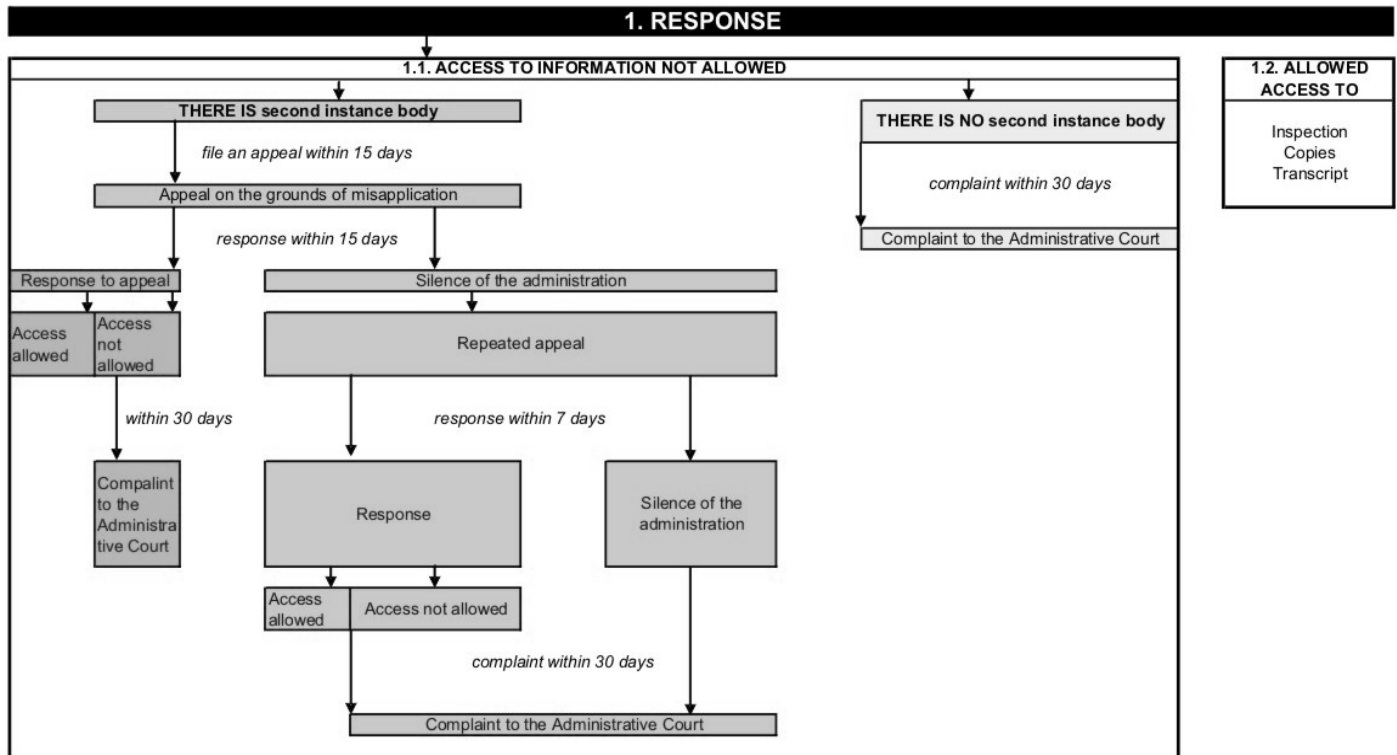


12. APPENDICES

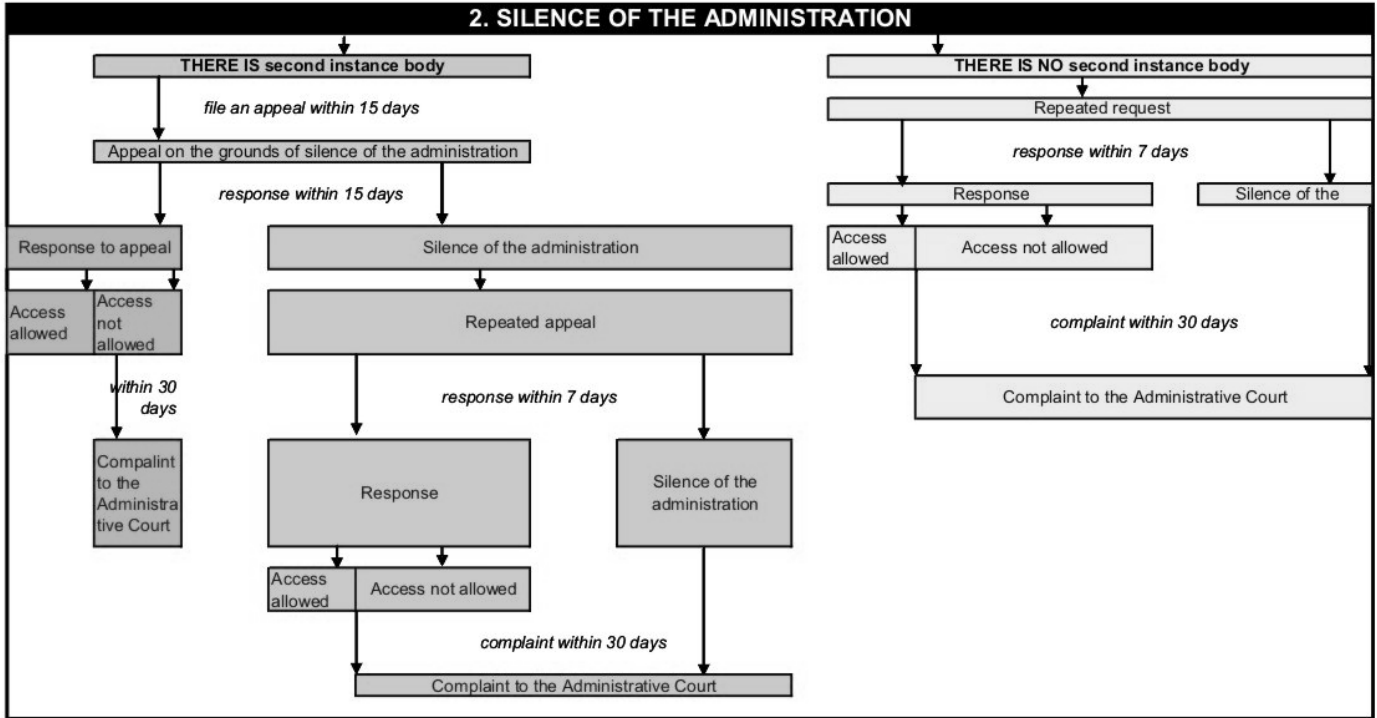
12. APPENDICES

Appendix 1: Access to information flowchart

response within 8, or 15 days



2. SILENCE OF THE ADMINISTRATION



Appendix 2: Template for the Request for free access to information

Name of the institution	Date and place
Ref: Request for access to information	
Dear Sir or Madam,	
Would you be so kind as, pursuant to the Law on Free Access to Information, to provide me a copy (or enable inspection or transcribing) of	
<i>Text of the request (document title or description of the information requested)</i>	
You are kindly requested to deliver the resolution upon this request and requested information to the address given under the contact details.	

Applicant's signature	
Contact details	

Appendix 3: Template for repeated request

Name of the institution	Date and place
Ref: Request for access to information	
Dear Sir or Madam,	
Pursuant to the Law, I hereby repeat the request for information as of _____.	
Would you be so kind as, pursuant to the Law on Free Access to Information, to provide me:	
- <i>Text of the request (document title or description of the information requested)</i>	
Please find enclosed a copy of the prior request for information.	
You are kindly requested to deliver the resolution upon this request and requested information to the address given under the contact details.	

Applicant's signature	
Contact details:	

Appendix 4: Template for the appeal due to the silence of the administration

_____ (first instance body)

for

_____ (second instance body)

Date and place

On _____ I submitted the request for access to information and _____ requested the copies of:

-Text of the request

Evidence: certificate of the receipt of the request (copy of the request submitted).

Since upon this request, pursuant to Article 16 paragraph 1 of the LFAI, the resolution has not been passed and delivered within the stipulated time, I hereby make an

A P P E A L DUE TO "THE SILENCE OF THE ADMINISTRATION"

The first instance body failed to pass and deliver any resolution within the time stipulated by Article 16 paragraph 1 of the Law on Free Access to Information and therefore I make an appeal, as if my request had been refused, as envisaged by the Law on Administrative Procedure, and in relation thereto I

p r o p o s e

to the second instance body to conduct the procedure and pass a decision upon my request.

Applicant's signature

Contact details

Appendix 5: Template for the repeated appeal

_____ (first instance body)

for

_____ (second instance body)

Date and place

Ref: Repeated appeal

Pursuant to the Law, I hereby repeat the appeal already lodged.

On _____ I submitted the request for access to information and _____ requested the copies of:

-Text of the request

Evidence: certificate of the receipt of the request (copy of the request submitted).

Since upon this request, pursuant to Article 16 paragraph 1 of the LFAI, the resolution has not been passed and delivered within the stipulated time, I hereby make an

A P P E A L DUE TO "THE SILENCE OF THE ADMINISTRATION"

The first instance body failed to pass and deliver any resolution within the time stipulated by Article 16 paragraph 1 of the Law on Free Access to Information and therefore I make an appeal, as if my request had been refused, as envisaged by the Law on Administrative Procedure, and in relation thereto I

p r o p o s e

to the second instance body to conduct the procedure and pass a decision upon my request.

Applicant

Contact details

Appendix 6: Template of the appeal for the misapplication of substantive law

_____ (first instance body)

for

_____ (second instance body)

Date and place

By the decision _____ dated _____ July 4, 2006

Pursuant to Article 20 of the Law on Free Access to Information (Official Gazette of the Republic of Montenegro, no 68/05), I hereby make an

A P P E A L

On the grounds of:

- Misapplication of substantive law.

R a t i o n a l e

On _____ request for information no _____ was submitted by which I requested from _____ the following:

-Text of the request

On _____ I was delivered the resolution _____ no _____ dated _____ which _____ (description of the resolution).

I consider the previous resolution not to be passed pursuant to the law.

State the reasons for which the resolution is contested

Considering that by the resolution _____ as of _____ no _____ my constitutional and legal right to free access to information is limited I hereby

PROPOSE

The second instance body should dismiss the resolution _____ and enable free access to information.

Applicant

Contact details

Appendix 7: Template for the complaint due to the silence of the administration

ADMINISTRATIVE COURT, Podgorica

PLAINTIFF: *Name and surname or the title of the plaintiff*
Address

DEFENDANT: _____ (*name of the institution*)

In due time, the plaintiff files this

COMPLAINT

On the grounds of:
-procedural violations

RATIONALE

On _____ I submitted a request for information pursuant to the Law on Free Access to Information and requested from _____ the following:

-Text of the request

Article 16 of the Law on Free Access to Information explicitly stipulates that any government agency is obliged to promptly make a resolution and deliver it to the applicant, and not later than eight days as of the day when the request was submitted.

The deadline of 8 days expired on _____.

Since the resolution was not delivered within statutory deadline on _____ I submitted the **repeated request** pursuant to the Law on Free Access to Information, Article 20, paragraph 1, and relating to the Law on Administrative Dispute, Article 18, paragraph 2 and referring to paragraph 1 of the same Article of the Law on Administrative Dispute.

As per the Law on Administrative Dispute, the deadline for response to repeated request is seven days. Although this deadline has expired, no resolution has been delivered as envisaged by the law, and thus Article 1 and Article 16 of the Law on Free Access to Information have been violated.

Considering that this silence of the administration, i.e. the violation of the procedure constitutes the violation of the Law on Free Access to Information, to his/her damage, the plaintiff hereby

PROPOSES

The Court orders the delivery of the resolution and enables free access to information.

The Court imposes the **maximum fine** _____ as stipulated by Article 27 paragraph 1 and the responsible persons pursuant to Article 27 paragraph 3 of the Law on Free Access to Information.

Plaintiff

Place
Date _____

Appendix 8: Law on Free Access to Information

THE LAW ON FREE ACCESS TO INFORMATION

BASIC PROVISIONS

Article 1

Access to the information filed with government agencies shall be free, whereas it shall be exercised in the manner prescribed by this Law.

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

Access to the information shall be guaranteed upon the principles and the standards contained in international documents dealing with the issues of human rights and freedoms.

Article 2

Access to the information filed with government agencies shall be grounded in the following principles:

- 1) freedom of informing;
- 2) equal preconditions for exercising the right;
- 3) straightforwardness and accessibility to public scrutiny;
- 4) promptness of the procedure.

Article 3

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

Article 4

Particular notions in this Law shall have the following meaning:

- 1) **the right of access to information** shall encompass the right to ask for, receive, use and disseminate the information filed with government agencies;
- 2) **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;
- 3) **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;

- 4) **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);
- 5) **applicant** shall be any person that requires access to the information;
- 6) **disclosure of the information** shall be any inspection of the contents of information by applicants or third persons, regardless of the purpose for their use;
- 7) **publishing the information** shall be reflected in any making feasible to have insight in the contents of any information;
- 8) **deletion of the information** shall be the method to protect the part of any information that is restricted to access;
- 9) **responsible person** shall be any person assigned to act upon requests for access to information, or any person authorized to act upon complaints or any person responsible for the legality of the relevant government agency's work;
- 10) **submission date** shall be the day when a request or other written brief was received by a government agency;
- 11) **delivery date** shall be the day when a resolution or other document was delivered to an applicant.

ACCESS TO INFORMATION

Article 5

Any government agency shall be in obligation to compose and to publish, in appropriate manner, a list of the types of the information filed with it, including also public registers and records; data on the procedure for access to the information; names of the persons authorized to act upon any request for access to the information; and other data of importance for exercising the right of access to the information (Guide for Access to Information).

Article 6

Any government agency shall be in obligation to enable inspections of public registers and public records filed with it.

Article 7

Disabled persons shall be provided access to the information through the method and form corresponding to their needs.

Article 8

Any government agency shall be in obligation to make possible to any applicant to access the information or a part thereof, except in cases provided for by this Law.

Article 9

Access to information shall be restricted if their disclosure would significantly endanger:

- 1) national security and defense or international relations, primarily through disclosing the information:
 - a. from security intelligence agencies and intelligence agencies for national security;
 - b. from military intelligence services;
 - c. of armed forces activities;
 - d. about buildings, installations and systems that are intended exclusively for the State defense purposes;
 - e. of importance for international tribunals or investigation bodies or other international authorities or organizations' work;
- 2) public security, through disclosing the information relating to:
 - a. the public unsafety and state of emergency;
 - b. the safety of individuals, the people and material properties;
- 3) commercial and other private or public economic benefits, through disclosing the information:
 - a. relating to financial, monetary or commercial operations of the State with other states, international organizations or other legal or natural entities;
 - b. that are business secrets;
 - c. contained in a separate law on the confidentiality of data;
- 4) economic, monetary and foreign exchange policy of the State, through disclosing the information:
 - a. of national economy, financial policy initiatives, operational plans and other economic policy documents;
 - b. relating to the capital and financial markets;
- 5) prevention and investigation of and proceedings upon criminal matters, through disclosing the information:
 - a. contained in reports submitted to the authorities relevant for identifying and prosecution of criminal offenders, which reports include data concerning planning or commissioning such offences and the persons that have committed them;
 - b. of witness protection programs;
 - c. of juvenile criminal offenders;
 - d. in relation to investigation procedures;
 - e. relating to the fight against organized crime, related operational plans and to special forces for combating organized crime;
 - f. relating to anti-money laundering and anti-financial terrorism activities;

- 6) privacy and other personal rights of individuals, except for the purposes of court or administrative procedures, through disclosing the information:
 - a. concerning private lives of parties and witnesses in the procedures, as well as of victims and parties injured by criminal offences, and through disclosing the information of adjudicated persons;
 - b. contained in personal and medical files of individuals, findings obtained from psychiatric and psychology examinations and personal disposition tests;
 - c. relating to the establishment of parental rights, adoption of children and alike;
 - d. regarding individual employment, income, pension, relief and other social welfare benefits;
 - e. giving phone numbers, temporary or permanent residences of individuals and their families, if such individuals require a relevant authority to keep the information secret because they reasonably believe their and their families' safety is at risk;
- 7) the procedure of considering and passing certain official documents, through disclosing the information:
 - a. containing attitudes in connection with negotiations that are conducted by government agencies;
 - b. that are in the course of their processing, or the information that are not in any official document form, except for laws or other general documents.

The interests referred to in paragraph 1 of this Article shall be considered significantly endangered if disclosing such information would cause them damages considerably bigger than the public interest in publishing such information is.

Article 10

Any government agency shall be in obligation to enable access to the information or to a part thereof, referred to in paragraph 1 of Article 9 of this Law, if such information contains data that obviously imply: disrespect to substantive regulations; unauthorized use of public resources; misuse of powers; unscrupulous performance of public duties; the existence of reasonable suspicions a criminal offence was committed; or the existence of the grounds for attacking a court judgment, regardless of the seriousness of damages caused to the interests referred to in paragraph 1 of Article 9 of this Law.

PROCEDURE FOR ACCESS TO INFORMATION

Article 11

The procedure for access to the information shall be initiated upon the request of any person that requires such access.

Any request for access to information shall be submitted to a relevant government agency in writing, whereas directly or by mail or by e-mail.

There shall be no dues payable for any request for access to the information.

Article 12

A request for access to the information shall contain the following:

- 1) basic data concerning any required information;
- 2) the method in which such information is desirable to be available;
- 3) data on applicant (first and family name, permanent or temporary residence place, firm and registered office) and / or its agent, representative or attorney.

Any applicant may include also other data that make searching for any required information easier.

Any government agency may prescribe the form for submitting requests, whereas it shall be in obligation to act also upon any request not being submitted in such form.

Article 13

Access to any information filed with a government agency may be exercised through:

- 1) direct inspection of public records or the original or a copy of such information, within the premises of the government agency;
- 2) transcribing such information by the person that submitted the request for such information, within the premises of the government agency;
- 3) transcribing, photocopying or translating such information by any government agency, whereupon such information shall be delivered in the form of a transcript or a photocopy or a translation to the applicant, directly or by mail or e-mail.

If any part of information is restricted, relevant government agency shall enable access to the information after deleting the part of such information that is restricted.

Any part of information that is restricted shall be marked by indication "deletion completed", whereas the notification of the extent of such deletion shall be indicated as well.

The text of information must not be destroyed or scratched by any such deletion.

Access to the information, a part of which was deleted, shall be exercised in the manner provided for by item 3 in paragraph 1 of this Article.

Article 14

Government agencies shall not be in obligation to enable any access to the information that has already been published or made available in the country or on the Internet.

In cases referred to in paragraph 1 of this Article, any government agency shall inform any applicant, in writing, of the carrier of the required information (e.g., Official Gazette or other official organ or publication or printed media, and alike), as well as of where and when such information was made public.

Article 15

Government agencies shall act upon any request for the information in a summary procedure.

Article 16

Any government agency shall be in obligation, upon any request for the information, to promptly make a resolution and to deliver it to any applicant, whereas not later than eight days as of the day of the request for information being submitted.

Except for paragraph 1 of this Article and in cases when it is required for the purposes of protecting lives or freedoms of persons, any government agency shall be in obligation to promptly make and to deliver a resolution to any applicant, whereas not later than 48 hours upon such request has been submitted.

If the range of the required information is big or if the searching for such information requires an extensive documentation inspection that would unreasonably disrupt regular operations of any government agency relevant therefore, the deadline for making and delivering a resolution, referred to in paragraph 1 of this Article, may be prolonged by 15 days at most.

Article 17

If any request for the information is incomplete or indistinct and, therefore, it cannot be acted upon, any government agency shall be in obligation to invite any applicant to eliminate deficiencies therein within eight day as of the day of delivering the notification thereof, whereby such government agency shall give necessary instructions for eliminating such deficiencies.

In case deficiencies shown in a request for the information have not been eliminated within the prescribed deadline by its applicant, any relevant government agency shall reject such request by a conclusion. It shall be in obligation to notify any such applicant of such consequence, in its notification instructing elimination of such request deficiencies.

In the case referred to in paragraph 1 of this Article, the deadline for making resolution thereupon shall commence on the third day after submission date of any corrected request.

Article 18

Any government agency shall decide upon a request for information by a resolution.

Any resolution permitting access to the required information or to a part thereof shall determine the manner and the deadline for such access, and the costs of the related procedure as well.

Any government agency shall be in obligation to give the rationale for any document rejecting such request, and to state the reasons for restricting access to such information.

Any government agency shall be in obligation to make access to the information possible within three days as of the delivery date of related resolution to any applicant concerned.

If it has been resolved to make the required access through direct inspection in public records or information or through transcribing such information by an applicant, the deadline for such access shall not be preclusive.

The costs of access to the information related procedure shall be paid in advance of related resolution execution.

Article 19

Any applicant shall bear the costs of the procedure for exercising the right of access to the information, in harmony with the separate regulation.

The costs of such procedure shall be in connection only to actual costs incurred by a government agency with respect to transcribing, photocopying, translating and delivering any required information.

In case when a disabled person is actual applicant, any government agency shall bear the related procedure costs.

Article 20

A complaint may be presented against any document of a first instance government agency deciding upon any request for the information, before the authority performing supervision of such first instance agency's work. If such authority does not exist, an administrative dispute may be instituted against such document.

Article 21

Any first instance agency shall be in obligation to conduct all necessary activities upon any complaint within three days as of its submission, all within the framework of powers granted by the Law.

Article 22

Any government agency relevant for making decision upon any complaint shall be in obligation to decide thereupon, and to deliver such decision to a complainant concerned, whereas within 15 days as of the day such complaint has been submitted.

Article 23

A complaint submitted against any resolution allowing access to the information shall not adjourn such resolution execution.

The resolution referred to in paragraph 1 of this Article shall be final upon expiration of the deadline provided for the exercising the right of access to the information.

Article 24

Any applicant presenting a request for access to the information or any other person interested therein shall be entitled to the court protection during any administrative dispute procedure.

The procedure upon a suit instituted in relation to access to the information shall be urgent.

Article 25

No employee who, while performing assigned duties scrupulously, discloses information of misuse of or irregularities in performing any official duty, and who also informs the head of a government agency concerned or the relevant authority for combating forbidden activities, may be hold accountable.

SUPERVISION

Article 26

Supervising the enforcement of the provisions of this Law relating to composing and publishing the Guide for Access to Information shall be the responsibility of the ministry relevant for media.

PENAL PROVISIONS

Article 27

A fine amounting from ten- to a hundred-time minimum wage in the Republic shall be imposed to any government agency if it:

- 1) does not compose or publish Guide for Access to Information (Article 5);
- 2) does not enable inspection of public registers or records filed with it (Article 6);
- 3) does not make any disabled person possible to access the information in the manner and in the form corresponding to his / her needs (Article 7);
- 4) does not provide any applicant access to the information or to a part thereof filed with it (Article 8);
- 5) act in violation of Article 9 of this Law;
- 6) act in violation of Article 10 of this Law;
- 7) act in violation of Article 25 of this Law.

A fine amounting from double to ten-time minimum wage in the Republic shall be imposed to any responsible person in any government agency for violations referred to in paragraph 1 of this Article.

TRANSITIONAL AND FINAL PROVISIONS

Article 28

Government agencies shall be in obligation to compose and to publish respective Guide for access to information filed with them, within 60 days as of the day of entering into force this Law.

Article 29

This Law shall enter into force on the eighth day as of the day of its publishing in the "Official Gazette of the Republic of Montenegro".