



CAPACITY ANALYSIS OF THE AGENCY FOR PERSONAL DATA PROTECTION AND FREE ACCESS TO INFORMATION



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Capacity analysis of the Agency for Personal Data Protection and Free Access to Information

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Executive Summary

Capacity analysis of the Agency for Personal Data Protection and Free Access to Information, conducted by MANS, shows which are the key challenges that this second-instance body faces with respect to fulfilment of legal obligations prescribed by the Law on Free Access to Information.

In addition to the observed problems, the Analysis also contains key recommendations for improving the situation to a certain extent, taking into account the importance of the role this body has in the process of free access to information.

Regarding the normative framework for the work of the Agency, in addition to the umbrella Law on Free Access to Information which defines the competences, powers and responsibilities of the Agency, there is a series of by-laws of this institution that regulate the manner in which it functions. Among the 26 such documents, there are eight that are directly related to the area and procedures related to free access to information. Although the institutional basis of the Agency can be considered sufficiently developed, a number of problems that arise in practice reflect the problematic set of other grounds on which the Agency relies but also the non-compliance with the established rules.

Looking at the organizational structure of the Agency and comparing it with the structure of employees, it is obvious that there are several important problems that the Agency would have to solve in order to improve its work. The structure of employees does not correspond to the organizational structure, above all in terms of the number of employees, while their competences and the extent to which employees at the individual level fulfil their obligations cannot be appropriately estimated because there is no established system of evaluation nor the Agency is willing to provide any information on the work biographies of its employees to the public. Additionally, the fact that the recruitment process itself has changed over time, depending on the real power of decision-making in certain managerial positions, it is unambiguously clear that significant changes are required in terms of improving the situation of human resources. Finally, in an organizational context, more than five years after the Agency has been given obligations in the area of free access to information, it is still not precise and there is in practice no system of distribution of work when it comes to performing the supervisory

role and handling of complaints, as the most significant and most burdensome scopes of work of the Agency.

Furthermore, when it comes to the defined procedures within the Agency, based on the claims of the Agency itself, it has been established that the practice has changed independently of the rules over the years, to the point where, for example, even the basic competences of the Council became questionable. There is a clear problem of insufficiently defined manner in which cases are entering the agenda at Council sessions and, more importantly, it is established that members of the Council, who decide on cases, are not sufficiently informed about the cases or their substance. The fact that they only decide but do not formulate decisions or have an obligation to review their final content, “transferred” to a greater extent the powers related to decisions from the Council to the Department for Information System, which independently interprets the Council’s decisions and drafts decisions. On the other hand, the decisions are insufficiently substantiated, with poor legal conclusions and overburdened with unnecessary case descriptions, which later reflects on the work of other bodies in the system, such as the Administrative Court.

The Analysis has shown that financial aspect is not a major challenge in work, and that the existing budget largely allows the Agency to function, but additional resources would be needed to improve the knowledge and skills of employees, their education and training.

When it comes to the Agency’s information system and the software solution it uses in its work, the Analysis has identified problems, primarily in terms of timely and consistent collection of information that the Agency should have, since the first-instance bodies do not provide timely information on the number of requests by the applicant. This results in questionable accuracy of the available data, as it shows, for example, that MANS itself has submitted more requests to public authorities in a given period, than the Agency recorded in total for the same period. Moreover, a significant problem is the fact that an electronic database for monitoring complaints against decisions of first-instance bodies, as well as legal suits filed against the Agency’s decisions, is not kept on a

daily basis. Therefore, it is not possible to keep track of the “status” of a specific case. Finally, the Agency does not have the archive in an electronic form because no documentation is scanned, so it is impossible to keep and search the acts in electronic form.

Based on the key findings obtained on the basis of this Analysis, MANS has pointed to aspects where there is room for improvement of work and capacity building of the Agency. Summed recommendations would be as follows:

- It is necessary for the Agency to comply with the normative framework to a greater extent, or if the existing solutions do not constitute an adequate basis for effective practice, to carry out a certain revision of the existing by-laws regulating the manner in which it operates.

- The Agency should be more transparent in terms of employment and staffing capacity.

- It is necessary to redefine the division of competencies between the bodies of the Agency, but also between individual employees.

- The Agency should improve the procedures for making better quality decisions based on decisions of the Council.

- It is necessary for the Agency to efficiently regulate and clearly define the chronology of decision making, so as not to violate the legal deadlines.

- The Agency needs to update its database on a daily basis, as well as to upgrade the existing software in such a way that it is possible to record and classify cases according to the “status”, which is particularly important for monitoring individual cases of access to information.

- The Agency should create an electronic archive.

Introduction

The Agency for Personal Data Protection and Free Access to Information (hereinafter referred to as: “the Agency”) was given competences in the area of free access to information with adoption of the 2012 Amendments to the Law on Free Access to Information. Since then, this second-instance body is an autonomous and independent body with a key control role in the area of free access to information in Montenegro.

The Agency's new legal obligations required a number of changes in terms of adjusting to the new normative frameworks for its functioning, then adjusting to organizational structure and human capacity, followed by the need for different financial resources and, finally, adjusting in the area of software solutions necessary for work in the new area.

The need for achieving a satisfactory level of capacities of the Agency was highlighted in the European Commission Progress Reports on Montenegro. Thus, in the 2014 Report, the EC indicated that the electronic database of published decisions could be improved and made more user-friendly¹. Next year, the EC reported that the Agency does not have sufficient capacity to deal with the increasing number of complaints it is receiving, and that administrative silence is a major issue, causing nearly 50 % of complaints from the public.²

In the 2018 Report, the European Commission noted That the capacity of the Agency was strengthened, but its 2017 budget was only increased slightly as well as that administrative silence by the public administration remains a concern and a major cause of citizens' complaints.³

In order to find out to what extent the Agency is able to respond to legal obligations in the area of free access to information, MANS has conducted a comprehensive analysis of the Agency's existing capacities. To this end, the normative framework for work of the Agency was analysed, which represents the institutional basis for its work; then the organizational structure of the Agency with the capacities of employees, who should respond to the tasks prescribed by law; budget analysis was carried out as a reflection of financial capacity and; analysis of the software, without which efficiency, no system with large databases, such as the Agency's system, can work.

Methodologically, the Analysis was carried out by combining desk research of documentation proactively published by the Agency as well as documentation submitted to MANS on request. The Analysis also involved processing of qualitative data obtained through the interviews conducted by MANS with two members of the Council, representatives of the Administrative Court, the Ministry of Public Administration and the media in Montenegro. It is important to note here that MANS initiated interviews with the President of the Council, Muhamed Gjokaj, as well as the Head of the Department for Access to Information within the Agency, Biljana Božić. However, until the day of making this analysis they did not provide answers to our questions. Quotations of other interviewees are listed below.

¹ 2014 European Commission Progress Report on Montenegro

² 2015 European Commission Progress Report on Montenegro

³ 2018 European Commission Progress Report on Montenegro

1. Normative framework

1.1. Law on Free Access to Information

Free access to information in Montenegro is guaranteed by **the Constitution**. Article 51 of the highest legal act in Montenegro stipulates that “everyone shall have the right to access information held by the state authorities and organizations exercising public authority”. This right is limited only if it is in the interest of “protection of life; public health; morale and privacy; conducting criminal proceedings; security and defence of Montenegro; external, monetary and economic policies”.⁴

A more precise normative framework for exercising the right to free access to information is set out in **the Law on Free Access to Information**, which, by the amendments that entered into force in 2013, institutionalizes the control mechanism in this area. The Agency, as a collective independent body that previously performed supervision only in the area of personal data protection, obtains a number of new competences and powers, provided by the Law on Free Access to Information.

Competencies of the Agency for Personal Data Protection and Free Access to Information regarding access to information are stipulated in Article 39 of the Law.

⁴ Article 51 of the Constitution of Montenegro

Competencies of the Agency

Article 39

In addition to the competences set forth in the law governing personal data protection, the Agency shall:

- 1) perform supervision over the legality of administrative decisions deciding upon requests for access to information and take the measures set forth by the law;
- 2) manage an information system of access to information;
- 3) monitor the state of play in the area of access to information;
- 4) performs inspection surveillance over application of this Law in terms of developing and updating the Access to information Guide, proactive publishing of information, and delivery of acts and data necessary for keeping of information system for access to information;
- 5) submit requests for opening of misdemeanour proceedings for violations of this Law that relates to developing and updating the Access to information Guide, proactive publishing of information, and delivery of acts and data necessary for keeping of information system for access to information;
 - 5a) keeps and regularly updates the records of all authorized exclusive rights for reuse of information;
 - 5b) verifies the justification for the reasons for granting the exclusive right to reuse the information;
- 6) performs other duties prescribed by this Law.

In the area of free access to information, the Agency is a **second-instance body** with a **supervisory role**. This body monitors the legality of exercising the right to free access to information by supervising administrative acts in this process and is authorized to take the lawfully prescribed measures if necessary.

In order to adequately perform its supervisory function, the Agency, pursuant to Article 40 of the Law, has the right to request from the public authorities, as first instance bodies, to submit to it within five days the information to which access is requested as well as data that are required for decision making. Moreover, the Agency has the authority to request that the inspection, if necessary, establishes whether the public authority is in possession of the requested information within the same deadline⁵.

The second important role of the Agency as the second instance body is to **decide upon complaints**. Namely, the Law on Free Access to Information in Article 34 prescribes the right to a complaint, as a possibility for an applicant for access to information to make a complaint against the decision made in the first instance, with certain exceptions⁶.

The Agency shall make a decision upon the complaint and deliver it to the complainant **within 15 days**⁷.

A complaint may be lodged for violation of rules of procedure, incompletely and incorrectly defined factual state, and misapplication of material law⁸. Once the Agency makes a decision on the complaint, the Law stipulates a five-day deadline for the first-instance body to carry out all activities upon the complaint⁹.

A fine ranging from Euro 200 to 2 000 shall be imposed on the Agency for a misdemeanour, if the Agency fails to make a decision about a complaint and submit it to the applicant within 15 days of the day on which the complaint is submitted.¹⁰

⁵ Article 40 of the Law on Free Access to Information (Official Gazette of Montenegro 044/12 of 9 August 2012)

⁶ Article 34, *Ibid*

⁷ Article 38, *Ibid*

⁸ Article 35, *Ibid*

⁹ Article 37, *Ibid*

¹⁰ Article 48, *Ibid*

1.1.1. Information System Management

The right of the public to know underlying the free access to information includes a number of procedures and a large number of actors, ranging from interested parties requesting information, public authorities, second instance and judicial bodies. Monitoring the situation in the area of free access to information therefore requires a unique information system that combines all relevant data in a **database**, which is also the task of the Agency, while public authorities are obliged to provide the Agency with all necessary data within 10 days¹¹.

The database, according to Article 41 of the Law, should contain information on public authorities, requests, decisions of public authorities made in relation to requests, complaints, legal suits, court decisions, as well as measures taken against public authorities¹².

1.1.2. Monitor the state of play in the area of free access to information

The Agency is obliged to monitor the state of play in the area of free access to information in Montenegro through the information provided. It is also obliged to submit a report to the legislative body¹³ on the current state of play once a year, but also upon request.

A fine ranging from Euro 200 to 2 000 shall be imposed on the Agency for a misdemeanour, if the Agency fails to submit a report to the Parliament of Montenegro on the state of play in the area of access to information.¹⁴

1.1.3. Supervision over proactive publishing of information

The Agency specifically supervises the extent to which the public authorities comply with the statutory obligation to proactively publish information and regularly update the Free Access to Information Guide¹⁵. If the public authorities violate this obligation, the Agency's competence is to file a request for initiation of a misdemeanour procedure¹⁶.

¹¹ Article 42, *Ibid*

¹² Article 41, *Ibid*

¹³ Article 43, *Ibid*

¹⁴ Article 48, *Ibid*

¹⁵ Article 39 item 4, *Ibid*

¹⁶ Article 39 item 5, *Ibid*

1.1.4. Supervision over the re-use of information

Finally, the Agency is responsible for supervising the re-use of information. This body also registers and verifies the justification of the reasons for granting the exclusive right to re-use of information.

Article 27a of the Law stipulates that the Agency is obliged to keep records of contracts, other agreements and decisions by which the public authorities grant the exclusive right to the re-use of information. Public authorities shall submit these documents, according to the same Article of the Law, to the Agency within 15 days from the date of conclusion or adoption.¹⁷

1.2. Assessment of the Law on Free Access to Information regarding the Agency's Role and Competencies

In the opinion of experts of the Access Info Europe (AIE), the leading international organization dealing with free access to information, the Montenegrin Law on Free Access to Information in the part related to the Agency is partially in line with international standards¹⁸, but there is significant room for improvement as well as for fundamental changes.

As assessed by the AIE, receiving and deciding on complaints, functioning of an information system for access to information, keeping a list of public authorities, verifying whether each public authority has updated its Guide, review of proactive publishing of information, are in line with international standards.

According to the Law, the Agency is implementing promotional measures and organizing trainings, however the AIE experts consider that activities related to promoting awareness of the law, contributing to changing culture and enabling state officials to understand both the substance and the text of the law are not strong enough.

The Law should be strengthened, as stated, to allow all public authorities to report to the Agency on the statistics of the right to access to information in order to collect the data in a comprehensive and timely manner.

The Agency has the authority to carry out inspection of the requested documents, which is rated as good. According to the AIE, this also includes an insight into confidential information. However, they expressed concern because the Agency does not have the authority to decide on complaints when the request relates to denying access to information containing data marked as classified (Article 34). This provision does not make any sense and is not in line with standards and practices across Europe: "Article 34 seems to be formulated to remit applicants for access to information from filing complaints against decisions denying access to information containing data marked as classified (which is already a serious problem in the Montenegrin Law on Free Access to Information) and set obstacles in the form of a costly, difficult and long-lasting process."

They conclude that such provision is inconsistent with international standards and jurisprudence of the European Court of Human Rights for access to documents for the purpose of determining jurisdiction, even when the subject matter is confidential.

Finally, the AEI sees the lack of protection of the second-instance body from political bias as the biggest shortcoming of the Law on Free Access to Information regarding regulation of the work of the Agency: "The Law on Free Access to Information does not provide for this, but we understand that the law setting up the agency stipulates that the agency cannot be directed by political party members. That said, this does not mean that their political history prohibits them from appointing. Indeed, the current president of the Agency Council was member of ruling party (Democratic Party of Socialists) at the moment of his candidature and only left the party to begin his mandate. This is not a sufficiently strong standard to ensure independence."¹⁹

¹⁷ Article 27a of the Law on Amendments to the Law on Free Access to Information (Official Gazette of Montenegro 030/17 of 9 May 2017)

¹⁸ The key international standards Montenegro has to adhere to in the area of free access to information are contained in the Council of Europe Convention on Access to Official Documents, General Comment No. 34 to the United Nations Human Rights Committee, European Court of Human Rights Decisions, EU 1049/2001 and legal practice of the European Union Court of Justice.

¹⁹ Analysis: The Law on Free Access to Information of Montenegro, Helen Darbshire, Access Info Europe, link: <http://www.mans.co.me/wp-content/uploads/2018/11/AnalizaZoSPI.pdf>

1.3. By-laws

The work of the Agency for Personal Data Protection and Free Access to Information, in addition to the Law on Free Access to Information as a basic legal act, is regulated by a series of by-laws. These are internal acts of the Agency itself and there are 26 of them in total.

Among the internal acts of the Agency, **eight by-laws** are closely and directly related to the competences and procedures that the Agency has and is carrying out in relation to free access to information.

Rulebook on operations	The Rulebook regulates the manner in which the Agency operates and ensures the proper and timely execution of administrative, administrative-technical and other tasks relevant to the Agency's internal operations.
Statute (including the Decision on Amendments to the Statute)	The Statute of the Agency regulates the following issues: headquarters and activity; proxy and representation; internal organization; manner of work, decision-making and competences of the Agency's bodies; more detailed process of decision-making; the manner of publishing an annual work report and other issues relevant to the work of the Agency.
Procedure for drafting the Agency's budget proposal	The internal procedure determines the manner of drafting the Agency's budget proposal.
Rules of Procedure	The Rules of Procedure regulates more closely the manner of working and acting, as well as other issues relevant to the work of the Agency.
Rulebook on organization and systematization of job positions	The Rulebook regulates internal organization and systematization of job positions in the Agency within the established competences of the Agency.
Rulebook on Archival Business	The Rulebook establishes the method of archival business of the Agency. Archival business includes: receiving, viewing, recording and assigning of documents (acts) to work, administrative and technical processing of documents, mailing of postal items, distribution of cases and acts, classification and submission of archival material to the competent archive.
Rulebook on the Content and Manner of Managing the Information System for Access to Information	The Rulebook prescribes the content and manner of managing the information system by the Agency for the purpose of monitoring the situation in the area of access to information.

Internal acts of the Agency directly related to the area of free access to information

2. Internal organization and capacities of the Agency

2.1. Organizational structure

According to the Law, the Agency is a **collective body**, and internal organization and clear division of competencies are of great importance for the smooth running of procedures regarding free access to information. Organizational structures and rules relating to internal organization and division of competencies are largely provided by *the Statute of the Agency and the Rulebook on organization and systematization of job positions*.

According to the Statute of the Agency, bodies of the Agency are the Council and the Director²⁰. **The Council** consists of the President and two members, who are appointed and dismissed by the Parliament of Montenegro and on the proposal

of the Administrative Board. Their mandate lasts five years and they may be appointed only twice. Members of the Council are responsible to the Parliament for their work.²¹ **The Agency's Director** is appointed by the Council for a period of four years, based on a public vacancy.²²

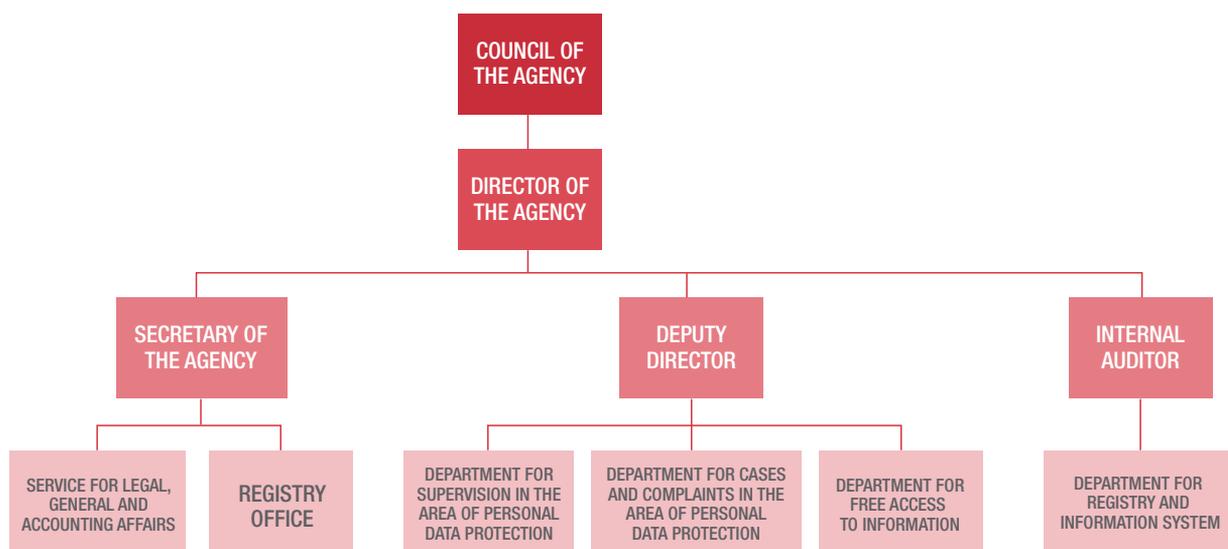
As far as other organizational units within the Agency are concerned, there is an Administrative and **Professional Service** dealing with professional and administrative affairs, with five separate units, among which the following two are important for the area of free access to information: **Department for Access to Information and the Department for Registry and Information System**.

Two organizational units have the protection of personal data in their jurisdiction have (Department for Personal Data Protection, Department of Cases and Complaints in the area of Personal Data Protection) and fifth is **the Service for Legal, General and Accounting Affairs**.

²⁰ Article 9 of the Statute of the Agency for Personal Data Protection and Free Access to Information

²¹ Article 10, Ibid

²² Article 1, Ibid



Scheme of organizational units of the Agency

Deputy Director and Secretary of the Agency are appointed on the basis of a public vacancy, for a period of 5 years, with the possibility of re-appointment. The Deputy Director manages the work of four departments, and the Secretary manages the Service for Legal, General and Accounting Affairs.²³

Each department has a manager. The Department for Free Access to Information is managed by the **Head of Department - Chief Controller**, while the Department of Registry and Information System is managed by the **Head of Department**. All managers are responsible to the Director.²⁴

²³ Duties and tasks of Deputy Director and Secretary of the Agency are defined by the Amendment of the Statute of the Agency from 2017.

²⁴ Article 10 of the Rulebook on Internal Organization and Systematization of Job Positions of the Agency.

<p>Council of the Agency</p>	<ol style="list-style-type: none"> 1. Adopts the Rules of Procedure of the Agency; 2. Adopts the Statute and act on internal organization and systematization of job positions of the Agency, with the approval of the Administrative Board, as well as other acts of the Agency; 3. Adopts annual and special report on the state of play in the area personal data protection, 4. Determines the annual work plan and annual and semi-annual reports on the work of the Agency; 5. Determines a proposal of the financial plan, final statement of account and budget request; 6. Makes decisions upon requests for protection of rights and in other cases after the supervision has been carried out; 7. Discusses periodic reports on budget execution of the Agency for the current year; 8. Decides on conclusion of contracts on behalf of and for the account of the Agency; 9. Initiates the procedure for appointing and dismissing the Director of the Agency and appoints and dismisses the Director of the Agency, in accordance with the Law and the Statute; 10. Makes decisions on initiating the procedure for appointing the Director of the Agency, at least 60 days before the expiration of his term of office; 11. Decides on the transfer of certain powers to the Director of the Agency; 12. Provides recommendations; 13. Provides opinions on application of the Law, opinions in the case where there is a doubt as to whether a certain set of personal data is considered a collection, whether a certain way of processing personal data jeopardizes the rights and freedoms of persons; 14. performs other duties as defined by the Law and the Statute of the Agency.
<p>Director of the Agency</p>	<ol style="list-style-type: none"> 1. represents and acts on behalf of the Agency; 2. Organizes and manages the Agency's activities; 3. Executes decisions of the Council; 4. Proposes to the Council work plans, reports on the status of personal data protection and access to information, budget requests, opinions on application of the law, opinions in case there is a doubt as to whether a certain set of personal data is considered a collection, opinions as to whether a certain way of processing personal data jeopardizes the rights and freedoms of persons, suggestions and recommendations for enhancing the protection of personal data, submitting proposals for reviewing the constitutionality of the law, or the constitutionality and legality of other regulations and general acts that regulate the processing of personal data; 5. Concludes contracts of employment with employees and decides on all rights and obligations in employment and in relation to employment; 6. Organizes and ensures the lawful and efficient performance of the Agency's tasks and is responsible for the lawful performance of the business; 7. Performs other tasks in accordance with the law and the statute of the Agency.
<p>Department for Free Access to Information</p>	<ol style="list-style-type: none"> 1. Conducting proceedings upon complaints, preparing draft acts upon lodged complaints against an act based on a basic request for access to information; 2. Exercising control over the legality of administrative acts addressing requests for access to information; 3. Supervising implementation of the Law on Free Access to Information in relation to development and updating of the Access to Information Guides, proactive publishing of information and submission of acts and data for the purposes of managing the information system for access to information; 4. Filing requests for initiation of a misdemeanour procedure for violation of the Law on Free Access to information relating to development and updating of Access to Information Guides, proactive publishing of information and submission of acts and data for the purposes of managing the information system for access to information; 5. Tasks related to the constitutional complaint regarding the exercise of the right of access to information; monitoring the application of the rules of the area of free access to information; 6. Preparation of proposals for acts that provide an initiative for implementation of relevant international standards in the national legal system; 7. Monitoring of judicial practice in the area of free access to information; preparation of proposals and recommendations regarding access to information; 8. Realization of cooperation with other public authorities, preparation of applications for projects funded by foreign donors and reporting on realization of the Agency's projects, preparation of the Agency's acts giving the initiative for adoption or amendments to the regulations as well as other proposals and recommendations for the purpose of implementing and improving the measures for free access to information and integration of relevant international and European standards into the legal system; 9. Development of independent projects and participating in joint projects for the purpose of enhancing the protection of personal data and free access to information; 10. Creating manuals and other publications, drawing up work plans; 11. Making monthly, quarterly, annual and special reports on the work of the Department
<p>Department for Registry and Information System</p>	<ol style="list-style-type: none"> 1. Keeping the Registry, i.e. a registry of data collections and catalogues of data collections, as well as publishing the Registry on the Internet; 2. Exercising the right to perform an insight into the records of the collection of data before the Agency; 3. IT and other professional activities related to the management of individual data collections; 4. Cooperation, providing instructions and providing expert assistance to operators of individual data collections and data processors; 5. Performing IT tasks in the function of the Registry and other records managed in the Agency; 6. Preparing documents with a list of personal data collections for annual public publishing; monitoring of application of information technologies in terms of data protection and suggestion of improvement measures; 7. Initiating surveillance; 8. Updating the website of the Agency; 9. Maintaining internal exchange; 10. Preparation of information from the scope of work of the Department regarding the submitted requests for access to information and its submission to the Secretary of the Agency; 11. proposing technical measures for improving the protection of personal data; 12. Managing an information system of access to information that provides a database on: public authorities; requests for access to information, by applicants, public authorities, types of information and the required manners of access to information; acts of public authorities upon requests for access to information; complaints against acts upon requests for access to information, by applicants and public authorities; legal suits against the decisions on requests for access to information, by the complainants and the respondent authorities; decisions of the courts upon legal suits against requests for access to information and measures against the public authorities for failure to comply with the Law on Free Access to Information; 13. Updating the data on submissions, acts and measures undertaken on the basis of notices submitted by the public authorities to the Agency; 14. Making statistical reviews on the number of requests, decisions, complaints, decisions and others; 15. Preparing documentation from the scope of work of the Department for the Agency to handle requests for access to information on the work of the Agency; 16. Drafting work plans; 17. Preparing monthly, quarterly, annual and special reports on the work of the Department and other activities within the scope of this Department.

Competences of the Agency's bodies and the Department *directly related to the area of free access to information*²⁵

²⁵ Competencies are stipulated by the Statute of the Agency and the Rulebook on Internal Organization and Systematization of Job Positions

All departments in the Agency deal with application of competencies and powers in the sense of implementing the provisions in which the Agency is designated as a supervisory body.

The Service for Legal, General and Accounting Affairs deals solely with application of laws regulating work and labour relations, application of regulations in the field of accounting and finance (public procurement), and handling of requests for free access to information in the first instance. Moreover, the Service performs archival tasks, as well as tasks of keeping records of first-instance and second-instance proceedings, which are carried out by authorized officers, i.e. the Council.²⁶

According to the Rulebook on Internal Organization and Systematization of Job Positions of the Agency, there are **28 systematized job positions with 47 executors**²⁷ for execution of tasks from the Agency's competence. The Rulebook also prescribes the requirements for employment in individual job positions.

²⁶ Decision on Amendments to the Statute of the Agency

²⁷ Job positions and executors are prescribed in Article 12 of the Rulebook on Internal Organization and Systematization of Job positions: Director of the Agency (1), Internal Auditor (1), Deputy Director (1), Secretary of the Agency (1), Controller in the area of personal data protection (1), Agency Controller (for performing inspection supervision in the area of personal data protection) (4), Agency Controller (for performing inspection supervision in the area of personal data protection) (1), Head of Department for Cases and Complaints in the area of personal data protection (1) Legal Advisor (3), Advisor for cooperation with operators (1), Advisor for development and promotion of personal data protection measures (1), Head of Department for Registry and Information System (1), Information System and Maintenance Advisor (2), Data Entry and Maintenance Operator (3), Head of Department for Free Access to Information - Chief Controller (1), Advisor - Agency Controller (7), Advisor (4); Advisor - Translator (1), Legal Advisor (1), General Affairs Advisor (1), Accountant (1), Cashier (1), Technical Secretary-Administrator (2), Driver - mail deliverer (1), Cleaning staff (1), Head of Registry office (1), Chief Archivist (1), Archivist - documentarian (2).

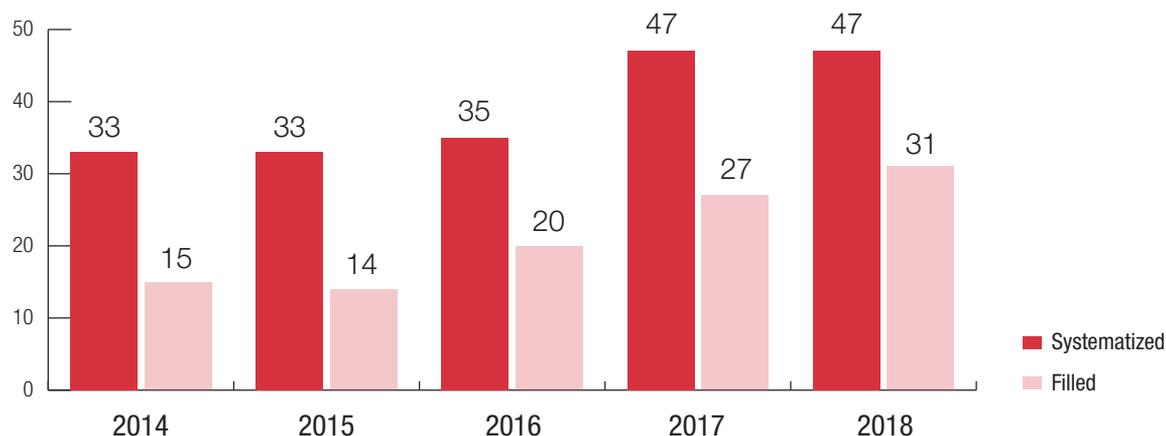
In the Department for Free Access to Information, according to the Rulebook, **13 job positions** have been systematized: Head of Department - Chief Controller for Free Access to Information (1), Advisor Controller (7), Advisor (4) and Advisor Translator (1).

In the Department for Registry and Information System **6 job positions** have been systematized, as follows: Head of Department, Data Entry Operator (3) and Information System and Maintenance Advisor (2).

2.2. Structure of employees

According to the available data published in the Agency's Annual Reports, the number of systematized job positions and executors who should perform the foreseen tasks in this body has grown over the years. However, **defined duties and work tasks were performed by less than half of the planned number of employees in 2014 and 2015, up to 66% of filled executor job positions in 2018.**

When it comes to the **number of employees in the Department for Information System**, based on the request for free access to information submitted by MANS to the Agency, this body disclosed that at that point there were **9 employees in the Department, although the Rulebook on Internal Organization and Systematization of job positions provided for 12 employees.**



Source: Annual Reports of the Agency for 2014, 2015, 2016, and 2017 and the List of employees of the Agency for 2018

The ratio of systematized and filled executor positions in the Agency

Requirements for employment at all job positions within the Agency are regulated by the Rulebook. In the Department for Information System it is foreseen that Head of Department - Chief Controller has completed studies at the Faculty of Law, has passed professional examination for work in state institutions, at least five years of working experience in the profession and is computer literate. The same requirements are prescribed for executors at the position of Advisor - Agency Controller. Advisor - translator should have completed studies in social sciences, passed a professional exam, one year of work experience, knows English and is computer literate. For executors on the position of Advisor, the same qualifications are required, with the exception of English language skills.

However, **it is not possible to check whether the currently employed persons in the Department actually meet the requirements of the Agency's Rulebook.**

Specifically, MANS has submitted **a request to the Agency to publish work biographies of employees at the Department for Free Access to Information. This request was rejected**, with justification that those are personal data of the employees, and that the employees did not consent to the data being published.

Moreover, the Agency has rejected the request for publishing information on the evaluation of work (evaluations) of the employees in the Department for Free Access to Information for the period from 2013 to the end of 2018. This information, according to the Agency's explanation, is not in its possession because it does not evaluate the employee's performance.

Therefore, with regard to the capacity of employees in the Agency, the analysis of the available documentation and the data obtained through the conducted interviews with representatives of the Agency, show several key problems.

DECISION

The request of MANS from Podgorica requesting access to the following information is being rejected:
- Work biographies of all employees in the Department for Free Access to Information

Reasoning

On 24 December 2018 the Agency for Protection Personal Data and Free Access to Information was submitted a request for free access to information by the Network for Affirmation of the Non-Governmental Sector MANS from Podgorica, No. UPI 04-125-33-1/18, requesting to provide access to information listed in the wording of the decision.

Specifically, Article 2 paragraph 2 of the Law on Personal Data Protection of prescribes that personal data may be processed only to the extent necessary to achieve the purpose of processing and in a way compatible with the aims for which they were collected.

As employees of the Department for Free Access to Information did not give their consent to disclosure of data regarding their work biographies this decision was made as stated in the wording of the decision.

Excerpt from the Agency's decision No. UPI 04-125-33-2/18 of 27 December 2018

If the Council is independent, and is not influencing or monitoring employment, then something is not right here. Who is responsible for employing people in some illegitimate way? I, as a member of the Council, have no influence here. For the past year I did not participate in any employment.

Aleksa Ivanović, member of the Council

Earlier, when employment was in question, the practice was to have the Council making decisions on which job position is required, on publishing vacancies. We commonly conducted interviews with candidates. The Director proposed the candidates, and the Council gave its consents...

Today we have a completely different practice, the Council is completely excluded from any procedure.

In my opinion, the Council should determine which priority positions are to be filled in the Agency, and the Director is the one who has to publish a vacancy and make a decision on the selection of candidates.

Radenko Lacmanović, member of the Council

The Agency has **fewer executors than it is specified in the act on internal organization and systematization of job positions.**

This body **does not in any way evaluate the**

work of its employees. It is therefore difficult to determine in which respect it is necessary to improve the capacities of employees, and whether all employees formally meet the conditions for their positions.

**MONTENEGRO
AGENCY FOR PERSONAL DATA PROTECTION AND
FREE ACCESS TO INFORMATION
No. UPI 04-125-34-2/18
Podgorica, 27 December 2018**

The Agency for Personal Data Protection and Free Access to Information, acting upon the request for free access information of the Network for Affirmation of Non-Governmental Sector MANS from Podgorica, No. UPI 04-125-34-1/18 of 24 December 2018, on the basis of the Article 18 of the Law on Administrative Dispute and Article 30 paragraph 5 of the Law on Free Access to Information (Official Gazette of Montenegro 44/12, 030/17) hereby makes the following decision

DECISION

The request of MANS from Podgorica requesting access to the following information is being rejected:

- Copy of acts containing information on evaluation of work of the employees of the Department for Free Access to Information, for the period from 2013 until the end of 2018.

Reasoning

On 24 December 2018 the Agency for Protection Personal Data and Free Access to Information was submitted a request for free access to information by the Network for Affirmation of the Non-Governmental Sector MANS from Podgorica, No. UPI 04-125-34-1/18, requesting to provide access to information listed in the wording of the decision.

In the proceeding upon request, the Agency for Protection Personal Data and Free Access to Information has determined that it does not possess the requested information because the Agency does not perform evaluation of work of the employees.

Personal capacities of these people who work here have to be measures. We do not have a norm like judges, how many decisions need to be prepared, arranged... So in that part there is certainly a possibility for some improvement. They really work a lot of and are preoccupied with their work, but in order to know where to make an improvement, a better analysis should be done. Poor analysis counting how many cases has someone prepared are not enough. Some employees may be preparing some simpler cases, due to the silence of the administration, and others some very complex cases in the merits. So every story has to have its background, a base, in order to make a conclusion and suggest something one must have a basis for it. I have all the praise for their work, but we are still late with dispatching.

Aleksa Ivanović, member of the Council

According to the Ministry of Public Administration's assessment, the biggest challenge that the Agency for Personal Data Protection is facing is a large number of proceedings before the Agency, bearing in mind that first-instance bodies are being submitted a large number of requests that can not be responded to in the real time frame due to the extensive documentation that is requested, resulting in "silence of administration" and hence a large number of complaints against acts of the Montenegro's state administration submitted to the Agency for decision-making.

On the other hand, a high percentage of the annulled acts of the Agency by the Montenegrin Administrative Court shows that the Agency's work mechanism and capacity in this part is still ineffective and that the Agency is still facing the challenges to strengthening the administrative and professional capacities of the employees, as well as strengthening the control and monitoring mechanisms.

Danijela Nedeljković Vukčević, General Director of the Directorate of State Administration at the Ministry of Public Administration

This further opens the issue of the **employment process** itself, **which is not always carried out in the same way**, since the practice changes over time, especially when it comes to the role of the Council and the Director in this process.

At the same time, employees in the Agency justify the delays in their work with "work overload" and the obligation to carry out supervision and work on decisions adopted by the Agency at the same time, and in that sense **the problem of improper-**

ly determined distribution of work in all aspects of the Agency's competencies is evident.

Finally, in addition to a series of systemic problems, the **issue of individual capacities of employees** in the Agency should be taken into account, especially if the non-transparency of the employment process is taken into account, as well as the absence of any data that would confirm the competence of the employees to perform the job for which they are engaged.

First and foremost, we need a quality legal staff. In my opinion, in the previous period we have been employing staff that is not fully able to respond to the Agency's obligations. The Agency prepared acts according to the needs of people and interest areas that must be satisfied.

All this could have been better formatted in a more quality manner. People have to work on decisions and perform supervision, and somethings has to suffer here.

Radenko Lacmanović, member of the Council

Recommendations:

- The number of job positions and executors in the Agency should be aligned with the act on internal organization and systematization. It is important that the Agency respects the normative framework in terms of employment, or that, if it is established as appropriate by an adequate analysis, it improves the normative basis for employment.
- Work biographies and the results of work of the employees must be transparent.
- Evaluation of the work of employees needs to be carried out at certain time intervals, in order to gain insight into the quality of work of all employees. Also, the evaluation needs to point out in with respect it is necessary to improve the capacities of the employees.
- The employment procedure must be carried out exclusively under the same rules for all candidates.
- It is necessary to specify the distribution of work among the employees in accordance with the actual number of employed executors, with respect to the fulfilment of all competences of the Agency.

2.3. Procedures in decision making

When it comes to free access to information, it is particularly important how efficiently the Agency distributes the received cases, then how it is decided at the sessions of the Council, i.e. how the Agency decides on complaints against decisions of the first-instance bodies.

2.3.1. Allocation of cases

Allocation of a large number of cases that the Agency is required to act upon under the law is regulated by **the Agency's Rulebook on Operations**. In this document, the ninth article states that daily submitted act by order of submission, respecting the alphabetical order of initial letters of the surnames, is given to certain members of the Council.

Assigning cases to the members of the Council also follows the alphabetical order of the initial letters of surnames of the members of the Council.

Resolving cases is done by order of reception, and as mentioned in Article 52 of the Rulebook, upon receipt of the file, the member of the Council immediately examines and classifies cases according to urgency, nature and importance. Moreover, in the same article it is written that the member of the Council is obliged without delay to start working on the cases for which the law prescribes that they are urgent.

The Rulebook also provides for allocation of cases in case of absence or work overload of a member of the Council. Cases are forwarded to other members of the Council, also in alphabetical order. The Council decides on suspension of the allocation of cases.²⁸

All acts of the Council, according to the Rulebook, are signed by the President of the Council, or by the member of the Council, by the President's authority.

When it comes to the structure of the text of decisions adopted by the Council, Article 18 of the Rulebook provides that introduction, statement and explanation of decisions must be visibly separated.

2.3.2. Sessions of the Council

The Statute of the Agency foresees that the Council is working on sessions chaired by the President of the Council, while decisions are made by a ma-

majority of votes. The Director may attend sessions on call, but does not have the right to decide.²⁹

Scheduling and agenda are determined by the President on his or her own initiative or at the proposal of the members of the Council and the Director of the Agency. The agenda with the materials needed to hold the sessions is delivered to Council members no later than two days before the session. If necessary, the council session may be scheduled, without a written convocation, by telephone or otherwise, at least 24 hours before the session.³⁰

The President and members of the Council have the right and duty to attend the session and participate in its work and decision-making, as set forth in Article 16 of the Agency's Rules of Procedure.

The President of the Council recalls the proposed agenda, but Council members may request that the proposed agenda be explained and supplemented.³¹

An internal act defines the decision-making process of the Council. After adoption of the minutes from the previous session and proposal for the agenda, the Council decides on each agenda item after a final discussion on the matter. The Council makes the decisions by majority of the members of the Council. Voting is performed by raising hands "for" or "against". When deciding member of the Council cannot be restrained.³²

Members of the Council have the right to exclude their opinions regarding the decision against which they have voted, or whose reasoning they are opposing. The Director is responsible for execution of the Council's decisions, as stipulated in Article 28 of the Rules of Procedure.

2.3.3. Handling of complaints

When it comes to the role of the Agency as a second-instance body that acts upon complaints in the process of free access to information, this procedure is regulated by Articles 33-36 of the by-law **Rules of Procedure**.

This act states **that the Council shall decide by a majority vote on a complaint against a first instance decision of a public authority or due to silence of administration.**

²⁸ Art. 9, 10, 11, 12 of the Rulebook on Operations of the Agency

²⁹ Art. 13 and 14 of the Statute of the Agency

³⁰ Article 15 of the Rules of Procedure of the Agency

³¹ Article 18, *ibid*

³² Article 21, *ibid*

In 2016, 672 legal suits were filed before the Administrative Court against the Agency, in 2017 2,047 legal suits, while in 2018, 3,252 legal suits were filed against the Agency. In order to reduce the number of disputes before the Administrative Court it is necessary to clarify the legal formulations contained in the text of the Law on Free Access to Information and primarily to clarify the nature of the information that can be requested.

Ana Perović-Vojinović, judge of the Administrative Court of Montenegro

As far as complaints are concerned, we have changed our practice since 16 February 2013. This practice seems to me to be better in the beginning than it is today. We first worked on the principle of the court, each was in charge of a particular case, meaning three of us for every third case and we had our advisors, we reported on our case, debated them and made decisions thereafter. It was a practice for an advisor to prepare a decision and submit it to a rapporteurs. If the rapporteur agrees with such a decision, usually such a decision goes out to the public.

For the last two years, because there is a large number of cases, and also due to the absence of some colleagues who are on maternity leave, the practice has changed so mainly the Head of Department for Free Access to Information prepares cases, reports them at the Council sessions, we discuss them and makes decision. I think this practice is somewhat worse because the Council members are often unaware of the substance of the case before the Council's session itself. This makes it easier for making mistakes compared to the situation when each of us were rapporteurs on every third case.

Radenko Lacmanović, member of the Council

The deadline for lodging a complaint is 10 days from the date of receipt of the complaint with the case files, while the case files shall be submitted to the President and members of the Council no later than the following working day from the moment of receipt.

According to the Rules of Procedure, the order of cases is determined according to the number of recordings in the archives of the Agency, and the rapporteur for the sessions of the Council is determined by the first letter of the surname in alphabetical order.

In the last two years, the members of the Council have no insight into the decisions that are being made, which is very bad, but at the sessions of the Council, we only make decisions. While I had an insight into these decisions, it was not without any intervention. Today nobody gives it to me and I have no idea what goes outside. Much depends on the colleagues in the Department, how they will interpret and reason the Council's decision.

Radenko Lacmanović, member of the Council

The reasonings for the decisions of the Agency are too extensive and in my opinion it is unnecessary to chronologically present the course of the respective situation from the date of the submission of the request to making the decision upon complaint, when all that can be determined by insight into the case files, while the legal conclusion is brief, usually containing only the most essential reasons.

Ana Perović-Vojinović, judge of the Administrative Court of Montenegro

Our experience with the Agency is unfortunately devastating, because they do not respect deadlines for deciding upon complaints, and often do not decide upon them. Due to the large number of complaints, which is indicating that the Law on FAI is bad, the Agency often makes decisions for all them at sessions of the Council, i.e. it has more than 100 items on the agenda. That is why the decisions are often routinely rewritten and the Administrative Court throws them out.

Because the complaints are being ignored or because they are being considered with several years of delay we are mostly discouraged to write them because in daily journalism we need we need as soon as possible the required information.

Mila Radulović, journalist of the Independent Newspapers Vijesti

Very often, when the administration is silent (inactivity of the Agency to act upon a lodged complaint), prior to the scheduled hearings, a written copy of the decision is delivered, so for the purpose of respecting Article 26 of the Law on Administrative Disputes, the hearing is adjourned because the party - complainant must be allowed to give statements. In case of success in the dispute, the party is to pay the costs of this delayed hearing, because the Agency did not deliver written copy of the decision within a minimum of 8 days prior to the date of the hearing.

Ana Perović-Vojinović, judge of the Administrative Court of Montenegro

I can not provide answer to a question on how the order of decision-making is being determined. The President of the Council sets the agenda himself and does not allow Council members to amend the agenda, although they have the right to do so. Earlier it was a practice that the cases were chronologically resolved as they arrived. Is that so today, I do not know.

Radenko Lacmanović, member of the Council

Despite a series of rules defined by subordinate legislation, the practices of the Agency when it comes to the procedure, as confirmed by the representative of this body with whom MANS spoke, speaks in favour of their non-compliance. Practice has changed, as they claim, over the years, to the point that in some situations the Council's basic competencies are questioned.

Although there is a rule on the agenda of a session, whereby all three members of the Council can participate equally in determining the agenda, **in practice, the agenda is determined by the President of the Council on an independent basis**, which is directly reflected in the order of the cases to be decided upon. Asked to comment on how it might be possible to first decide on cases of a recent date, and then on cases that are several years old, the Council member said that it was once a practice to deal with cases chronologically, and now it is not known what the principle is. The other member of the Council argues that priority is given to cases with potentially significant consequences, such as for example ecological, and then the cases of minor importance enter the agenda.

The members of the Council are mostly acquainted with the cases during the sessions, which makes it impossible to get to know the es-

sence of the problem to be decided upon, as when the members of the Council are being rapporteurs in the assigned cases. This is how the preparation of cases is "moved" to a greater extent in the Department for Information System.

Drafting decisions also largely depends on interpretation of the representative of the Department for Information who attends the session of the Council and later interprets decisions made at the session.

There is no obligation nor a rule by which the Council should in any way have to confirm the validity of the decisions made in the Department, although they are based on the Council's decisions. One member of the Council is on his own initiative requesting for insight into the decision that he considers to be legally more complex and more significant, while other member has no insight into the content of the decisions themselves in the last two years.

When it comes to the content of the decisions, it is noted that legal conclusions are not sufficiently substantiated, but that the majority of the content of the decisions on complaints contains the information already existing in other documents, without justification of the decision made.

Recommendations:

- It is necessary for the Agency to apply the rules on allocation of cases, or if it is necessary because of a large number of unresolved cases, it clearly defines the rules by which the cases are entering the agenda.
- It would be necessary to establish the obligation and the manner in which members of the Council would get to know in more detail the subject matter and content of the final decisions.
- It is necessary to redefine the division of competencies between the Council and the Department for Information regarding preparation of cases and drafting of decisions.
- Legal conclusion in the Agency's decisions should be substantiated to a greater extent and more precisely, while the data available in other documents should not be exhaustively mentioned in the text of the decision.

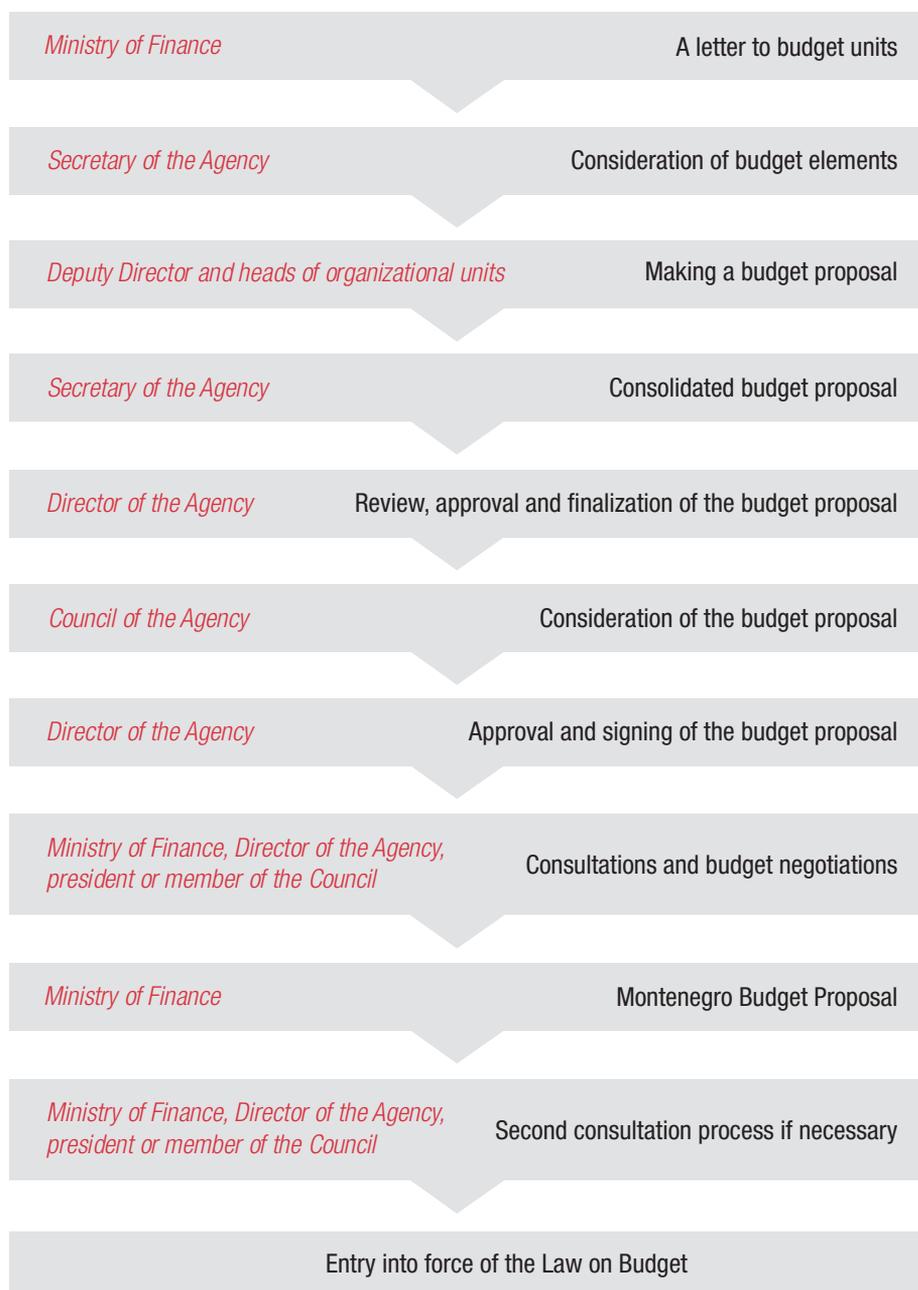
3. Budget of the Agency

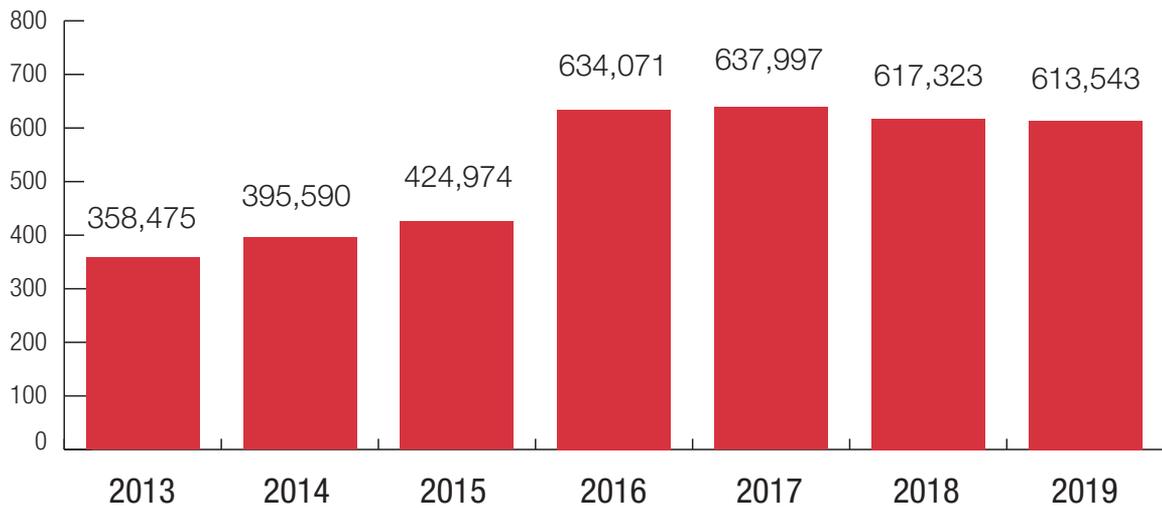
Funding for the work of the Agency is provided by the **Budget of Montenegro and other funds in accordance with the law** and is determined by the financial plan, which is made annually by the Council on a proposal from the Director.

As referred to in Article 25 of *the Statute of the Agency*, the Agency's assets cover the obligations for supervision over application of the law, procurement of labour resources, earnings of employees in the Agency and other expenses in accordance with the law and other regulations.

The procedure for drafting the budget proposal until adoption of the Law on Budget is prescribed by the by-law adopted in 2017: ***Internal procedure for drafting the budget proposal of the Agency for Personal Data Protection and Free Access to Information***.

In its Annual Reports, the Agency publishes an overview of the budget by positions, and based on the request for free access to information, the Agency provided to MANS the budget data which has not yet been published on the website. The data indicate the aggregate budget of the Agency, by types of expenditures rather than individual departments.





Amount of the Agency's budget for the period 2013 to 2019

The graph shows that, in the period from 2013 to 2019, the Agency's budget almost doubled, with the largest growth being recorded in 2016, when the Agency's budget resources increased by 50%. Viewed by the Agency's expenditures over the same period, the biggest jump in the budget is part of the gross earnings and contributions paid by the employer (67%), and this is when 6 new executors were employed. Although in the coming years, the number of employees in the Agency has continued to grow, the amounts intended for earnings have not increased in the same way, but have fallen since 2018.

However, from the interviews with the Agency's representatives, we found out that the budget available to the Agency meets the needs of the Agency, especially when considering the broader economic context of the country.

As noted, the Agency needs additional resources for **staff training as well as training to enable employees to acquire new knowledge in their field of work.**

Expenditure	2013	2014	2015	2016	2017	2018	2019
Gross earnings and contributions paid by employer	256.441	292.644	319.392	534.075	541.596	499.222	490.722
Other personal income	7.000	6.000	6.000	1.800	2.000	12.000	12.000
Expenses for material	20.250	19.237	17.824	16.933	19.700	20.200	19.470
Expense for services	51.383	46.807	41.156	48.661	42.500	55.500	62.200
Current maintenance expenses	2.400	2.400	2.400	2.400	2.400	2.400	2.400
Other expenditures	13.000	18.500	28.500	20.500	25.300	22.500	22.200
Capital expenditures	8.000	10.000	9.700	9.700	4.500	5.500	4.550
Repayment of obligations from previous years	1	1	1	1	1	1	1

Budget of the Agency by expenditures in the period from 2013 to 2019

When it comes to the budget, maybe we have the least reason to complain. Due to the importance of the institution and the changes to be made, the amount for the position for official travel should be higher. All other positions, to a greater or lesser extent, meet the needs of the Agency. Our training, exchange of experience and new knowledge requires investment of the state, because it is not an expenditure, it is an investment. Perhaps we are to be blamed for some expenditures and if we were a bit more careful we would not have that kind of expenditures. So I think there is room to make certain savings and to be happy with the budget.

Radenko Lacmanović, member of the Council

We have minimal funds for functioning. We submit our proposal, it is adopted, not adopted or shortened, but we are not defending this proposal anywhere. The question is whether we have the resources for education, the improvement of knowledge. Staff training is very important.

Aleksa Ivanović, member of the Council

Recommendations:

- Distribution of the budget should in the future take into account the funds for education of employees in the Agency, in order to enhance their knowledge and skills.
- As a proponent of budget, the Agency should make greater use of the right to represent its proposal in the process of budget adoption, especially with regard to the need to allocate funds for training of staff.

4. Information System and Software of the Agency

Although keeping an information system was established by a 2013 legal solution, the Agency for Personal Data Protection and Free Access to Information did not establish it until the end of 2016.

According to *the Rulebook on the content and manner of keeping the information system for access to information*, it is necessary to enter the following data into the system in a timely manner:

1. Name of the authority that received the request for access to information
2. Information on the applicant and the content of the information
3. Details of the decision on the request
4. Data on a complaint
5. Data on a legal suit
6. Data on measures taken against the public authorities

The data shall, according to the Rulebook, be entered no later than the following working day from the date of receipt or adoption of the act.

According to the information received from the 2013 Report on the state of play in the area of free access to information, **the Agency and its**

employees have independently created a software solution that has temporarily fulfilled this statutory obligation.

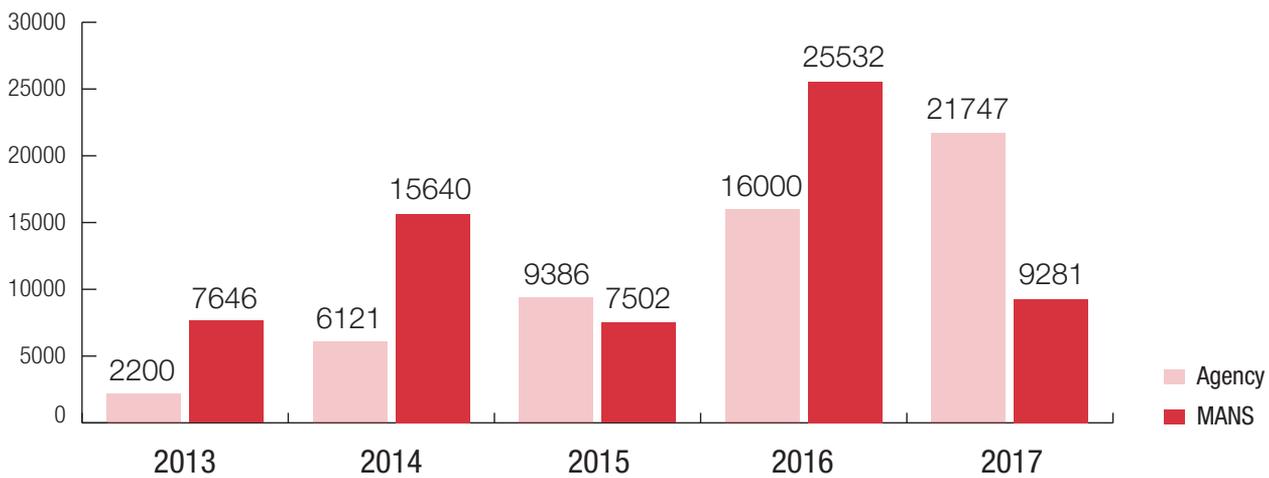
However, an information system for monitoring application of the Law on Free Access to Information was implemented only at the end of 2016 with the financial support of the EU Delegation to Montenegro through IPA funds, as confirmed by the Agency's Report on the state of play in the area of personal data protection and free access information for 2017.

In order to examine the quality of monitoring of this legal obligation, MANS has inspected the Agency's information system. On that occasion, it was found that **the first-instance bodies do not submit information on the number of requests by the complainant in an up-to-date manner.**

By comparing the Agency's statistical data obtained on the basis of its Annual Reports and MANS statistical data, per years, pertaining to the number of submitted requests, we notice drastic inconsistencies. It is clear that **the data in the Agency's information system are not precise and do not correspond to the actual situation**, as MANS itself has submitted significantly higher number of requests to the public authorities than the Agency recorded in total.

We've got a significant amount of money to upgrade the software and I think that today it is up to the needs of the Agency and it has been improved over the past two years. We have improved security of the information system itself from uncontrolled intrusions, but there is certainly room for innovation.

Radenko Lacmanović, member of the Council



Comparative overview of the number of requests submitted according to the Agency's data and the number of requests submitted by MANS for the period 2013 to 2017

Moreover, a significant problem is the fact that **an electronic database for monitoring the process of complaints that has been filed against the decisions of the first instance bodies, as well as the complaints filed against the Agency's decisions, is not kept on a daily basis.**

This is extremely important because due to inadequate recording of complaints and legal suits, it is not possible to follow the complete proceedings in a specific case. In terms of legal procedures,

the database does not follow all the stages of the procedure and is not fully aligned with the legal deadlines so it is not possible to determine the "status" of each particular case in a simple and quick manner.

The problem is also the fact that the documentation is not being scanned, so the Agency does not have an archive in electronic form, which would certainly have had an impact on improving the efficiency of its work.

The software should be precise enough to show which case and when was taken into work and to tell us if some cases have been resolved earlier, and if some others have not and to know why we have resolved it like this, because the fact is that we are late.

Aleksa Ivanović, member of the Council

Recommendations:

- The Agency should upgrade the database in order to have an overview of the "status" of each case, which would enable easy monitoring of individual cases of access to information.
- The database should be kept and updated on a daily basis.
- The Agency should create an electronic archive.

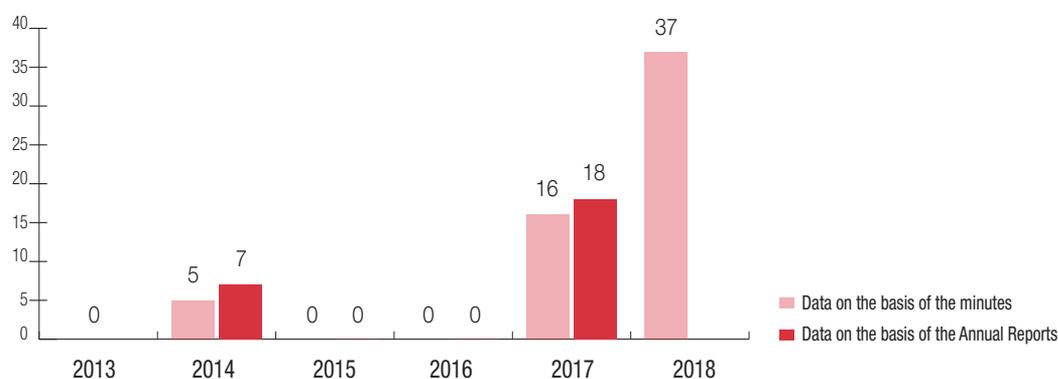
5. Other

Among the competencies of the Agency, which are prescribed by the Law on Free Access to Information, **a second-instance body plays an important role in the process of proactive and reactive access to information.** Firstly, the Agency is in charge of carrying out the inspection supervision of all public authorities in Montenegro regarding their obligation to proactively publish information, as provided for in Article 12 of the Law on Free Access to Information. Secondly, in the process of access to information upon request, interested parties submit complaints to the Agency if they are not satisfied with the decision of the first-instance bodies from which they requested information. **According to the Law, the Agency shall make a decision upon a complaint within 15 days.**

In practice, the analysis of proactive publishing of information by public authorities in Montenegro, conducted by MANS during 2018³³, showed that the vast majority of entities subject to the Law violates the provision laid down in Article 12. Moreover, MANS's experience of initiating complaints against the Agency shows that this body does not decide on certain complaints for several years. For example, there are complaints even from 2014, upon which the Agency has not yet made a decision.

In this chapter, we present a statistical overview of the data indicating to what extent the Agency performs the inspection supervision of proactive publishing of information and to what extent it makes decisions upon initiated complaint proceedings.

³³ link: http://www.mans.co.me/wp-content/uploads/2019/01/analiza_proaktivno_MNE-sajt.pdf



Source: Minutes of the Agency submitted to MANS and Annual Reports of the Agency

5.1. Performing supervision over proactive publishing of information

The Agency has started to perform supervision over proactive publishing of public information by the entities subject to the Law in the fourth quarter of 2014. As stated in the Agency's Report, 7 inspection supervisions were performed, in which no violation of Article 12 was found. Apart from the explanation that job positions of controller defined in the Rulebook on Internal Organization and Systematization were not filled in 2015 and 2016, during the two years there was no inspection supervision. During 2017, the Agency reported that it performed 18 inspection supervisions, only over the ministries of the Government of Montenegro. It is not stated whether any irregularities were found.

We wish to note here that, in its analysis of proactive publishing of information, MANS have analysed websites of 139 public authorities, and it has been found that none of the institutions fully respects this legal provision and that as many as 19 public authorities do not respect the obligation to proactively publish information at all.

According to the data provided in the Annual Reports, the Registry of public authorities in the information system of the Agency for monitoring application of the Law on Free Access to Information included 722 public authorities in 2017, 670 in 2016, 540 in 2015, and 448 public authorities in 2014. For 2013 and 2018, the Agency did not disclose data.

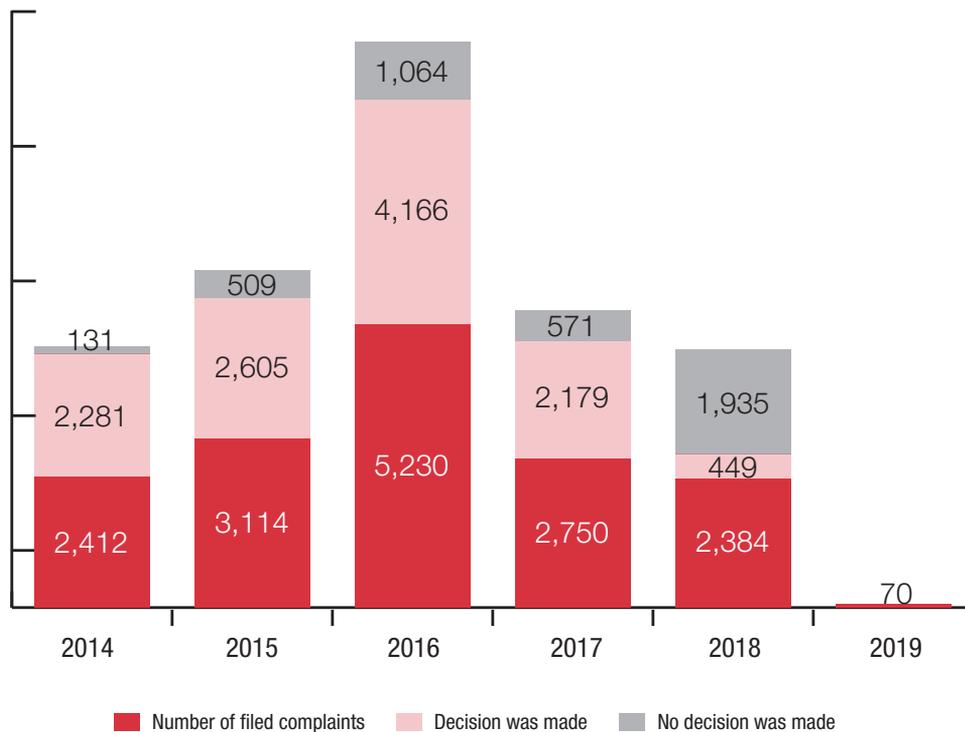
Finally, certain inconsistencies in keeping the statistics on supervision are evident on the basis of the documentation that was provided to MANS. Acting upon the request for free access to information, the Agency provided MANS with copies of all minutes that the Agency developed in the process of controlling the work of public authorities in relation to proactive publishing of information. Thus, for example, from the entire documentation there are two minutes from 2014 that are missing, while inconsistencies for 2017 are likely to be the result of an unqualified classification by date of supervision or drafting of the minutes.

5.2. Statistics of the Agency's actions upon MANS complaints

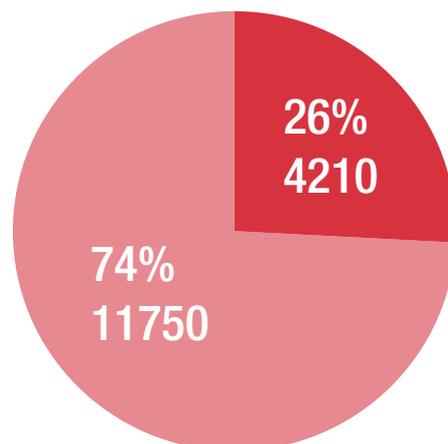
The practice of MANS to obtain information upon request largely reflects the work of the Agency, since over the previous years a large number of complaints against decisions of the public authorities have been submitted to the second instance body. For example, during the year 2016, 5320 complaints were filed with the Agency, of

which for more than a thousand there is still no decision today.

In the period from 2014 to 16 January 2016, MANS filed 15 960 complaints with the Agency, and a decision was made upon 11 750 of them. By the end of January this year, the Agency did not make a decision for 4210 MANS complaints.



Source: MANS



Decision was made No decision was made

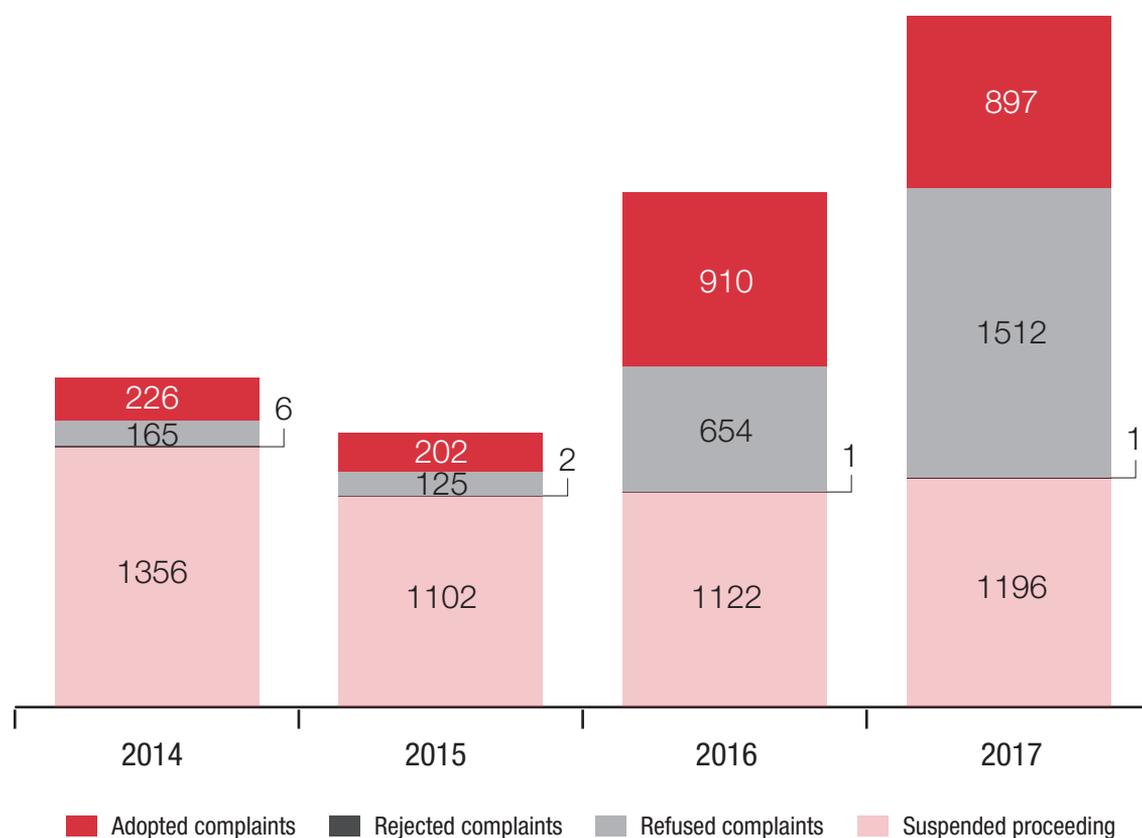
Source: MANS

The ratio of the Agency's decisions upon MANS appeals in the period 2014-2019

According to the Agency's statistical overviews, which are presented in the Annual Reports, there is an evident trend of increased complaints lodged against decisions of the public authorities since 2015. During 2014, 2687 complaints were lodged, then 1513 in 2015, 3554 in 2016, and 3880 complaints in 2017.

According to this body's assessment reduction of the number of requests, complaints and legal suits in the area of free access to information will be reached through the more prompt implementation of the principle of proactive access to information, and in this regard enhanced inspection supervision by the Agency.

Danijela Nedeljković Vukčević, General Director of the Directorate of State Administration at the Ministry of Public Administration



Source: Annual Reports of the Agency

The number of adopted, rejected, refused complaints and suspended proceedings in the Agency