

Freedom Of Access To Information Act For The Federation Of Bosnia and Herzegovina

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PREAMBLE

FREEDOM OF ACCESS TO INFORMATION ACT FOR THE FEDERATION OF BOSNIA AND HERZEGOVINA

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SECTION I – GENERAL PROVISIONS

Article 1

Purpose

This Act regulates access to information held by public authorities, for the purpose of:

1. acknowledging 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 public authorities, and is essential to the democratic process;
2. establishing that every natural and legal person has a right to access this information to the greatest extent possible consistent with the public interest, and that public authorities have a corresponding obligation to disclose this information;
3. enabling 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 content, including any copy or portion thereof, regardless of form, characteristics, when it was created, or how it is classified;

2. “public authority” means any authority or legal person in the Federation of Bosnia and Herzegovina (hereafter “Federation”) as follows:

- a legislative authority;
- an executive authority;
- a judicial authority;
- an administrative authority;
- a legal person appointed or established by law to carry out a public function;
- a legal person that is either owned or controlled by the Federation, or by a canton, municipality or town within the Federation, or that’s work is administered by a public authority;

3. “control” means either possession of information, or access to, information;

4. “personal information” means any information relating to a natural person who can be directly or indirectly identified by 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 that's competency 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 Exemptions

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

1. claims an exemption under Articles 6, 7 and 8 of this

Act for all or part of the information; and

2. determines, upon applying the public interest test provided for in Article 9 of this Act, that the disclosure of the information 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 following legitimate aims of the Federation:

1. the defense and security interests, and the protection of public safety;
2. crime prevention and crime detection; and
3. the protection of the deliberative process of a public authority insofar as it involves the expressing of opinion, advice or recommendation by an employee of the public authority, or any other 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

1. 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 and inform the third party that the disclosure of the information is imminent unless the third party, within 15 days from 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.

2. Upon receipt of such a response as provided for in subsection (1) of this Article, 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 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. In so doing, it shall have regard to both any benefit and harm that may accrue from the disclosure.
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, injustice, 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.

1. 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 its contact information, the deadline for and cost of filing an appeal, and the right to apply to the Ombudsman of the Federation of Bosnia and Herzegovina (hereafter "Ombudsman") including its 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.

III – ACCESS PROCEDURE

Article 11

Submission of a Request

1. A request for access to information shall be submitted to the public authority the requester believes is the competent authority.
2. A request for access to information shall:
 1. be in writing in one of the official languages of the Federation;
 2. 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 locate the requested information; and
 3. contain the requester's name and address.
2. If a request relates to the requester's own 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, that person shall sign the request and produce legal photo-identification. If the request is made by the requester's legal representative or by someone 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.

3. 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) or (3) of this Act, 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 right to appeal, the specific body to whom the appeal should be addressed including its contact information, the deadline for and cost of filing an appeal, and the right to apply to the Ombudsman including its 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 and a copy of the guide provided for in Article 20(a).
3. Notices provided for under subsections (1) and (2) of this Article shall inform the requester that a reformulated request will be considered 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 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. If the competent authority has no objections, 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) of this Article, 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. Where the competent authority grants access to the information, either in whole or in part, it 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

2. 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 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.

(3) If the competent authority denies access to the information, either in whole or in part, it shall notify the requester in writing thereof. This notice shall:

1. include the legal grounds for the exempt status of the

information under the Act including all material issues relevant to the decision and the public interest factors taken into account; and

2. instruction of the right to appeal, the specific body to whom the appeal should be addressed including its address, and the deadline for and cost of filing an appeal, as well as the instruction of the right to apply to the Ombudsman including the necessary information for contacting the Ombudsman.
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 Article 9(3), this 15 day time period shall be correspondingly extended by the time limits provided for in those Articles. The competent authority shall immediately notify the requester 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 of the Federation 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 into another.

Article 16

Duplication Costs

1. A public authority shall not levy fees or taxes for requests submitted, or for decisions or notices provided for under this Act. Fees may only be levied for duplication costs that shall be determined in accordance with an Instruction of the Federation Ministry of Justice issued pursuant to this Act.
2. For standard size photocopies, the first ten pages shall be free of charge.

SECTION IV – PERSONAL INFORMATION

Article 17

Right to Amend and 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 and, having regard to the purpose for which the information was collected or is to be used, is current, complete, relevant to the 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 that may be denied if the competent authority reasonably determines that the

information to which the request relates satisfies the conditions of subsection (1). If the competent authority denies the request, it 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 the competent authority shall append to the personal information. The commentary shall 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 is obliged, within its capabilities, to take all necessary steps to assist any natural or legal person seeking to exercise any right under this Act.

Article 19

Information Officer

A public authority is obliged to appoint an Information Officer who shall process requests made under this Act. Upon the appointment of the Information Officer, his or her name and contact information shall be submitted to the Ombudsman.

Article 20

Requirement to Publish and Disseminate

A public authority shall publish:

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 relevant 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 Ombudsman, every municipal and legal library in the Federation, 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 available in accordance with the dissemination requirements as provided for in clause (a);
3. statistics, on a quarterly basis, including but not limited to, the number of requests received, the types of information requested, determined exemptions, and procedural and final decisions taken. These statistics shall be submitted to the Federation Parliament and to the Ombudsman, and shall be available upon request;
4. an annual report 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 Federation Parliament and shall be available upon request.

VI – THE OMBUDSMAN

Article 21

The Ombudsman

The Ombudsman shall perform its functions in relation to this Act in accordance with its mandate and responsibilities as established under the Constitution of the Federation and the Law on the Ombudsmen of the Federation of Bosnia and Herzegovina (“Official Gazette of the Federation of BiH”, number 32/2000).

Article 22

Activities of the Ombudsman

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

1. creating and disseminating information such as guidelines and general recommendations concerning the implementation and application of this Act;
2. 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 authorities within the Federation, in cooperation with the ombudsman institutions of Bosnia and Herzegovina and the Republika Srpska.

VII – TRANSITIONAL AND FINAL PROVISIONS

Article 23

Mutual Cooperation

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

Article 24

Responsibility for the Application of the Act

1. The Federation Minister of Justice shall take all appropriate measures, including but not limited to the issuing of instructions, to ensure the effective implementation of this Act. The Federation Minister of Justice shall, within three months of the date of the entry into force of this Act, determine the duplication costs as provided for under Article 16.
2. Within three months of the date of the entry into force of this Act, the Government of the Federation shall sign an agreement with the Council of Ministers of Bosnia and Herzegovina and the Government of the Republika Srpska

in order to give effect to Article 23.

Article 25

Relationship of this Act with other Laws

1. For the purpose of the implementation of this Act, the Law on Administration in the Federation of Bosnia and Herzegovina ("Official Gazette of Federation of BiH", number 28/97), the Law on Administrative Procedure ("Official Gazette of Federation of BiH", number 2/98), and the Law on Administrative Disputes ("Official Gazette of Federation of BiH", number 2/98), shall apply to all public authorities under this Act, unless otherwise regulated herein.
2. This Act shall not diminish a natural or legal person's rights and obligations related to access to information as regulated under the laws on judicial procedure, including rules of evidence, 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 established herein.
4. Every contravention of this Act shall be subject to sanctions under the Criminal Code, Law on Minor Offences, administrative laws, and other laws in force in the Federation of Bosnia and Herzegovina.

Article 26

Commencement

This Act shall enter into force on the eighth day from the day of its publication in the “Official Gazette of the Federation of BiH”, and shall be applicable six months after that date.