



## **Access to Information in Montenegro**

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# RIGHT to KNOW

Experiences in the application  
of the Law on Free Access to Information  
- Case Study Montenegro -



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## 1. INTRODUCTION

The Parliament of Montenegro adopted the Law on Free Access to Information on 8<sup>th</sup> November 2005.

The Law on Free Access to Information is the one which enables the change in the pattern of relations between the state and its citizens. Enforcement of this law is one of key preconditions in fight against corruption recognised as the single most significant impediment to European integrations.

Since the enactment of the Law, MANS has been monitoring its implementation testing the political will and readiness of government agencies to publicise delicate information to which the public was denied access until now.

The aim of the publication is to draw attention to current problems in access to information filed with public authorities and provide grounds for considering amendments to legislation and enhancing its practical application.

The publication includes a number of practical example with relevant documents offering data on the first 1,000 requests for information submitted between 20<sup>th</sup> December 2005 and 11<sup>th</sup> July 2006, while the experience in the application of the Law on Free Access to Information regarding the privatisation process will be published in a separate publication. The database of all submitted requests for information is available at [www.pravodaznam.info](http://www.pravodaznam.info)

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Swedish Helsinki Committee  
for Human Rights

The views expressed in this publication are solely the viewpoints of MANS and do not necessarily coincide with the viewpoints of the Swedish Helsinki Committee for Human Rights.

## 2. GENERAL EXPERIENCES IN THE APPLICATION OF THIS LAW

**Lack of political will to publicise information previously restricted for the public, and the complicated and time-consuming procedure for access to information** are the main features of the implementation of the Law on Free Access to Information in Montenegro.

**A high percentage of the silence of the administration in all the stages of the procedure and a considerable percentage of negative responses** to requests for information are some quantitative indicators of the quality of the implementation of the Law on Free Access to Information in Montenegro.

Overall **statistics** show that access to information was granted in 44% of cases, in 36% it was denied, while the silence of the administration was the final response, after having conducted all the stages of the procedure, in 22% of the total number of requests.

**Imprecisely worded exceptions are frequently misused in practice**, among other things thanks to the fact that there are no regulations defining the business and state secret.

In practice, **authorities do not conduct the test of harm** to show whether the publication of the information would cause greater harm than is the interest of the public for the information to be publicised.

In some cases the institutions **restrict access** to information, without referring to exceptions stipulated by the Law, pursuant to some internal acts declaring the information confidential, or with the explanation that the information may not be publicised until the publication of the guide for access to information, or even without any explanation.

There are cases where **one government agency restricts** the access to information without referring to the exceptions, whereas **other agency enables** access to the same information.

Quite often access is **denied** to information which may indicate possible **abuse of position** of public officials and other **violations**.

In some cases, government agencies refuse to make the information public saying it is **not filed** with them, and with the explanation that they are not the relevant institution, although being actually in possession of the document, since it had to be submitted by the bodies which actually compiled it.

Frequently several government agencies in a row declare themselves as not having the authority, which makes access to information more difficult or prevents it altogether. It proved in practice that frequently by doing so they try to hide the information actually filed with them.

In order to avoid publicising information, government agencies abuse the possibility envisaged by the law that the information **already published** does not have to be made available to the applicant. This essentially prevents access to information since authorities refuse to give more details regarding where and when the requested information was published, although obliged to do so by the law.

The mechanisms that would ensure the authorities would allow access to information in the manner requested have not been stipulated by the Law, which leads to some authorities only allowing **inspection of the documents**, frequently proving to be a significant obstacle to free access to information.

According to the Law, government agencies are obliged to charge **costs of free access to information** pursuant to a separate regulation that has not been adopted yet. Due to this fact, there are no legal grounds for calculating the costs of the procedure, but notwithstanding that it frequently happens that the authorities charge **unrealistically high amounts**, which constitutes another significant impediment to free access to information.

Pursuant to the Law on Free Access to Information, the complaints should be dealt with in a summary procedure, but in practice **several months may elapse before passing a decision**.

Although the law envisages the possibility for the court to pass a **meritry judgement** that is to replace fully the decision of the given authority and pursuant to which access to information may be exercised, **no such decision has been passed** yet; rather, the court abolishes the decision and orders the given agency to pass a new one, harmonised with the law.

**In some cases**, despite the court decision abolishing the resolution, the authorities again restrict access to information on the same grounds, which requires repetition of the procedure of filing complaints, which makes the procedure take several months and turn into a vicious circle, making **court protection of the right to access to information rather meaningless**.



### **3. RIGHT TO FREE ACCESS TO INFORMATION**

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The right to information, as the right which implies accurate and timely information, is often referred to as “**the right of the public to know**”.

Freedom of opinion and expression, as one of the **fundamental human rights** includes the right to free access to information, freedom to receive and impart information.

At the same time, information is a **precondition** for enjoyment of many economic and social rights, while only an informed citizen may make rational civil and political decisions.

**The Montenegrin Law** stipulates that access to information is guaranteed at the level of principles and standards contained in international documents on human rights and freedoms.

Free access to information establishes mechanisms enabling the citizens to better understand the activities and policies of the government and to scrutinize those who govern them leading to increased accountability, better operation of public authorities and **reduction of corruption**.

The right to free access to information is regulated by numerous international documents and as of late more importance is being attached to it, particularly in the field of curbing corruption.

#### **Universal Declaration of Human Rights, Art. 19:**

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

#### **International Covenant on Civil and Political Rights, Art. 19:**

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

#### **European Convention on Human Rights and Fundamental Freedoms, Art. 10:**

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

#### **United Nations Convention against Corruption, Art. 10:**

“ Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

- (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.”

On 8<sup>th</sup> November 2005, after strong pressure from international institutions and civil society organisations, after more than two years and many drafts, the Parliament eventually adopted the Law on Free Access to Information.

Thus the citizens of Montenegro acquired a new right and the possibility to request and obtain information filed with public authorities, which is a real revolution in the relations between the state and its citizens.

This Law is one of the key mechanisms for public scrutiny of public authorities, thus narrowing down the space for discretionary decisions of individuals, while just few pieces of information, compared to the practises insofar, may remain hidden from the public eye.

#### **Excerpts from the Law on Free Access to Information:**

**Access to the information** filed with government agencies shall be free.

**Any national or foreign legal and natural entity** shall be entitled to access the information filed with government agencies.

The right of access to information shall encompass **the right to ask for, receive, use and disseminate the information** filed with government agencies.

**Publishing the information** filed with government agencies shall be **in the public interest**.

**Information** shall be any document in written, printed, video, audio, electronic or other form, including also a copy or a part thereof, regardless of its contents and source (or author) or the time of its composing or the system of its classifying

**Government agency** shall be any: state authority (legislative, executive or judicial); local self-government authority; local government authority; public institution; public company or other business entity that has been granted to perform public powers, which is founded by the State or a local self-government authority or which is funded from public revenues and with which the information are filed;

**the information filed with government agencies** shall represent physical possession of information by government agencies (their own ones, as well as those reported by other government agencies or third persons)

## Procedure for Access to Information

The procedure following the request for free access to information is regulated by the Law on Free Access to Information, the Law on General Administrative Procedure and the Law on Administrative Dispute.

**The deadline for making a resolution upon the request for free access to information is 8 days as of the day of the request for information being submitted.**

If the applicant **does not receive an answer within 8 days:**

1. If there is **no authority performing supervision** of the work of the authority which was sent the request for free access to information, the applicant has the right to submit the **repeated request**.

The deadline for response to the repeated request is 7 days from the submission of the repeated request.

2. If there is an authority performing supervision over the work of the agency to which the request was submitted, the applicant has the right to **appeal on the grounds of silence of administration**.

The appeal is filed with the agency which was requested to allow free access to information which refers it to the second instance authority.

**The deadline for appeal** is 15 days from the day when the deadline for a response to the request has expired.

**The deadline for a response to an appeal** is 15 days from the day of appeal.

If the authority does not submit a response even after the appeal, the applicant may submit the **repeated appeal**.

The deadline for response to the repeated appeal is 7 days from the submission of the repeated appeal

If the authority fails to allow access to information even after the repeated request or appeal the applicant has the right, within 30 days from the expiry of the deadline upon repeated request or an appeal, to file a **complaint** to instigate a procedure before the Administrative Court.

When an applicant receives a **response upon request that does not satisfy him/her:**

1. If **there is an authority performing supervision** of the work of the agency that brought the resolution, the applicant has the right to file an appeal within 15 days from the day of the delivery of the resolution.
2. If **there is no authority performing supervision** of the work of the agency that brought the resolution, within 30 days from the day of its delivery, the applicant has the right to file a **complaint** with the Administrative Court on the grounds of **the violation of the procedure or misapplication of the law**.

**The complaint** has to state the name and surname, profession, place of residence and address, or the name and seat of the plaintiff, the act to which the complaint refers, the reason for filing the complaint, and in which sense and to what extent the annulment of the document is sought. The complaint is filed in three certified copies and together with it the plaintiff is obliged to **submit the original or certified transcript of the document** to which the complaint refers.

**The chapter entitled Appendices gives the diagrams showing the process of access to information and the templates.**