commercial interests of a third party, the competent authority shall forthwith notify the third party in writing 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 writing that it considers the information to be confidential and gives reasons as to why harm would result from disclosure. Upon receipt of such a response the competent authority shall claim an exemption.

Article 8
Exemption for the Protection of Personal Privacy

A competent authority shall claim an exemption where it

reasonably determines that the requested information involves the personal privacy interests of a third person.

Article 9
Public Interest Test

1. A competent authority shall disclose the requested information notwithstanding that it has claimed an exemption, where to do so is justified in the public interest having regard to both any benefit and harm that may accrue from doing so.
2. In determining whether disclosure is justified in the public interest a competent authority shall have regard to considerations such as but not limited to, any failure to comply with a legal obligation, the existence of any offence, miscarriage of justice, 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 disclosure of the requested information for which a competent authority has claimed an exemption under Articles 7 or 8 is determined to be in the public interest, the competent authority shall notify third party in writing that the information shall be disclosed upon the expiry of 15 days of receipt of the notice. The notice shall inform the third party of the availability of appeal, the specific body to whom the appeal should be addressed including the necessary contact information, and the deadline for and cost of filing an appeal. The notice shall also inform the third party of his or her right to apply to the Information Ombudsman including the necessary contact information.

Article 10
Severance

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.

SECTION III – ACCESS PROCEDURE

Article 11
Submission of a Request

1. Requests for access to information may be submitted to the public authority the requester believes is the competent authority.
2. A public authority shall neither require nor ask for any reason or justification for the request. A request for access to information shall only be required to:
    a. be in writing in any of the official languages in Bosnia and Herzegovina;
    b. provide sufficient detail as to the nature and/or contents of the information sought so as to enable the public authority exercising a reasonable effort to identify the requested information; and
    c. include the requester's name and contact information.
3. If a request relates to personal information, the request shall, in addition to satisfying the requirements provided for in subsection (2), only be made by the natural person to whom it relates, or by the requester's legal representative or someone authorized in writing by the requester to access the information. If the request is made by the person to whom it relates, he or she shall sign the request and produce legal photo-identification. If the request is made by the requester's legal representative or by someone authorized to access the information, that person shall sign the request, produce his or her legal photo-identification, proof of legal representation or authorization, and a copy of the requester's legal

identification.

Article 12
Determination of Competent Authority

1. Should the respondent authority not be the competent authority, it shall, within 8 days of receipt, transfer the request to the competent authority and notify the requester in writing thereof. Transfer need not be effected if, within the same time period, the requested information is determined to be 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 thus be deemed to be the competent authority and shall process the request in accordance with Article 13.
2. Should the competent authority not be locatable and the respondent authority have control of the requested information, the respondent authority shall be deemed to be the competent authority. Should the competent authority not be locatable and the respondent authority not have control of the requested information, the respondent authority shall, within the time period provided for in subsection (1), provide the requester with written notice that the request cannot be processed for this reason.

Article 13
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 reasonable 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 notify the requester in writing thereof. This 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 whether duplication is possible, the cost of the duplication, and that the duplication shall be provided to the requester upon payment. Where the duplication of the information is unusually complex or time-consuming, the duplication shall be provided to the requester at a time mutually agreeable to the requester and the competent authority; or
c. include duplication of the requested information where it can be supplied at no cost as provided for under Article 16.

3. If access to the information is denied, either in whole or in part, the competent authority shall notify the requester in writing thereof. This notice shall:

a. include the legal grounds for the exempt status of the information including the Articles of the Act being relied upon and all material issues relevant to the decision including public interest factors taken into account; and
b. inform the requester of the availability of appeal, the specific body to whom the appeal should be addressed including the necessary contact information, and the deadline for and cost of filing an appeal. The notice shall also inform the requester of his or her right to apply to the Information Ombudsman including the necessary contact information.

4. The notices referred to in subsection (2) and (3) shall be sent out within 15 days of receipt of the request. For requests that necessitate processing under Article 7 and/or Article 9(3), this 15 day time period shall be correspondingly extended by the time periods provided

for in those Articles. The requester shall immediately be notified in writing of all extensions including the reasons for the extensions.

Article 14
Inability to Comply with a Request

1. Should either the respondent authority or the competent authority receive a request that does not conform to Article 11, it shall nevertheless make every effort to comply with the request insofar as it is reasonable and possible to do so. If it is not possible to comply with the request owing to incomprehensibility or lack of detail, the authority shall, within 8 days of receipt, notify the requester in writing thereof. This notice shall include any specific clarification questions, a copy of the guide provided for under Article 20(a), and shall inform the requester that he or she may submit a reformulated request which shall be treated as a new request.
2. Should either the respondent authority or the competent authority be unable to comply with the request owing to the absence of the necessary contact information it may disregard the application.

Article 15
Language of Access

1. Access to information shall be provided in any of the official languages in Bosnia and Herzegovina.
2. The competent authority shall not be obliged to translate information from one of the official languages in Bosnia and Herzegovina into another.

Article 16
Duplication Costs

The competent authority shall not levy a fee or tax for

requests submitted or notices provided for under this Act. Charges may only be levied for duplication costs and only insofar as regulated in instructions issued pursuant to this Act. For standard size photocopies, the first ten pages shall be free of charge.

SECTION IV – PERSONAL INFORMATION

Article 17
Right to Amend or Comment on Personal Information

1. Every person has the right to ensure that his or her personal information in the control of a public authority is correct or, having 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 held, is not otherwise misleading.
2. Upon obtaining access to his or her personal information, a requester may give effect to subsection (1) by submitting:
    a. a request for amendment. The request for amendment may only be denied if the competent authority reasonably determines that the information to which the request relates satisfies the conditions of subsection (1). The request for amendment must be made and processed in accordance with the Law on Administrative Procedure [of the Entity]. If the request is denied, the competent authority shall send the requester written notice thereof which shall 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 of

receipt of the commentary, notify the requester in writing that the commentary has been appended to the information.

SECTION V – RESPONSIBILITIES OF PUBLIC AUTHORITIES

Article 18
Duty to Assist

A public authority shall take all reasonable steps to assist 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 under this Act. The name and contact information of the Information Officer shall be submitted upon his or her appointment to the Information Ombudsman.

Article 20
Requirement to Disseminate

Each public authority shall disseminate:

a. a guide sufficient to enable any person to access information controlled by that public authority including but not limited to, the contact information of the public authority and its Information Officer, essential elements of the request procedure together with a sample request letter, information regarding the categories of exemptions, access procedure, duplication costs, avenues of redress, and any applicable time limitations. The guide shall also refer to the indexed register as provided for in subsection (b), as well as how that register may be accessed. The guide shall be

submitted to the Information Ombudsman, every public and legal library in Bosnia and Herzegovina, on the Internet where practicable to do so, and shall be available upon request. This guide shall be free of charge;

b. an indexed register of the types 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);
c. statistics, on a quarterly basis, concerning but not limited to, the number of requests received, the types of information requested, exemptions claimed, and any procedural or final decisions taken. These statistics shall be submitted to the Parliamentary Assembly [of the Entity] and to the Information Ombudsman, and shall be available upon request;
d. a report at least once every year detailing the functions, policies, operations, organizational structure, and financial affairs of the public authority including but not limited to their proposed budget and annual financial statement detailing actual prior year revenues and expenditures. This report shall be available upon request.

SECTION VI – THE INFORMATION OMBUDSMAN

Article 21
Information Ombudsman

For the purpose of this Act there shall be established an Information Ombudsman who shall perform his or her functions within the mandate and office of the Ombudsman Institution of [the Entity].

Article 22

Responsibilities of the Information Ombudsman

The Information Ombudsman shall, in accordance with this Act and the Constitution of Bosnia and Herzegovina and the Constitution of [the Entity] and in cooperation with the Ombudsman institutions in Bosnia and Herzegovina and [the other Entity], examine the activities of public authorities in relation to this Act either upon receiving an application or ex officio. In so doing, the Information Ombudsman will consider:

a. creating and disseminating information, such as guidelines and general recommendations, that he or she thinks suitable to facilitate the administration and implementation of this Act;
b. including in the annual report a summary of all activities performed by the Information Ombudsman, all cases dealt with by the Information Ombudsman that are of public interest, evidence of poor administration of the Act, any regular or persistent failure on the part of public authorities to comply with the Act, any failure to suitably cooperate with an investigation by the Information Ombudsman, incidents of non-compliance with the recommendations of the Information Ombudsman, and any relevant statistics; and
c. proposing instructions on the implementation of this Act to all competent ministries within [the Entity], in cooperation with the Ombudsman institutions in Bosnia and Herzegovina and [the other Entity].

SECTION VII – FINAL PROVISIONS

Article 23
Mutual Cooperation

Every public authority in [the Entity] has the duty to assist public authorities of Bosnia and Herzegovina and [the other Entity] whenever the application of their respective freedom

of information legislation necessitates their cooperation.

Article 24
Responsibility for Application of the Act

1. The Ministry of Justice [of the Entity] shall take all appropriate measures, including but not limited to the issuing of instructions, to ensure the proper and effective implementation of this Act. The Ministry of Justice shall, within three months of the entry into force of this Act, promulgate instructions regulating duplication costs as provided for under Article 16.
2. [The Government of the Entity] shall, within three months of the entry into force of this Act, enter into mutual agreements with Bosnia and Herzegovina and [the other Entity] in order to give effect to Article 23.

Article 25
Relationship with other Laws

1. For the purpose of this Act, the Law on Administration, the Law on Administrative Procedure, and the Law on Administrative Disputes [of the Entity] shall apply to all public authorities as defined in this Act. In particular, nothing in this Act shall prejudice the rights of a natural or legal person to administrative appeal and judicial review.
2. This Act shall not diminish a person’s rights and obligations related to access to information as regulated under the laws on judicial procedure, including rules of evidence, 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.
3. Legislation passed subsequent to this Act that is not specifically aimed at amending this Act shall in no way restrict the rights and obligations set out herein.

Article 26
Transitional Provision

Every public authority shall have three months from the entry into force of this Act to give effect to Article 20(a) and (b).

Article 27
Commencement

This Act shall enter into force _____ days after its publication in the Official Gazette of [the Entity].

Office of the High Representative