

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

Restrictions of the right to information

The right to information is anticipated in the Constitution of the Republic of Albania in article 23 of the Chapter "Human Rights and Freedoms". However, the right to information is not an absolute right rather than a relative right which is restricted namely by article 17 of the Law No. 119/2014 "On Right to Information".

The right to information may be restricted if the provision of the information would affect the right to privacy; the commercial secrets; the copyright; patents; national security, referring to the definition made by the legislation on classified information; prevention, investigation and prosecution of criminal offences; normal flow of the administrative review in the context of disciplinary proceedings; normal flow of inspection and auditing procedures for the public sector bodies; working out the monetary and fiscal policies of the state; parity of parties in judicial proceedings and normal flow of judicial proceedings; preliminary consultation or discussion internally or among the public sector bodies for developing public policies; and if the provision of information would clearly cause a serious damage to the above mentioned interests.

In these circumstances, the public authority shall take into account whether the provision of information would be of public interest. If the benefit to the public is greater than the damage to the authority or other affected individuals, the authority must provide the information.

The Public Authority may only refuse to provide the information regarded as state secret only after the latter has initiated the reviewing procedure. Only after the conclusion of this procedure, it may decide to handle the information request.

If only one part of the requested information is affected by restrictions, the public authority shall provide the information by clearly indicating the part which was refused. The authority should submit a written explanation, if it decides to refuse the information request.

Monthly summary of decisions

Decision No. 38 -

The information contained by the public authority and is not subject to restriction, should be provided to the applicant

Decision No. 39 -

if the restriction affect only one part of the information, the other part shall not be refused.

Decision No. 40 -

Public Authorities should accurately provide the requested information.

Decision making of the Information and Data Protection Commissioner

In the course of September, the Office of the Information and Data Protection Commissioner (IDP) issued 3 decisions on the application of the Law No. 119/2014 “On Right to Information” (LRI). All decisions consisted of orders addressed to public authorities to provide the requested information.

By medium of Decision No. 38 dated 21.09.2020, the Office of the Commissioner has accepted the complaint by the journalist M.B, who requested to Fier Municipality (the Public Authority) information on:

“Number of the employed disabled persons and of those discharged within the administration of the public authority since 2015; the number of factories operating with over 100 employees currently in Fier city; the number of Rom community in the city council; the number of food packages distributed by the Public Authority during the measures taken against Covid-19; the number of electronic devices and their model provided by the Public Authority to pupils during the Covid-19 pandemic. What is the phase of the project on construction of the training complex in Darzezë on preparation phases?”

After examining the respective legislation and the documentation held, the Commissioner considered in principle that the information/documents requested are in line with the requirements of Article 2/2 of the Law No. 119/2014 “On Right to Information”, which stipulates that “public information is any data recorded in any type of form or format, in the course of assuming the public function, regardless whether it has been worked out by the public body itself or not”.



TRANSPARENCY
OF PUBLIC AUTHORITIES IS THE
ANTECHAMBER OF GOOD GOVERNANCE

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#information #transparency #decision

The Law No. 119/2014 “On Right to Information” aims at encouraging integrity, transparency and accountability of the public authorities and any entity exercising public functions. Local self-government units are subject to this obligation also in application of Chapter VI of the Law No. 139/2015 “On Local Self-government”, as amended. Particularly, Article 15 “The transparency of the activity of local self-government units”, sets forth that:

1. The local self-government units ensure that their activity is opened to the public.
2. Any act of local self-government units shall be published on the official website of the local unit and is posted in certain places by the public notification unit...”

The Commissioner assessed that, the existence of the above mentioned information/documentation, even if they are produced or held by the Public Authority, the latter shall be responsible to make available the requested documentation.

While making available the requested information, the Public Authority shall take into account Article 17/6 of the Law No. 119.2014 “On Right to Information”, which foresees that “Where the restriction affects the information only partially, the remaining part shall not be rejected to the applicant. The public sector body shall clearly indicate the parts of the respective documentation having been rejected, as well as based on which point of this Article the rejection was ruled”.

In conclusion, the IDP decided to Order the Public Authority to provide the requested information.

For more information on this case, please visit our website at: www.idp.al.

**TË NJOHIM
KOORDINATORËT E TË
DREJTËS PËR INFORMIM
MINISTRIA E INFRASTRUKTURËS DHE ENERGJISË**

Name surname: Etleva Shore

Job Position: Lawyer

Department: Programming, Standardization and Harmonization of Regulatory Framework Department

Public Authority: Ministry of Infrastructure and Energy

Appointment date as coordinator: September 2018

Previous experiences as coordinator of the right to information: N/A

Email address: etlevashore@infrastruktura.gov.al

Phone: 0682001225

Number of information requests recorded during 2020: 100 requests

How do you assess the transparency level of the public authority where you work? The Ministry of Infrastructure and Energy has complied with all legal requirements for every information request received, as well as in cases when the Ministry did not dispose the requested information, by notifying the applicant within the legal deadlines, also in cases where it disposes the information, by making available the original document or its copy in the form and the requested format. MIE has published on its official website www.mie.gov.al the transparency programme which reflects information and documents made available without request, as well as the register of requests and responses where all information requests are reflected in. The Public Authority where I am assigned as coordinator has, in the context of the right to information, responded to almost all information requests within the powers and responsibilities that it covers.

Which is the greatest difficulty encountered during your assignment as a right to information coordinator? The duty of the right to information coordinator is not an easy job. Being a coordinator requires to be accountable in order to handle every request with integrity and readiness aiming at fulfilling every applicants' requests. One of the difficulties I have encountered during the assumption of this function is the broad area of responsibility that MIE covers, thus making it difficult to coordinate with responsible structures, in order to provide the requested information within legal deadlines. I would also like to underline that during the pandemic (in particular during lockdown) this process got harder to be accomplished according to the legal framework.

What would improve the implementation of the law on the right to information?

My modest suggestion would be on provisions of the right to information law which relate to restrictions, which I think should be revised in order to provide more specific details on restrictions of the right to information. Accordingly, based on the daily practice, for many other specific cases, I think that issuing of a DCM for the enforcement of the right to information law would be more effective.

With respect to the coordinator of the right to information, I would suggest that the latter should enjoy a special status within the public authority in order to boost motivation of the person carrying out this function for the fulfilment of the law on right to information.

28 shtatori është Dita Ndërkombëtare e të Drejtës për Informim Right to Know Day

The International Day for Universal Access to Information is celebrated every year worldwide. The International Day for Universal Access to Information was proclaimed at the Freedom of Information Conference held in Sofia, Bulgaria, on 26-28 September 2002.

Information is a basic human right and the fundamental foundation for the formation of democratic institutions.

NELSON MANDELA

None of the main issues which humanity is facing will be resolved without access to information.

CHRISTOPHE DELOIRE

A lack of transparency results in distrust and a deep sense of insecurity.

DALAI LAMA

The only source of knowledge is experience.

ALBERT EINSTEIN

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.

BARACK OBAMA

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