Freedom Of Access To Information Act For Bosnia and Herzegovina

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–This is an unofficial translation, and represents the only English version endorsed by the OSCE Mission to Bosnia and Herzegovina and the OHR–

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PREAMBLE

Based on Article IV(4)(a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, in the session of the House of Representatives held on 18 October 2000 and in the session of the House of Peoples held on 23 October 2000, adopted the

FREEDOM OF ACCESS TO INFORMATION ACT FOR BOSNIA AND HERZEGOVINA

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SECTION I

PRELIMINARY PROVISIONS

Article 1

Purposes

The purposes of this Act are:

1. 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;

2. 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

3. 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 promote 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 content, 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 Bosnia and Herzegovina:

1. an executive authority;
2. a legislative authority;
3. a judicial authority;
4. a body appointed or established by law to carry out a public function;
5. any other administrative authority;
6. a body that is either owned or controlled by a public authority.

3. “control” means either possession of, or control of 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 are prescribed by this Act.

Article 5

Determination of an Exemption

Requested information shall be determined to be exempt from disclosure on a case-by-case basis and only if a competent authority:

1. claims an exemption under Articles 6, 7 or 8 for all or part of the information; and

2. determines, upon applying the public interest test provided for in Article 9, that 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 Bosnia and Herzegovina:

1. the foreign policy, defense and security interests, and the protection of public safety;

2. the monetary policy interests;

3. crime prevention and crime detection; and

4. 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 under Articles 6, 7 or 8, 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 the 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 Ombudsman and shall include 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 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. Requests for access to information shall:

3. be in writing in one of the official languages in Bosnia and Herzegovina;

4. 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

5. include the requester’s name and address.

3. Requests for access to the requester’s own personal information 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.

4. A public authority shall neither require nor ask for any reason or justification for the request.

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, where such notification is possible, that the request cannot be processed for that reason. This notice shall 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 Ombudsman, and shall include the necessary contact information.

2. For requests that fail to comply with Article 11(2)(b), the notice provided for in subsection (1) shall also include any specific clarification questions and a copy of the guide provided for in Article 20(a).

3. Notices 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 the competent

authority, it shall, as soon as possible and no later than 8 days from receipt of the request, 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 14.

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 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 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:

1. 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 acceptable to the requester and the competent authority; and/or

3. include duplication of the requested information where it can be supplied at no cost as provided for under Article 16.

1. 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:

1. 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

2. 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 Ombudsman, and shall include the necessary contact information.

4. Notices referred to in subsections (2) and (3) shall be sent out as soon as possible and no later than 15 days from receipt of the request. For requests that necessitate processing under Articles 7 and/or 9(3), this 15 day time period shall be correspondingly extended by the time limits provided for in those Articles. The requester shall immediately be notified in writing of all extensions including the reasons for the extensions.

Article 15

Language of Access

1. Access to information shall be provided in one of the official languages in Bosnia and Herzegovina and, where possible and reasonable to do so, in the original language if different than one of the official languages.

2. A competent authority shall not be obliged to translate the requested information from one of the official languages in Bosnia and Herzegovina into another.

Article 16

Duplication Costs

A public authority shall not levy fees or taxes for requests submitted or notices provided for under this Act. Fees may only be levied for duplication costs and only insofar as is provided for in a Decision of the Council of Ministers 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 and/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, or not otherwise misleading.

2. Upon obtaining access to his or her personal information, a requester may give effect to subsection (1) by submitting:

1. 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 in subsection (1). If the request is denied, the competent authority shall send the requester written notification thereof that complies with the requirements provided for in Article 14(3)(b); and/or

2. a commentary that 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, as soon as possible and no later than 15 days from 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 necessary 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 Ombudsman.

Article 20

Requirement to Disseminate

Each public authority shall disseminate:

1. 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 clause (b), as well as how that register may be accessed. The guide shall be submitted to the 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;

2. 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 provided for in clause (a);

3. 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 Bosnia and Herzegovina and to the Ombudsman, and shall

be available upon request;

4. 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 submitted to the Parliamentary Assembly of Bosnia and Herzegovina, and shall be available upon request.

SECTION VI

THE OMBUDSMAN

Article 21

The Ombudsman

The Ombudsman for Bosnia and Herzegovina shall perform its functions in relation to this Act in accordance with its mandate and responsibilities as established under Article II paragraph 1 of the Constitution of Bosnia and Herzegovina, Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina, and any subsequent legislation regulating its competence and responsibilities.

Article 22

Activities of the Ombudsman

In performing its functions in relation to this Act, the Ombudsman for Bosnia and Herzegovina may *inter alia* consider:

1. creating and disseminating information such as guidelines and general recommendations concerning the administration and implementation of this Act;

2. including in its annual report a special section regarding its activities in relation to this Act; and

3. proposing instructions on the implementation of this Act to all competent ministries within Bosnia and Herzegovina, in coordination with the ombudsman institutions of the Federation of Bosnia and Herzegovina and the Republika Srpska.

SECTION VII

FINAL PROVISIONS

Article 23

Right to Appeal

1. Every requester has the right to file an administrative appeal against any decision made under this Act with the head of the public authority that issued the decision. In hearing such an appeal, the head of the public authority shall apply the common principles of administrative law as referred to in Article 26(1).

2. Nothing in this Act shall prejudice the rights of a natural or legal person to administrative appeal and judicial review.

Article 24

Mutual Cooperation

Every public authority of Bosnia and Herzegovina has the duty to assist public authorities in the Entities whenever the application of their respective access to information legislation necessitates their cooperation.

Article 25

Responsibility for Application of the Act

1. The Council of Ministers shall take all appropriate measures, including but not limited to the issuing of Decisions, to ensure the proper and effective implementation of this Act.

2. The Council of Ministers shall, within three months of the date of the entry into force of this Act, issue a Decision regulating duplication costs as provided for under Article 16, and shall enter into mutual agreements with the Governments of the Entities in order to give effect to Article 24.

Article 26

Relationship with other Laws

1. For the purpose of this Act, the general common principles of administrative law contained in the laws on administration and the laws on administrative procedure of the Federation of Bosnia and Herzegovina and of the Republika Srpska shall apply insofar as the same subject matter is not otherwise regulated by this Act.

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. Any contravention of this Act may be subject to sanctions under the administrative laws, criminal laws, laws on minor offenses and under any other applicable legislation in force in the territory of Bosnia and Herzegovina.

4. Legislation passed subsequent to this Act that is not specifically aimed at amending this Act shall in no way restrict the rights and obligations contained herein.

Article 27

Transitional Provisions

1. For the first three months from the date of the entry into force of this Act, a public authority may claim a 15 day extension of the time limits provided for in Articles 12 and 14(4). If such an extension is claimed, the public authority claiming the extension shall, within the original time limits provided for in those Articles, notify the requester and any interested parties in writing thereof.

2. Every public authority shall have three months from the date of the entry into force of this Act to give effect

to Article 20(a) and (b).

Article 28

Commencement

This Act shall enter into force on the eighth day from the day of publication in the Official Gazette of Bosnia and Herzegovina.