

# The Right to Information

Monthly newsletter on oversight of implementation of the Law on Right to Information

*The Newsletter is a publication of the Office of the Information and Data Protection Commissioner*

## Focus of the month

### The Public Authority

Public authorities are subject to implementation of the Law No. 119/2014 "On the Right to Information", which are divided in three categories according to the relevant definition.

The first category includes any administrative body provided for in the legislation in force on administrative procedures as well legislative, judicial and prosecutorial bodies of every level, bodies of local government units of each level, state bodies and public entities, established by the Constitution or by law.

The second category of public authorities are companies where: i) the state owns the majority of shares ii) public functions are exercised by any natural or legal person to whom it is provided by law, sub-legal act or any other form provided by the legislation in force, the right to exercise public functions.

The third category of public authorities defines every natural or legal person, to whom it is provided by law, sub-legal act or any other form, provided by the legislation in force, the right of exercising public functions.

The Office of the Information and Data Protection Commissioner published in its official website Guidelines on "Public Authorities in terms of the Law on Right to Information", which may be consulted at the following link:

[https://www.idp.al/wpcontent/uploads/2017/02/Udhezues\\_kush\\_eshte\\_AP.pdf](https://www.idp.al/wpcontent/uploads/2017/02/Udhezues_kush_eshte_AP.pdf)

These guidelines provides a detailed analysis of the concepts on public authorities, bodies and institutions, as well as interpretation of legislative and judicial doctrine to determine whether the term Public Authority will be considered the central body including its regional branches or whether the latter will be considered public authorities separately.

## Monthly summary of decisions

**Decision no. 41** - Companies that perform public functions under a legal or sub-legal act are subject to RIA

**Decision no. 42** - Societies where the state is not a majority shareholder and does not perform public functions under a legal act or bylaws, are not subject to RIA

**Decision no. 43** - The Public Authority provides in its response details on the rejected part of information

**Decision no. 44** - The information which after the review procedure remains classified, is restricted

**Decision no. 45** - The Evaluation table of the winning candidate file consist of public information

**Decision no. 46** - Information on official persons reflecting matters, administrative and public activities related to their task consist of public information

**Decision no. 48** - Restriction of information remains valid as long as the reason for restricting it.

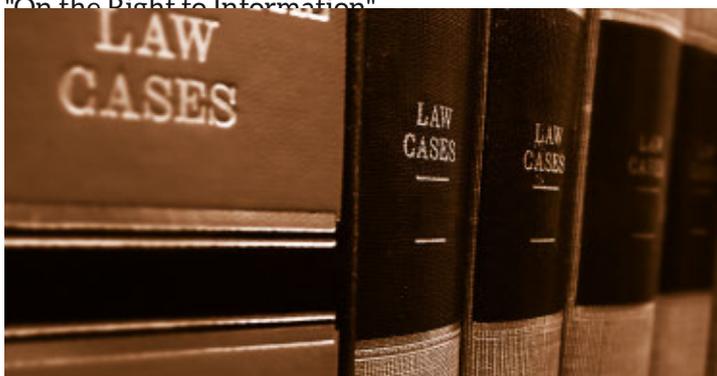
# Decision making of the Information and Data Protection Commissioner

The Office of the Information and Data Protection Commissioner (IDP), in the course of October, issued 7 decisions regarding the implementation of the Law No. 119/2014 "On Right to Information" (LRI). 5 decision consisted in ordering of public authorities to provide the requested information and two decisions on refusal of the submitted complaints.

During the review of citizens' complaints and prosecution of administrative procedures, IDP has noted that the definition of the Public Authority to which the Law no. 119/2014 "On the Right to Information" applies, is not clear yet both from the public authorities themselves and by the citizens. Accordingly, the two last decisions rendered by the Commissioner's Office consisted on cases such as: dealing with the application of the definition on the "Public Authority".

By means of Decision no. 41 dated 05.10.2020, the Office of the Commissioner has received a complaint by the journalist E.H, who required the Albanian Development Fund (ADF) and Ministry of Finance and Economy (MFE) information and documentation of the assessment performed by the inter-institutional group, which was set up based on the DCM no. 234, dated 17.4.2019 "On the Integrated Program of Development "Pole of Justice" for the establishment built by the National Chamber of Advocates.

The ADF refused to provide information on, where inter alia deemed that this institution operates in accordance with law no. 10 130, dated 11.05.2009, "For Albanian Development Fund" as amended. Based on point 1 and 2 of article 4 of this law, the ADF is a legal person and enjoys the status of a non-profit organization, enjoys managerial, administrative, financial and technical independence. From the above it turns out that the ADF is not a public authority as defined by law no. 119/2014 "On the Right to Information".



## #information #transparency #decision

Regarding the argument submitted by the ADF, the Commissioner considers that this argument does not stand. Point 1 of Article 2 of the LRI clearly states that: "Public authority" is (...) c) any natural or legal person, being awarded the right to assume public functions by law, by-law act or any other fashion, provided for by the current legislation.

In terms of the above provisions, although ADF enjoys the status of a non-profit organization, managerial, administrative, financial and technical independence, is a legal person, which exercises public functions and is subject of the Law no. 119/2014. Accordingly, it is obliged to implement it, guaranteeing public access to information in the context of transparency and accountability, in addition to the required information and documentation, relates to the way public funds are managed, based on point 2 of article 1 of the Law no. 19/2014 "On the Right to Information".

Meanwhile, by medium of Decision no. 42 dated 07. 10. 2020, the Office of the Commissioner has dismissed the complaint of the citizen B.L. against OTP Bank Albania PLC. Following the preliminary review of the complaint and verification of facts and its legal basis, as well as verification performed with NBC, it results that OTP Bank Albania PLC is a company with private shares, owned 100% by a private entity. Pursuant to point 1 of article 2 of LRI, the OTP Bank Albania PLC is not a public authority, in the sense of the Law no. 119/2014 "On the Right to Information". Accordingly, the submitted complaint falls out of the scope of this law.

For more information you can read the full the decision on the KDIMDP website [www.idp.al](http://www.idp.al).

**INFORMATION ON  
COORDINATORS OF THE  
RIGHT TO INFORMATION**  
**MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT**

**Name Surname:** Adenisa Ago

**Job position:** Lawyer

**Department:** Department of Good Management of Human Resources, Assets and Services

**Public Authority:** Ministry of Agriculture and Rural Development

**Date of appointment as coordinator:** October 2019

**Previous experience as a coordinator for the right to information:** No

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**Number of requests for information recorded during 2020:** 52 information requests

**How do you assess the level of transparency of the public authority where you work?** The Ministry of Agriculture and Rural Development has published on its official website (<https://bujqesia.gov.a/programi-transparences/>) the transparency programme, which reflects the categories of mandatory information to be made public in accordance with Article 7 of the Law no. 119/2014 "On the right to information". The Ministry updates the transparency programme whenever there are changes in the information reflected thereto. Also, regarding the requests for information that have been sent, the ministry has informed the applicant within the deadlines set out by law whether or not it disposes the requested information. In cases where it turns out that the ministry disposes the requested information, it has made available it to the applicant. Meanwhile, in cases when it turned out that the ministry does not dispose the requested information, the latter has forwarded the request to the relevant authority disposing the requested information, and also informed the applicant.

**What is the largest difficulty you deal with in your role as coordinator for the right to information?**

The principle of the right to information is a very important element of the rule of law. For this reason, interested persons should be informed by public authorities on the information they require within the restrictions defined by the law. In practice, deciding on where this right is restricted has not been easy in every case, therefore, this has been one of the difficulties I have encountered in my role as coordinator for the right to information. Another difficulty I have dealt with relates to identifying the information requested in cases where the request has been ambiguous.

**What is your suggestion for improvement in the implementation of the law on the right to information?**

I would like to suggest that the coordinator for the right to information should enjoy a special status within the public authority where he/she works, in order to have sufficient time and support in handling requests for information.

# THE RIGHT TO INFORMATION, TRANSPARENCY FOR GOOD GOVERNANCE

During the month of October, the Office of the Information and Data Protection Commissioner held a meeting with coordinators from the Prime Minister's Office and ministries. This meeting addressed issues on proactive transparency, implementation of recommendations rendered by the Commissioner's Office on updating Transparency Programmes of these Public Authorities; the use of "Electronic register of requests and responses of the right to information" (ERRRRI), through the portal [pyetshtetin.al](http://pyetshtetin.al) ([askthestate.al](http://askthestate.al)), as well as on the complaints being handled and issues encountered by handling them. The role of the coordinator was addressed as well, and the Office of the Commissioner shall continue to provide assistance and support in strengthening the coordinators' role within the structures of Public Authorities.

