

# PROMOTING PRACTICAL ACCESS TO DEMOCRACY: A SURVEY OF FREEDOM OF INFORMATION IN CENTRAL AND EASTERN EUROPE

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# INTRODUCTION

Freedom of information, including the right to access information held by government and public bodies, has long been recognised as a fundamental right, protected under international and constitutional law. Authoritative statements and interpretations have been made at a number of international bodies, including the United Nations, the Commonwealth, the Organisation of American States and the Council of Europe.

On 21 February, 2002, the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2002)2 on access to official documents which for the first time established a regional standard in Europe on access to information contained in documents held by public authorities. While the scope of the recommendation does not go as far as many in the NGO community, including ARTICLE 19 would have liked, it does establish important principles underpinning the public's right to know, such as the individual right to access information without being obliged to justify the request. The adoption of a *Recommendation* rather than a legally binding instrument is recognised as only the first step on the way to the ultimate goal of agreeing a binding Resolution. Nevertheless, the Recommendation sends out a strong signal to member states and aspiring members of the Council of Europe that access to information is a fundamental right, the effective guarantee of which requires the introduction and implementation of specific legislation by governments.

Such regional and international standards act as important legal imperatives for states to adopt freedom of information acts (FOIAs). In Central and Eastern Europe the fall of Communism and the political transition to democracy and the rule of law has also been an important factor in bringing about the adoption of FOIAs. The drafting of new Constitutions to guarantee individual rights provided an opportunity in many countries for freedom of expression and FOI activists to ensure that the right to access information was included among the list of newly recognised and constitutionally protected fundamental rights. While the pace of political and legislative

change in each country in the region has of course varied, there is no doubt that the adoption of a FOIA has emerged as one of the key benchmarks of democratic reform.

For the past few years, ARTICLE 19's Europe Programme has been working in partnership with NGOs in Central and Eastern Europe to promote the adoption of Freedom of Information Acts which comply with international standards. In September, 2000, the programme embarked on a two year, EU funded project, entitled *Promoting Practical Access to Democracy*, which focused on promoting freedom of information in Albania, Bulgaria, Croatia, Montenegro and Romania. Of these five countries, Albania and Bulgaria had already adopted specific laws to guarantee access to information, and in October 2001, Romania joined a long list of countries in the region to adopt a FOIA. The aim of the project was not only to support national campaigns to get legislation adopted, but also to promote implementation, which in countries with a long history of totalitarian rule necessitates fundamental change in the culture and practice of government. While project activities have been primarily concentrated in the five target countries, expertise and experience has been exchanged throughout the region. For example, lessons learnt in countries such as Hungary with a ten-year history of FOI have been shared at training seminars for public officials in Bulgaria and Romania.

This regional survey of freedom of information is very much a product of such networking and intends to further promote and stimulate exchange and debate among government, public officials, NGOs, journalists and all those who are engaged in promoting freedom of information. A significant number of countries in the region have successfully enacted freedom of information legislation, but not all have seen the expected benefits of an improved culture of transparency and accountability in government. Meanwhile, those countries which have yet to introduce draft legislation, including Slovenia, Croatia, Macedonia, Serbia and Montenegro, could undoubtedly benefit from the experience of FOI campaigns and post adoption activities which have been employed in neighbouring states.

The survey includes ten countries (Albania, Bulgaria, Estonia, Hungary, Latvia, Lithuania, Moldova, Romania, Slovakia, and Ukraine), but the main part of the information presented and analysis offered concerns developments and initiatives in Bulgaria, Romania, Slovakia and the Baltic States. The survey does not attempt to provide a comprehensive account of freedom of information in these six countries. Instead it takes a thematic approach to the issue of FOI, seeking out examples of civil society initiatives which have resulted in successful campaigns, educational and monitoring activities to guarantee proper and vigorous implementation of legislation.

The structure and chronology of the report reflects the oft repeated assertion by those involved in promoting FOI, that the adoption of a FOIA is merely the beginning of the process to guarantee the public's right to know. Chapter One provides an overview of the existing legislation relating to freedom of information in each of the ten countries. Chapter Two describes campaigning techniques employed in the six main countries and seeks to draw out the essential elements of a FOIA campaign and the strategic options available to FOIA campaigners. Chapter Three outlines the fundamental principles which should be included in a FOIA and the complementary measures which need to be put in place in order to bring about effective realisation of the right of access guaranteed by the law. This Chapter refers frequently to two other ARTICLE 19 publications which set the standards for freedom of information legislation: *The Public's Right to Know: Principles on freedom of information* and *the Model Freedom of Information Act*. Chapter Four highlights the importance of educational and awareness raising activities to ensure that the FOIA is correctly applied by public officials dealing with information requests and ordinary people are aware of their rights under it. Finally, Chapter Five examines the role which civil society can play in monitoring the implementation of a FOIA and appealing its misuse – an ongoing task and one which may well result in renewed campaigning for amendments to improve or broaden the scope of the FOIA as test cases reveal loopholes and limitations to its effectiveness.

ARTICLE 19 is grateful to the freedom of information campaigners and activists who have taken the time to share their experience and knowledge of freedom of information in their respective countries. While all efforts have been made to ensure that information is accurate and up to date, omissions and mistakes may have been made and we would urge readers interested in the activities of the organisations covered in the survey to contact them or visit their web sites directly. We acknowledge that there is undoubtedly a great deal of activity and work being carried out by many industrious FOI activists in the region which we have omitted to include in the survey, but we would like to stress that failure to comment on FOI campaigns or initiatives is unintentional and in no way reflects an adverse opinion of their value or contribution to promoting freedom of information.

# CHAPTER ONE

## Overview of Freedom of Information related Legislation in the Countries Studied

### 1.1 Albania

**Law No. 8503 On the Right to Information over Official Documents** was enacted on 30 June 1999. The law provides for the right for everyone to seek official information. Governmental bodies are also required periodically to publish information about their functions and activities. The implementation of the law is the responsibility of the People's Advocate (Ombudsperson). In practice, the law is rarely applied, and most Albanians, including public officials at all levels of the administration, have little knowledge of its existence. The lack of public education programmes and training of public officials has contributed to the failure of the law so far to effect real change in the informational relationship between the individual and the state.

On 11 February 1999 **Law No. 8457 On Classified Information** was passed, establishing a National Security Authority whose powers are modelled on the NATO requirements for information security. Secondary legislation has also been passed in the form of Government Decrees.

### 1.2 Bulgaria

The **Access to Public Information Act** was enacted in June 2000. The law does not establish an independent body to supervise the implementation of the law. Some small fines may be imposed for failure to comply with the provisions of the FOIA, although there have been no such instances to date. For the past few months Parliament has been reviewing amendments to the FOIA, which would, among other things, introduce a system for administrative appeal (to precede judicial review) and a public interest test.

Civil society was very active in campaigning for the adoption of a FOIA and assisted in drafting the final Act. NGOs have been equally active in monitoring its implementation and in conducting training for public officials.

In April 2002, a **Classified Information Protection Act** was passed as part of the fulfilment of the criteria for NATO membership. The Act, which creates

four levels of classification, is not consistent with the provisions of the FOIA and it empowers anybody who has the authority to sign a document to also classify it. Provisions on official secrets are also contained in other laws, resulting in the absence of a unitary definition; in some cases the scope of an 'official secret' is determined by the authorities.

The **Data Protection Act** came into force in January 2002.

### 1.3 Estonia

**The Public Information Act** was approved in November 2000, following a campaign dating back to 1997. The Act came into force in January 2001. The Act obliges public bodies to maintain up-to-date web sites and states that people can request information via email. The implementation of the Public Information Act is supervised by the Estonian Data Protection Inspectorate (DPI).

The **State Secrets Act** was amended in August 2001 to ensure compliance with NATO requirements.

There is also a **Data Protection Act**, which establishes an individual's right to receive and correct information about him/herself.

### 1.4 Hungary

Compared to other eastern European democracies in transition, the Hungarian FOIA was enacted remarkably early. **Act No. LXIII on the Protection of Personal Data and Disclosure of Data of Public Interest** was passed in 1992. In addition, in the same year the Constitutional Court ruled that the right to freedom of information is a fundamental human right.

The implementation of the Act is supervised by the Parliamentary Commissioner, who has the dual function of overseeing the respect of the right to freedom of information and protection of privacy. The office of the Commissioner receives individual complaints on refusals to disclose information, provides opinions on the drafting of relevant legislation, as well as supervising secrecy legislation. It is the best example in the region of a dedicated office with a reasonable budget and human resources to adequately fulfil its functions, including the compilation of an in-depth annual



report. However, less than 10% of the complaints the Commissioner receives relate to freedom of information.

**Act LXV on State and Official Secrets** of 1995 empowers the Commissioner to modify the classification of official secrets.

The 1995 **Screening Act** establishes that individuals can have access to their own Communist-era files.

## 1.5 Latvia

The **Law on Freedom of Information** was signed by the President in November 1998. The law provides for access to 'generally accessible information', which is defined as any information which is not categorised as restricted information. The categories of restricted information are not narrowly defined and include trade secrets, private information and information intended for and specified for internal use by an institution. The author of information or the manager of an institution has the right to grant the status of restricted information, indicating the basis provided by the Freedom of Information law (FIL) or other laws. There is no public interest test governing disclosure of otherwise restricted information. The FIL provides for administrative review of non-disclosure decisions with the possibility of judicial review thereafter.

To date insufficient resources have been injected into the bodies responsible for dealing with information requests, and no specific training has been carried out, resulting in the less than adequate level of implementation of the law's provisions. Research by civil society has also shown that the courts have been particularly resistant to the notion of freedom of information, obstructing those attempting to gain access to court verdicts.

## 1.6 Lithuania

The right to freedom of information is regulated by the **Law on the Provision of Information to the Public** (No IX – 131), passed on 21 December 2000 and the **Law on the Right to Obtain Information from State and Local Government Institutions** of January 2000. The latter sets broad restrictions on the right to freedom of information, including blanket bans for categories of information

such as national security, defence and foreign policy interests. Non-disclosure decisions can be appealed through administrative proceedings.

**The Law on Legal Protection of Personal Data** (No 63-1479) of 1996 establishes the individual right to access and correct personal information.

## **1.7 Moldova**

The **Law on Access to Information** (Law No. 982-XIV), granting everyone the right to seek, obtain and disseminate official information, was approved by Parliament in May 2000 and came into force in August 2000. It states that any refusal to provide information must be accompanied by reasons and may be challenged through an administrative procedure and then in court.

Restrictions to the right to freedom of information are established in the law, yet a public official also has to prove that each restriction is 'necessary in a democratic society' to legitimately refuse disclosure. However, in practice very few people know about FOIA and public officials have not been adequately informed of their obligations under it.

The Moldovan Administrative Code was amended in 2001 to impose sanctions (fines and/or criminal prosecution) for illegitimate refusals of information, although these provisions have not been implemented until now.

The **Law on State Secrets** of May 1994 prohibits the disclosure of 'state secrets', defined in very broad terms, and a large number of bodies are entrusted with the authority to classify information.

## **1.8 Romania**

The **Law Regarding Free Access to Information of Public Interest** was adopted in October 2001, following a civil society campaign and co-operation between NGOs, the Ministry of Information and political parties in drafting the law. The law provides for wide exemptions to the general right to freedom of information, but also requires governmental bodies to publish detailed information about their activities and functions. Appeals against non-disclosure can be lodged with the body to which the request has been made, and subsequently with the courts. Civil society has also been co-operating with governmental bodies in training public officials and monitoring the implementation of the law. However, insufficient resources, particularly

financial, have been allocated to ensure the effective implementation of the law.

A **Law on the Protection of Classified Information** was passed in April 2002. Once again, civil society worked closely with government to limit the instances of inconsistencies of this law with the FOIA.

The **Law on Access to Personal Files and the Disclosure of the Securitate as Political Police** was passed in 1999 and establishes a citizen's right to access his/her files kept by the secret police, and to examine the files of those who are running for public office.

### **1.9 Slovakia**

The **Act on Free Access to Information** was approved in May 2000 and came into force in January 2001. It guarantees the right of everyone to request information held by public or private bodies fulfilling public functions, with some exceptions relating to, for example, state and professional secrets or personal information. In the case of non-disclosure the law provides for an internal administrative appeal to the obligee's superior and thereafter to the administrative courts. The impetus for the adoption of the law was primarily created by civil society, which acquired broad support from the population through an intense media campaign. Civil society has also been involved in the training of public officials and in monitoring the effective implementation of the Act. Severe sanctions can be imposed for failure to comply with the provisions of the Act.

Slovakia is currently drafting an Act on Public Access to the Legislative Process.

### **1.10 Ukraine**

Ukraine's access to information regime is governed by several laws and resolutions adopted in the past 10 years. The 1992 **Law on Information** guarantees the right of access to information and obliges state agencies at all levels to inform the public of their activities and decisions taken (Article 10). Citizens have the right to ask for any official document and the government body must respond in 10 days. However, surveys carried out by civil society

have revealed that the law is rarely implemented as it should be and public officials show a blatant disregard for the rights of those seeking information. The 1994 **Law on State Secrets** and the 1995 **List of Information that belongs to State Secrets** define what constitutes a state secret. The 1996 **Constitution**, at Article 34, guarantees each citizen ‘..the right to freely collect, store, use and distribute information orally, in writing or in any other way.’ Article 2 of ‘**On the Order of Dissemination of Information on Public Bodies and Local Government Activity by Mass Media**’, requires public bodies to inform the mass media about their activities. (Statute of 23 Sept. 1997, No. 539/97). In August 2002, the President issued a Decree ‘**On Additional Steps to Ensure Transparency and Openness of the State Bodies’ Activities**’, envisaging the involvement of a group of independent NGO experts in an investigation into the legal and organisational system necessary to ensure access to public information.

# CHAPTER TWO

## CAMPAIGNING TO SECURE THE ADOPTION OF A FOIA

### 2.1 Overview

Most of the countries studied: Albania, Bulgaria, Romania, Hungary, Estonia and Lithuania have constitutional provisions explicitly guaranteeing the right to access *information held by the state*. Latvia's Constitution does not explicitly guarantee access to *government held information*, but it does guarantee 'the right to freedom of expression, including the right to freely receive, keep and distribute information'. A provision which guarantees 'the right to address submissions to State or local government institutions and to receive a materially responsive reply' further strengthens the constitutional foundation for the public's right to access government information. Slovakia's Constitution guarantees a general right to information and a specific right to environmental information.

However, in order to bring about the implementation of a constitutionally guaranteed right to information, it is usually necessary to adopt a specific law, generally referred to as a Freedom of Information Act or FOIA. In transitional democracies such as those in Central and Eastern Europe, the adoption of a FOIA is regarded as a fundamental element in reform – a key step in transforming formerly closed and secretive regimes into modern democratic governments which genuinely assume the responsibility of guaranteeing the rights of their citizens.

In Estonia, for example, *the Estonian Newspaper Association*, argued the need for a FOIA on its web page devoted to the campaign, with reference to the negative attitude of government officials when confronted with a request for information:

'Estonia lacks an Access to Public Information Law, although the Constitution's Article 44 refers to one... officials say to an information request: "But where is it written that I have to give this information to you?" All too often, an official in possession of public information can rule in a highly arbitrary manner as to what information to issue to whom and when. This is because of lack of clear rules. It is easy for a government department to declare documents as "meant for internal consumption only'.

The *Romanian Helsinki Committee (APADOR-CH)* campaigned for the adoption of a FOIA so that the constitutional guarantee of access to information under Article 31 of Romania's Constitution could be applied. A fundamental principle of their campaign was that a FOIA should be a framework law and that all the laws in force that included limitations on the right of access to information should be interpreted according to the provisions of the FOIA.

Achieving the adoption of a FOIA is not an easy process. The whole issue of freedom of information normally confronts an unwilling government and/or political establishment. There may be downright opposition to the principle of freedom of information. Even when, as happened in Estonia in 1997, a Parliament instructs the government to draft a FOIA, progress may be very slow, or non-existent. The less developed culture of public inquiry which exists in countries whose populations have for many years been governed by a totalitarian system, is an additional obstacle to the swift adoption of such legislation.

Therefore, an assertive campaign to bring about the FOIA is needed not only to maintain pressure on government to get legislation passed, but also to educate the general public about the significance of the right to access information. The readiness of the public to make use of their rights under a FOIA, is of course crucial to its effectiveness.

Campaigns to achieve the adoption of a FOIA will vary from one country to another and the examples provided further in this chapter will demonstrate that many different approaches work. However, it is possible to identify some essential elements which should be present in all campaigns:

- a FOIA campaign should be a broadly-based-coalition of activists from different sectors of civil society, including grassroots organisations which have a more immediate relationship with ordinary people;
- the aim of the campaign should be to achieve a good FOIA which meets international standards;
- the campaign must focus not only on getting the FOIA adopted but also on the content of secondary legislation which will be crucial to implementation.

There is a debate as to how closely a civil society campaign should work with parliamentarians or government officials who are seen to favour the adoption of such legislation. It is always possible that politicians will co-opt the campaign to acquire greater prestige and, if involved at all, government is likely to adopt a cautious, protective approach to the issue. However, as experience has shown in Romania and Slovakia, the willingness of NGOs campaigning for a FOIA to co-operate with members of parliament who take a lead on the issue, can result in a process which enables civil society to be closely involved in the drafting of the final text of a FOIA.

Regardless of the level of co-operation with parliamentarians or government, the objective of creating a broad-based, inclusive and popular movement has been highlighted in many countries striving to achieve the adoption of a FOIA. *The Free Access to Information Programme* in Montenegro suggests that what is needed is the creation of 'an interdisciplinary network' to foster 'an active and widespread NGO alliance as a forum'.

Bulgaria provides a good example of such interdisciplinary co-operation at the civil society level. *The Access to Information Programme Foundation (AIP)* was established on October 23, 1996 in Sofia, by journalists, lawyers, sociologists and economists who combined their knowledge and efforts to promote the right to information and to initiate a public debate on the issue. Subsequently, *AIP* joined forces with 11 other organisations. Allies can often be found in the most unlikely of places. For example, in Romania an NGO, called the Cyclo-tourism Club, in the town of Cluj, were active in presenting their point of view on the draft FOIA law and even provided a critique of the draft application norms, once the law had been adopted.

Campaigners must be aware that securing the adoption of the primary law is only the *first step* in the campaign to guarantee the public's right to know. Afterwards, there is the key process of monitoring the implementation of the FOIA. In addition, campaigners should aim to be involved in drafting, or at least try to access and critically review, drafts of, the secondary or "application" norms which supplement the primary law.

## 2.2 Specific Country Experiences

The process of campaigning for a FOIA is likely to involve:

- putting the issue of freedom information onto the political agenda by raising awareness, initiating co-operation between interested civil society organisations and introducing the legislative concept to members of parliament and government officials;
- drafting the basic principles and/or a text of a draft law;
- interacting with the government, individual MPs or political parties, all of whom may have drafted a text(s);
- working within the government's processes for considering the drafts of the FOIA;
- bringing in international experts to advise on drafting a text which meets international standards and enlisting support from international NGOs for the campaign;
- mobilising public opinion in support of a law to create pressure for its adoption and interest in its implementation.

In Hungary the process of adopting a freedom of information law appears to have been accelerated when compared to the history of the campaigns in other countries in the region. In fact, as pointed out by Ivan Szekely, Hungary's apparent advantage over other newly democratic countries is rooted in the circumstances in which the campaign for a freedom of information law began. During the final stages of the old political system, a small group of inter-disciplinary professionals began collecting and studying Western concepts, norms and experiences and working out a new framework for possible legislation. As a result, when the transition to democracy began the concept and the draft of an FOI law had already been elaborated. In addition, the President of the Constitutional Court was a member of the group which had formulated the draft law and consequently the right to receive and impart information of public interest was included in the catalogue of fundamental rights and duties in the new Hungarian Constitution.



In Slovakia and Bulgaria, the campaign for a specific law to guarantee access to information grew in part out of an awareness of the importance of gaining access to information about the environment. In Slovakia, the Law on Providing Environmental Information was adopted in 1998. Although imperfect, this Law generated experience among NGOs, journalists and ordinary citizens of requesting information from official sources. In Bulgaria, the *Access to Information Programme (AIP)* was formed by individuals, largely concerned by the lack of information about the environmental and social consequences post-Chernobyl. As in Slovakia there was an existing, albeit limited, legislative example in place in the form of the 1991 Environmental Protection Act which had established the principle of the right of access in relation to this specific area of information.

Once the adoption of a FOIA has been identified as the central mechanism for rectifying the information deficit between society and the state, the campaign to achieve a law can take different forms.

In Bulgaria, as noted above, the *Access to Information Programme* was composed of lawyers, journalists, economists, sociologists and political scientists who came together to initiate a public debate and gained sufficient funding to establish themselves as an organisation dedicated to the right to information. In Slovakia, the campaign was launched by 11 organisations acting as a '*Citizens' Initiative*' which developed into a broad-based coalition of some 122 NGOs necessitating a formal secretariat and co-ordination point which was provided by the *Association for Support of Local Democracy (ZPLD)*. Over the course of the campaign, the services of consultants and advisors were utilised to develop expertise in the issue.

Sometimes, general human rights NGOs will take the initiative to raise awareness about the issue of freedom of information and encourage politicians to engage in a public debate. In Croatia, for example, the *Croatian Helsinki Committee* chose freedom of information as a key focus of the organisation's campaigning activities for 2002. In May, the Committee, together with other organisations such as *the Croatian Association of Journalists*, organised a seminar to discuss the issue which included representatives from the media; leading government officials from the

Ministries of Environment, Defence, Interior, and Culture; the Vice-President of the Croatian government; MPs; consumer groups and trade unions. The seminar was entitled *The Public's Right to Know and Restrictions on Free Access to Information* and sought to introduce the debate to a broad range of actors with the hope of building enough momentum to ultimately result in the introduction of a draft law to Parliament.

The willingness of an individual MP, party or cross-party group of parliamentarians to take the initiative to draft a text of a FOIA is obviously a crucial stage in the adoption of a law. This often happens either in direct response to, or in parallel with, a civil society campaign. The way in which the civil society campaign interacts with the political process can have an important bearing on the end result. Campaigning need not, and should not, be only critical or confrontational. Co-operation with government working groups and/or Parliamentary committees affords civil society a valuable opportunity to influence the content of the text. Failure will be frequent, but at least the counter-arguments will have been heard. For example, in Slovakia and Romania the NGOs involved in the campaign managed to obtain copies of the different drafts being developed and offered to co-operate with the MPs to influence the outcome.

In Slovakia, the initial impetus for drafting a FOIA was taken by 2 rival groups of MPs. Each based their proposals on the Czech law. The NGO coalition, *Citizens' Initiative*, eventually obtained both drafts, in spite of the reported reluctance of one group to share its work. The NGOs took the view that the drafts did not meet their expectations and were concerned both at the lack of co-operation between the two drafting groups and at the response to their own offer of co-operation. Even though the two groups publicly announced that they would combine their two drafts as one, ultimately it was the lawyers of the *Initiative* who came up with one draft. One of the leading MPs involved in the working group, Mr Langos, 'identified' himself with the draft and subsequently won sufficient support for its introduction to Parliament.

Intensive lobbying continued right up until the actual adoption of the FOIA: one week before the draft law was supposed to receive its third and decisive reading in Parliament, the representatives of the *Initiative* met with the Prime

Minister who publicly endorsed the bill and underlined the link to the official anti-corruption drive declared by the government several days earlier.

In Romania, a relatively small-scale expert group including the *Center for Independent Journalism* and the *Media Monitoring Agency* took the role of promoting the right to information in dialogue with the government. The *Romanian Academic Society (SAR)*, reportedly, acted as a broker, during one afternoon, between the government; the National Liberal Party (which had already proposed a draft law) and civil society organisations involved in the FOI campaign, to break an impasse in negotiations.

In Estonia and Bulgaria, representatives of the civil society campaign, (*the Estonian Newspaper Association* and *AIP* respectively), were actively invited to participate in drafting committees or working groups headed by government officials.

However, while co-operating with government and parliamentary actors is highly desirable, it is also important to point out that a good campaign will proactively set the agenda, by setting out the basic principles and elements which the FOIA should respect, protect and promote. In Bulgaria, the draft of the law was based on *AIP's Concept Paper on Access to Information Legislation in Bulgaria*. The paper, which was published in 1998, is a comprehensive survey of the concept and elements for a FOIA, based on international standards and a comparative analysis of existing FOIAs in other countries, tailored to the Bulgarian context.

In Slovakia, the campaign elaborated *Nine Principles of a Good Law on Free Access to Information*. These became non-negotiable in terms of co-operating with others (including politicians) and setting the benchmark for any draft text to be discussed. In brief, the 'Nine Principles of a Good Law on Free Access to Information' are:

1. Anything that is not secret is a public matter (principle of maximum disclosure).
2. Persons obliged to provide information shall belong to entities established by law.
3. Provisions on what information shall not be disclosed must be clear and the reasoning must be restrictive. In addition, a mechanism for

assessing the public interest in disclosing the information should be included.

4. Adequate deadlines should exist for the disclosure of information (15 days was recommended) without the possibility of their inappropriate extension.
5. The citizen must have an effective and fast remedy following a non-disclosure decision.
6. Sanctions against those who violate the law must exist.
7. State and public bodies should be obliged to pro-actively disclose crucial information relating to their function, activities etc.
8. The cost of information must not be an obstacle preventing citizens from accessing information.

9. The new law on access to information should include articles which explicitly resolve its relationship with the Law on Access to Environmental Information through specialised chapters regulating procedures for accessing information in specific areas.

The involvement of representatives from international NGOs/IGOs can greatly assist an FOI campaign. International experts can offer expertise in drafting laws which meet international standards, while the presence of international actors at seminars and workshops can contribute to the pressure on a government to draft legislation and support the process of its adoption. For example, in Croatia, as mentioned above, the Croatian Helsinki Committee convened a seminar on freedom of information in May 2002, to which they invited international experts (ARTICLE 19 staff and a representative from the Council of Europe), as well as experts from other countries in the region (Romania and Bulgaria). The aim of the seminar was to raise awareness about the standards at which their government should be aiming and to learn from the experience of those who have already gone through the process of adopting freedom of information legislation.

Similarly, in Romania, a regional Seminar on Freedom of Information, held in October 2001, was organised in partnership by the Centre for Independent Journalism, the Romanian Helsinki Committee and ARTICLE 19. The initial aim of hosting the regional seminar in Romania was to bring pressure to bear on the Romanian government and Parliament to finalise the adoption of the draft FOIA that had been languishing in Parliament for several months. As it

turned out, the process was all but complete by the time the seminar was held and the focus of the debate switched to welcoming the adoption of the law, while emphasising that the passage of a FOIA was merely the beginning of the process to guarantee the right to information. The Romanian NGOs also used the occasion to warn against the dangers of a draft Law on the Protection of Classified Information which threatened to undermine the principles established in the FOIA.

In all the countries studied, the FOI campaigns have sought in different ways to reach out beyond the political elite to disseminate arguments justifying the need for a FOIA and to mobilise popular opinion. In Bulgaria, *AIP* undertook a series of seminars prior to the adoption of the FOIA, involving NGOs, (local) government officials and media to comment on the draft FOIA text. *AIP* also undertook research projects, such as the "Public Registers Situation", which described and analysed information disclosure practices before the adoption of the FOIA and demonstrated that the constitutional provision guaranteeing access to information was inadequate.

In Slovakia, the *Citizens' Initiative* combined political lobbying with an intensive media campaign: articles and speeches were published in the press; discussion programmes involving members of the *Citizens' Initiative* were broadcast; a visual logo was created to brand the campaign; 50 000 postcards were distributed and people were encouraged to send them to the Chairman of the National Council demanding a FOIA; radio and TV advertising spots were prepared and broadcast.

In Estonia, the direct involvement of the media, in the form of the Estonian Newspaper Association, in launching the campaign helped to restart a political process which had effectively stalled. The ENA campaign was launched in July 1998 more than one year after Parliament had instructed government to draft a law. It opened a page on its web site, encouraging citizens to fill in a form suggesting their proposals for a FOIA. After a six-week period, the results of the poll were forwarded to the Ministry of Interior. The draft law was completed a year later and the Public Information Act was enacted in January 2001.

## 2.3 Strategic Options for Campaigning for a FOIA

Campaigning for a FOIA can take several different forms. Despite the successes of achieving the adoption of a FOIA in Hungary, Bulgaria, Slovakia, Estonia, Latvia, Lithuania and Romania, as described above, there is, arguably, no one right way of proceeding, no one cast-iron formula.

Campaigning has to take account of the motivating force behind the drive for a FOIA and the specific socio-political conditions in a given country. Equally, it is difficult to generalise about the relative failures, thus far, to adopt a FOIA, for example, in Croatia and Montenegro.

The fundamental point is that, conditional on the context, the issue should be put on the political agenda by a civil society movement. One option is for concerned individuals to come together to begin to address the matter, as in Hungary, before the necessary political transition to more open government. Pre-empting political change can have, as in that particular case, an impact on getting the principles of FOI acknowledged at the constitutional level. However, raising the issue at the constitutional level is not the same as campaigning for the adoption of a FOIA and good secondary legislation. To do that, experience indicates that, as in Estonia or Bulgaria, a progressive civil society organisation needs to emerge to promote the argument. This can be either an existing one (e.g. *ENA*), or one created specifically for the purpose (e.g. *A/P*).

Perhaps even more useful is the notion that civil society should come together in broad-based grouping, as happened to great effect in Slovakia. On the other hand, the Romanian experience shows that a smaller number of committed and informed NGOs, working together, can also be the catalyst for the FOIA's adoption.

The campaign needs to take into account whether, as in Estonia, Romania and Slovakia, there is already an existing *political/parliamentary* process, whereby one or other political party has seized the issue. As in Slovakia, the question then becomes whether and how to co-operate with the parties and which one to choose? In that country, the decision to co-operate was made largely on the basis of the conformity of the politicians' draft texts with the benchmark principles which the coalition had elaborated.

Another issue is the degree of media co-operation that should be sought by a campaign. Clearly, as in Estonia, the media might actually take the initiative in promoting the issue, or conversely, initially at least, they may be ambivalent about the necessity and advantages of adopting a FOIA. In Lithuania, for example, a top political journalist encapsulated this ambivalence, suggesting that the FOIA could actually make life more difficult for accessing information, as it might restrict unofficial disclosures and contain broadly-based exemptions which authorities could use as excuses not to disclose information. Nevertheless efforts should be made to win media support: journalists can play a valuable role in explaining the concept of freedom of information to the general public and in shifting attitudes at all levels of society; equally the long term benefits the media will gain from the transformation of the culture of official secrecy into one of greater openness can not be overstated.

## **CHAPTER THREE**

# **STRUCTURAL CONDITIONS AFFECTING THE WORKING OF THE FOIA**

There is no substitute for adopting an excellent law with provisions that mirror those, for example, which are set out in ARTICLE 19's Model Law. However, adopting a good law is a necessary but not sufficient condition for realising and entrenching the right to freedom of information. In order to ensure the law has maximum effect, there are a number of "structural issues" which need to be recognised and dealt with too.

### **3.1 Precedence and Interaction with other Laws**

In the countries studied – as elsewhere - the FOIA is but one law dealing with information.

Usually, there is also a law on classified information, which defines state and official secrets and a law on data protection which defines private information. In addition, there may also be articles regulating access to information in specific laws, for example concerning the environment. Therefore, even after the adoption of a good FOIA, campaigners and advocates must remain vigilant to ensure that neither the regressive amendment of existing laws nor the adoption of new more restrictive legislation compromises the principle of openness.

The structural issue is, how can the FOIA, and/or the principle which it embodies, be given precedence? The international standards are explicit in how this should be done:

ARTICLE 19's Principles on the Right to Know, Principle 8, DISCLOSURE TAKES PRECEDENCE, states that:

Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.

The law on freedom of information should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions. Where this is not possible, other



legislation dealing with publicly held information should be subject to the principles underlying the freedom of information legislation.

ARTICLE 19's Model FOI Law gives clear guidelines as to how a FOIA should be drafted to encapsulate this principle. Section 5 states:

Legislation Prohibiting or Restricting Disclosure

5. (1) This Act applies to the exclusion of any provision of other legislation that prohibits or restricts the disclosure of a record by a public or private body.

(2) Nothing in this Act limits or otherwise restricts the disclosure of information pursuant to any other legislation, policy or practice.

In countries in transition the issue of precedence has posed a particular challenge, because governments have been faced with the need to adopt a series of new laws to enact the fundamental rights and freedoms guaranteed in their new Constitutions. In Bulgaria, for example, the Access to Public Information Act (APIA) (June 2000) was adopted between 18 months and two years ahead of the Personal Data Protection Act (January 2002) and the Law on the Protection of Information Classified as State or Official Secret (April 2002). There was therefore a period of time during which officials were unsure of the relationship between the exemptions to the right of access to information, as defined in the APIA and the various unreformed laws and regulations which restricted access to information. In the period prior to the adoption of the law on classified information, *AIP* argued for reform of the secrecy regulations to avoid any ambiguity in the application and scope of the exemptions to the right of access prescribed in the APIA. The definition of the term 'official secret', one of the exemptions listed in the APIA, was identified as particularly problematic and open to abuse. Thus AIP argued that:

- regulations concerning official secrets are not found in a unitary regulation;
- different laws assign different meanings to the concept of official secrets;
- some laws simply use the term but leave it undefined;
- some laws use the term and assign it a specific meaning within that law;

- some laws confer full discretion on authorities to determine the scope and content of the official secret;
- a common feature is that the definition of official secret is applied to protect particular interests deemed necessary by individual public authorities to be protected.

The principal recommendation of *A/P* lawyers was that the legislators should make clear in a new Law on the Protection of Classified Information, the scope of interests to be protected as a way of reducing, as far as possible, the discretionary powers of the individual authority.

Similarly in Romania, the adoption of the Law on Free Access to Information of Public Interest (October 2001) preceded the adoption of the Law on the Protection of Classified Information (April 2002). The latter was criticised by ARTICLE 19 and others for failing to make explicit reference to the freedom of information law, in order to clarify the issue of precedence.

Another issue which has arisen more recently in Bulgaria, concerns the amendment of the chapter on access to information contained in the 1991 Environmental Protection Act. This Act was notable in that it established an important FOI principle, some 9 years before the adoption of the Access to Public Information Act (APIA). The chapter on access to environmental information introduced, for the first time, the principle of the individual's right of access to information without the need for justifying special legitimate interest. It also provided for judicial review in cases of refusal to disclose information. However, in spring 2002, proposed amendments to the Environmental Protection Act threatened to undermine the regime of openness established by the APIA. *A/P* criticised the amendments for introducing restrictions on the right to access information which would be additional to those in the APIA, for decreasing the number of bodies obligated in the existing law to provide access to information, and for failing to stipulate that the APIA should take precedence in the application of exemptions. At the time of writing, the amendments to the law had been adopted by Parliament but vetoed by the President.

There is a realistic awareness, among those organisations in the countries studied who are involved in educating public officials about the application of a FOIA, of the confusion which is likely to arise about the issue of

precedence. For example, in Slovakia, the Open Society Foundation has published a *Handbook for Public Administration Officials and Local Self-Government Officials*, which sets out, at paragraph 1.3 the mosaic of other laws that limit the right of access provided for in the FOIA. These include laws defining state, professional and trade secrets, data protection and information regarding decision-making activities of courts and organs of criminal prosecutions. However, the authors also take care in the subsequent paragraph 1.4 to explain that the FOIA rules out any possibility of using 'confidentiality' as a reason to deny access to information. They emphasise that 'confidentiality reasons' as defined in other legislation (such as the Labour Code; the Commodity Exchange Act; the Act on Military Police etc.) are not legitimate reasons for refusing to disclose information as prescribed in the FOIA.

Finally, it is important to note that establishing the precedence of a FOIA is not something which happens overnight; time and experience of applying the FOIA can be a useful ally for campaigners in this regard. For example, Emilia Sicakova reported last year that, on August 15, 2001, the Government of the Slovak Republic discussed the *Report on the Application of Act 211/2000 Coll. On Free Access to Information and Measures Approved at [sic] State Administration Bodies*. The Government concluded that "the application has...shown incompatibility and discrepancy between certain provisions of the act and provisions of other generally binding legal regulations. Therefore, the Government instructed the Minister of Education, Minister of the Interior, and the Head of the Office of the Government to submit an amendment to this [sic] Act to the Government by March 31, 2002, following negotiations with representatives of non-governmental organisations". It is unknown at the time of writing whether any progress has been made in this regard.

In conclusion, the aim should be to ensure that the FOIA takes precedence over all other information laws, in order to give effect to the legal presumption of maximum disclosure. The FOIA should itself prescribe the repeal or amendment of provisions in other laws that permit unreasonable non-disclosure of information. At the very least, it should prescribe that a review of

unjustifiably inconsistent legislation will take place within a finite period and a report made to the national legislature concerning the issue.

### **3.2 Secondary Norms**

The primary FOIA may largely be an *enabling* law, brought into effect in stages by secondary rules, for example, regulations, orders and/or "application norms". Therefore, having fought for a good primary law, campaigners should expend equal energy and effort to secure good secondary/application norms, which give detailed effect to the FOIA. At the very least, the procedure for the laying of regulations should be prescribed in the primary law and follow basic democratic norms allowing the opportunity for consultation with civil society.

ARTICLE 19's Model FOI law, article 50 prescribes:

#### **Regulations**

50. (1) The Minister may, by notice in the Gazette [or insert name of appropriate publication] and after consultation with the Commissioner make regulations regarding: –

- a. additional forms of communication of information under section 12(2);
- b. training of officials under section 20;
- c. reports to the Commissioner under section 21;
- d. any notice required by this Act; or
- e. any administrative or procedural matter necessary to give effect to this Act.

(2) Any regulation under sub-section (1) must, before publication in the Gazette, be laid before [insert name of legislative body or bodies].

In Romania, *APADOR-CH*, the *Center for Independent Journalism* and other NGOS co-operated and worked with the Ministry of Public Information to draft the application norms. Being involved allowed the civil society groups to criticise certain points in the early drafts and to ensure that the application norms did not undermine fundamental principles established in the law. For example, the provision that the applicant had to be present when requesting information and state why the information was needed, was taken out

following NGO objections. In addition, the procedures for determining whether a public official had violated the FOIA were reformulated to guarantee a presumption of innocence subject to inquiry.

The adopted norms also appear via a link on the Ministry of Public Information's web site. This is helpful, as finding the text of such secondary norms is often very difficult. Romania's NGOs and government have set a good precedent in both respects.

The FOIA may also be brought into effect by means of a Code of Practice (which may or may not have legal effect) and which may or may not be referred to in the primary legislation. There might even be another normative level, for example, so-called "Departmental Circulars", which offer soft-law interpretations of what particular concepts or phrases mean and how a specific policy (openness/transparency/freedom of information) is to be put into effect.

In addition, individual public bodies obliged under the law may issue their own "internal guidance" setting out the procedures for dealing with access requests. Again, the primary law or a Code of Practice on freedom of information may, or may not, refer to this category of information, as one to which there should be a right of access. Internal rules may prescribe information management processes and the classification of information which officials wish to be sure about, lest they be liable for criminal prosecution or disciplinary procedures for unauthorised disclosure.

Finally, even if not specifically provided for in the primary law, authorities' internal guidance should be publicly accessible and available for review and criticism.

### **3.3 Appeal and oversight mechanisms**

The FOIA prescribes who may request what information (subject to certain limited exemptions) and the procedure to be followed. The initial request, if denied, must be subject to a meaningful appeal, prescribed by law. In addition, it is highly desirable that the whole FOIA structure is supervised by a dedicated, independent authority, endowed with legal powers. Finally, the oversight mechanism itself should be subject to scrutiny, preferably by civil

society organisations, to ensure that it is robust and being used to maximum effect.

ARTICLE 19's Principles on the Right to Know, Principle 5: PROCESSES TO FACILITATE ACCESS, state:

### **Appeals**

Wherever practical, provision should be made for an internal appeal to a designated higher authority within a public authority that can review the original decision. In all cases, the law should provide for an individual right of appeal to an independent administrative body from a refusal by a public body to disclose information. This may be either an existing body, such as an Ombudsman or Human Rights Commission, or one specially established for this purpose. In either case, the body must meet certain standards and have certain powers. Its independence should be guaranteed both formally and through the process by which the head and/or board is/are appointed.

ARTICLE 19's Model Law prescribes the nature, structure and functions of the preferred oversight mechanism: an independent Information Commissioner. In addition to having powers to fully investigate a complaint against an FOI decision, the Commissioner's decisions and orders are foreseen as binding. Differing types of appeal and oversight mechanisms exist in the countries studied. Most employ some form of internal appeal mechanism, supplemented by an appeal to an administrative court. With the exception of Hungary, there is a conspicuous lack of laws/FOI regimes, which provide for the ideal institutional mechanism of an independent Information Commissioner.

In Hungary, the Act on Protection of Personal Data and Disclosure of Data of Public Interest is overseen by the Parliamentary Commissioner for Data Protection and Freedom of Information. The dual function of the Commissioner derives logically from the joint treatment of the rights in the 1992 Act which provided for the creation of the office. The first Commissioner for overseeing informational rights was elected in 1995 along with a

Parliamentary Commissioner for human rights and a Commissioner for safeguarding minority rights. The office has an Ombudsman function (i.e. receiving individual complaints against non-disclosure decisions) as well as providing opinions on freedom of information draft legislation and, arguably his most important power, supervising secrecy legislation. While the recommendations the Commissioner issues on freedom of information are non-binding, (although they are generally accepted owing to their moral authority), the Commissioner may order the declassification of secret documents and these orders are binding. Although less than 10% of the complaints filed with the Commissioner relate to freedom of information (as opposed to data protection) the impact of the Commissioner's recommendations and reports on the development of the theory and practice of freedom of information in Hungary and in the wider region has been significant. The Commissioner's annual reports, from 1995-2001 provide an extremely valuable source of comment and analysis regarding information retention/disclosure.

In Albania, the oversight and implementation mechanism is the responsibility of The People's Advocate (Ombudsman). The People's Advocate can receive complaints and conduct investigations which includes the right to request information or documents classified as state secrets that are relevant to the case under investigation; recommend criminal investigation/court action or dismissal of officials in the case of serious offences. The People's Advocate has a duty to submit an Annual Report to the Parliament.

In order to facilitate the implementation of the Law on the Right to Information over official documents, the Office of the People's Advocate issued a recommendation to municipalities, communes/districts, and government ministries in November 2001. The recommendation instructed the authorities, obliged under the law, to create the administrative systems to enable the effective implementation of the FOIA. Due to a poor rate of response, the recommendation was re-issued at the beginning of 2002 underlining the obligation of the public bodies to fulfil their legal obligations under the FOIA and to provide a report on progress to the Office of the People's Advocate. The latter reported in June 2002, that 90% of the authorities addressed by the

recommendation have responded with an explanation of the steps they have taken or intend to take in order to implement the FOIA. Nevertheless, the office concludes that serious intervention is needed particularly at the level of local authorities to realise the implementation of the law. This conclusion corresponds with the assessment of NGOs in Albania who report that the few complaints made to the PA's office demonstrate the very limited knowledge of the law by public officials at all levels of the administration.

The Access to Public Information Act (APIA) in Bulgaria did not establish an independent body to supervise and monitor the implementation of the law. Section IV of the Law sets out the framework for appealing denials of information to the Supreme Administrative Court. In December 2001, a group of MPs introduced an amending bill to the APIA which included at Article 39a the provision for the introduction of an opportunity for an administrative appeal of a refusal to grant access to information, as an alternative to a court review (although application to the court would also be admissible if the administrative review fails). At the time of writing, the amendments had passed the Committee stage in Parliament and were due to be introduced for first reading in the autumn of 2002.

In Estonia the implementation of the Public Information Act is supervised by the Estonian Data Protection Inspectorate (DPI). The DPI can initiate supervisory procedures on the basis of an individual complaint or on its own initiative. The DPI has the power to review procedures; receive complaints from individuals about refusal to disclose information; examine internal documents and demand explanations; order a body to comply with the law; and release documents. The body can appeal against the decision of the DPI to an administrative court, but there have only been a few cases so far.

In Latvia, appeals can be made internally to a higher body, and then to the courts; in Lithuania, appeals can be made to an internal administrative commission and then to the administrative court; in Romania, appeal is to the agency concerned (i.e., internal appeal mechanism) or the courts; and in Slovakia, appeals are to higher agencies, and can be reviewed by the courts.



### 3.4 Practice of appealing denials of information

The FOIA is a relatively new type of law and is usually adopted against a backdrop of political conservatism or a recent history of totalitarianism. Many ordinary citizens may be inhibited from appealing against a refusal to disclose information. However, litigation, can be carried out either directly by the affected individual, or on their behalf by a dedicated civil society organisation/NGO. Ideally, the service should be subsidised, as such litigation is really in the public interest. Many of the FOIA's provisions (and gaps) will benefit from judicial interpretation to clarify their meaning. However, litigation is a double-edged sword. Obviously, it may also be used by those more disposed towards non-disclosure of information and, of course, there is always the possibility of an "adverse" judgement.

Court actions may be pursued in order:

- to clarify uncertainties/ambiguities in the meaning of the primary law; and/or
- to assist requesters who have been unreasonably and unjustifiably denied information.

Using the courts to enhance freedom of information can be compromised in some countries by the perception and reality that judges and courts are not properly independent. Furthermore, in many countries in the region, such as Latvia, the courts themselves may be very resistant to the notion of freedom of information, so any value of having a freedom of information case litigated may be weakened. In an investigation into the attitudes and practices of bodies obliged under the FOIA, the Latvian branch of Transparency International (*DELNA*), observed:

Most resistant to the principle of open information were the courts. Notwithstanding what is written in the Law on Judicial Authority – "Courts in Latvia are open" – gaining access to court verdicts proved possible only in one court of one small town. In every other court the refusal was justified either by reference to the Code of Criminal Procedure, which offers access to legal materials only to those involved in the case, or by the

observation that the verdict was read once publicly already, so it's your fault if you were not present.

However, an outstanding example of the use of legal assistance and litigation to enhance freedom of information is found in the work of *AIP* in Bulgaria.

*AIP's* work in this area can be accessed either on its web site or in hard copy in the publication, *The Current Situation of the Access to Information in Bulgaria*. Its activities include:

- answering citizens/NGOs' questions (including by email) on the Bulgarian Access to Public Information Act (APIA) and generally on freedom of information;
- helping in the writing of follow up responses when an institution has refused information;
- opening a discussion group;
- compiling a Frequently Asked Questions database;
- creating a database with cases of information refusals (from the beginning of 1997 to June 2000 - when APIA was adopted, the database comprises 746 instances of refusal to disclose information, nearly 700 of which date from the adoption of the law. By far the greatest categories of "reasons" for refusal of information are no-reason refusals; "not obliged"; do not have the information; exercise of officers' discretion; and/or implementation of superior's order not to disclose)
- initiating legal proceedings in cases when the right to access to information is being violated.

By the end of February 2002, 26 appeals had been lodged and *AIP* had served as the legal defence for 16 cases. The cases were selected on the basis of the public interest of the information requested; the need for court interpretation of some ambiguous statutory provisions, application of the law sessions and/or the inability of the person seeking information to afford legal defence. By August 2002, 6 cases had resulted in an enforceable judgement in favour of disclosure. The cases were brought against the Ministry of Environment and Waters, the Ministry of Labour and Social policy, the Ministry of Education and Science, the Ministry of Finance, the Council of Ministers and Vraca Municipality.

Litigating appeals against refusals to disclose information is not always practical if the information is required urgently. This is a point made by *AIP* in their analysis of the judicial process relating to FOIA cases. They comment

that the administration of justice in Bulgaria is in general slow and that FOIA cases take even longer, perhaps due to the novelty of the legal framework. Although the hearings last one session (as there is no additional evidence produced), an even longer time than usual elapses till the judgement is issued.

Another Bulgarian example of using the courts is the recent action initiated by 57 MPs of the opposition coalition, the ruling Bulgarian Social Democratic Party (NDSV) and independent MPs. The MPs have appealed to the Constitutional Court claiming that several articles of the recently adopted law on classified information violate the constitutionally protected right to information. In particular, it is claimed, that the new law would make it impossible to obtain information on the former secret service, as it revokes the 1997 Access to Documents of the Former State Security Service Act and Former Intelligence Service of the General Staff Act; the law fails to provide for the publication of the list of classified documents; and finally the law does not provide for an appeal against an administrative decision denying a requester information. AIP is listed as an interested party in the case and will therefore have the opportunity to present their comments on the law when the case is heard in the autumn.

In Hungary, the Commissioner has made several recommendations on freedom of information cases brought since the office was established in 1995. Although the Commissioner receives on average only 50 FOI complaints a year, the resulting recommendations have a significant impact on the interpretation and application of the FOIA. For example, in November 1996, the Commissioner issued a statement addressed to the Minister responsible for privatisation on business secrets vs. public information in the process of privatisation and concession. Given the economic transformation taking place in Hungary (and indeed other countries in the region) at the time, the Commissioner's statement on this one case clarified an important area of interpretation of the FOIA. The Commissioner observed that the State Holding and Privatisation Company, an organisation in charge of realising business assets owned by the state, must render data of public interest in its

possession available for public scrutiny. Furthermore in order to ensure proper public scrutiny he defined the three key steps in the privatisation procedure and the corresponding level of openness required:

- phase 1: calling the tender – information on the assets for sale and their condition is clearly a matter of public interest and should be open to scrutiny;
- phase 2: evaluating the bids – this phase may include business information which the bidder has a reasonable interest in keeping secret, and therefore the refusal to disclose this information could be justified on the basis of the rules of fair competition;
- phase 3: announcing the result of the tender – this information must be disclosed, including the full text of the contract awarded to the successful bidder, as this is the only way of guaranteeing that the sale of the assets of the state has been carried out in the public interest.

The full details of this and case and others can be found on the web site of the Parliamentary Commissioner for Data Protection and Freedom of Information. In conclusion, recourse to the courts can be expensive and time-consuming for an ordinary person, but if organisations such as AIP exist and can dedicate time and resources to assisting requesters in appealing against decisions the value of targeted litigation is evident. Not only does it serve to remedy individual cases of unjustified denial of information, but it serves to clarify and aid interpretation of the law and promote good practice among institutions and individuals obliged under it. Nevertheless, several factors should be borne in mind:

- recourse to litigation may also be had by those seeking to narrow disclosure;
- even if litigation is pursued by pro-disclosure advocates, the outcome may be less than satisfactory;
- litigation is a high-risk and potentially costly strategy for implementing freedom of information;
- in some countries, the lack of trustworthiness felt toward the judicial system may have to be weighed when considering recourse to the courts.

### **3.5 Sanctions for violation of FOIA duties**

An issue which has an indirect connection to the issue of making the FOIA work, is that of the existence; severity; and efficacy of sanctions prescribed in law for public officials who breach their duty to disclose information according to the terms of the FOIA. In many of the countries studied, such sanctions are not prescribed in the primary FOIA, but are found either in the national Criminal or Administrative Code. While it is essential that the severity of deliberate intent to obstruct access to information according to a FOIA is recognised by legally enforceable sanctions, it is also important not to create a situation in which officials would rather avoid making a decision on an FOI request for fear of making the wrong one. Hence, ARTICLE 19's Model FOI Law, Part VIII prescribes:

#### **Good Faith Disclosures**

48. No one shall be subjected to civil or criminal action, or any employment detriment, for anything done in good faith in the exercise, performance or purported performance of any power or duty in terms of this Act, as long as they have acted reasonably and in good faith.

#### **Criminal Offences**

49. (1) It is a criminal offence to wilfully: –

- a. obstruct access to any record contrary to Part II of this Act;
- b. obstruct the performance by a public body of a duty under Part III of this Act;
- c. interfere with the work of the Commissioner; or
- d. destroy records without lawful authority.

(2) Anyone who commits an offence under sub-section (1) shall be liable on summary conviction to a fine not exceeding [insert appropriate amount] and/or to imprisonment for a period not exceeding two years.

In several of the countries studied, the law (whether the FOIA or another law such as a Law on Administrative Procedure) provides for sanctions in the event that a public official fails to comply with the FOIA's disclosure duties. For example, in Romania, the administrative norms for implementing the FOIA set out the procedure for analysing administrative complaints introduced by individuals claiming infringement of the provisions of the FOIA, whereby each public authority should establish an 'analysis committee'. One of the duties of the Committee is to propose a disciplinary punishment to be taken against the responsible person, if a complaint proves well grounded. In Slovakia, an amendment to the Law on Offences has been adopted, for the specific offence of "a person who breaks duties stipulated in the law on free access to information or who issues a decision, order, measure in such a way that the right is broken...". The fine for such an offence can be up to 50 000SK (approximately 1000 USD) and "prohibition of the activity [sic] for up to two years".

Although not one of the primary countries studied, in Moldova, amendment of the Administrative Code, in 2001, has resulted in illegitimate refusals to disclose information being subject to fines of the value of between 10 to 150 times the minimum salary (up to 2 700 lei, approximately 200 USD). The Criminal Code was also supplemented by an Article which imposes prison sentences of up to three years for pre-meditated failure to grant access, which results in considerable harm to public interests, health, security, and the environment.

However, until now these provisions have not been implemented.

Finally, in Bulgaria, minor fines can be levied for breaches of the FOIA. At the time of writing, *AIP* reported that based on their most recent survey of the current situation of the APIA and feedback during training seminars for public officials in different regions of Bulgaria, they conclude that there have been no instances of fines being imposed for violation of the APIA.

*AIP* has also raised the point of the ambiguity of what might be involved in a violation of an information-disclosure duty. For example, the lack of clear internal guidance about what can and cannot be disclosed leads to officials mixing up what should be given out with what should not be. This is

particularly acute where the threat of criminal/disciplinary sanctions might lead to excess caution when faced with a request for access to information.

In conclusion, the effectiveness of a FOIA is, in the main, dependent on changes in official attitudes/behaviour, i.e., the official culture and level of commitment to freedom of information. This can be fostered by the deterrence value of sanctions (or the effect of punishment on subsequent behaviour), albeit that it offers a rather negative motivation for compliance with the FOIA. Advocates for the effective use of sanctions should be aware that the behaviour which leads to the demand for punishment is often the result of inadequate training or inappropriate delegation by superiors. Often it will be better and more appropriate to impose sanctions and/or administrative or financial penalties on an authority (or head of the agency) displaying a persistent and gross abuse of requesters' rights. This will avoid an individual official from being blamed for the omissions and shortcomings of the administration.

### **3.6 Resources to finance the implementation of a FOIA**

One issue which is absolutely vital to the functioning of the is the provision of adequate financing to facilitate the introduction of freedom of information and to ensure that the principle takes root in the country's political culture.

It will be necessary to provide for the costs of:

- records management/reorganisation;
- training;
- salaries of any specialised information officers recruited to be focal points within authorities;
- publicity material aimed at raising awareness about the existence of the FOIA; and
- paying for the oversight mechanism (the independent information commissioner and office).

The latter expenditure in particular is costly, if the office of the Commissioner or Ombudsman is to be truly effective. In Hungary which provides the best example in the region of such a mechanism, the budget for the Information and Data Protection Commissioner in 2001 was 130 million Hungarian Forints, (530.000 USD) excluding tax and operational costs (heating etc.). The

office employs 1 part-time and 27 full time employees. Even so, the Parliamentary Commissioner, in his annual report of 2000, mentions the 'scant resources' of the office as a constraint on heightened activism in relation to promoting awareness and use of the FOIA.

Even without establishing such an institution, resources are needed to put in place new structures and employ new, or reallocate existing, staff to deal with information requests. In Romania, for example, the Law on Access to Information of Public Interest was adopted too late in the year (October 2001) to feature as a consideration in the adoption of the budget for 2002.

Encouragingly, there are indications that the issue will be dealt with in the 2003 budget: the government has asked all public bodies obliged under the FOIA to present an estimated budget for the creation and the functioning of the public information offices which would deal with FOI requests.

If the state is unable (or more often, unwilling) to provide adequate financing, then, at least in the short term, civil society should step in to support awareness raising and promotional activities. Of course, the contribution of NGOs should not be seen as a substitute for public expenditure as not only does the state have a duty to provide sufficient resources for legal and administrative reform, but also strong arguments can be made for their interest in doing so. FOI-related expenses can often be offset by savings achieved through increased efficiency (e.g., in respect of records management reorganisation). Furthermore, on occasion, public overspending, fraud and wasteful expenditure are exposed through FOIA - assisted information disclosure, resulting in significant savings in the long term.

In conclusion, it is vital that state expenditure on measures to promote the implementation of a FOIA is transparent and clearly indicated in budget-lines. Monitoring the provision and expenditure of such monies should be undertaken by sympathetic politicians, the media and by civil society groups. Governments should be publicly accountable for the sums spent or not spent on promoting freedom of information.



# CHAPTER FOUR

## RAISING AWARENESS and EDUCATING THE PUBLIC and DUTY-HOLDERS ABOUT THEIR FOIA RIGHTS and OBLIGATIONS

### 4.1 Overview

Generally, laws are symbolic and/or authorise behaviour – they do not implement themselves. In some countries in the region, a FOIA has been adopted primarily as a result of government initiative and the primary motivation for passing such a law has been to comply with expectations of international organisations such as the Council of Europe or OSCE. The lack of a civil society campaign pushing for a FOIA means that the level of awareness among the general public of the existence and purpose of the law is very low. Therefore, the campaign to improve the right to access information will in effect begin from the moment the law is passed. Even if the campaign for a FOIA has been led by civil society, raising awareness of the law's existence, educating and training both requesters and duty-holders in its provisions and meaning will be essential. This is crucial to ensuring that the law gets used, that the opportunities offered by the FOIA are maximised and that its procedures are deployed to best effect.

The responsibility for educating the public about the existence of the FOIA lies principally with the public bodies obliged under it. Ideally, (as discussed in the previous chapter), the FOIA should also provide for a dedicated institution such as an Ombudsman or a Commissioner to oversee the implementation of the law, a key function of which would be to educate duty holders and the general public about the content of the law.

ARTICLE 19's *The Public's Right to Know: Principles on Freedom of Information Legislation*, PRINCIPLE 3 PROMOTION OF OPEN

GOVERNMENT states:

**Public bodies must actively promote open government**

Informing the public of their rights and promoting a culture of openness within government are essential if the goals of freedom of information legislation are to be

realised...Promotional activities are, therefore, an essential component of a freedom of information regime. This is an area where the particular activities will vary from country to country, depending on factors such as the way the civil service is organised, key constraints to the free disclosure of information, literacy levels and the degree of awareness of the general public. The law should require that adequate resources and attention be devoted to the question of promoting the goals of the legislation.

### **Public education**

As a minimum, the law should make provision for public education and the dissemination of information regarding the right to access information, the scope of information which is available and the manner in which such rights may be exercised. In countries where newspaper distribution or literacy levels are low, the broadcast media are a particularly important vehicle for such dissemination and education. Creative alternatives, such as town meetings or mobile film units, should be explored. Ideally, such activities should be undertaken both by individual public bodies and a specially designated and adequately funded official body – either the one which reviews requests for information, or another body established specifically for this purpose.

ARTICLE 19's Model FOI law, at Article 38, prescribes that awareness raising and informing the public about their FOIA rights be a legally authorised function of the Commissioner.

### **General Activities**

In addition to any other powers and responsibilities provided for in this Act, the Commissioner may: –

(e) publicise the requirements of this Act and the rights of individuals under it.

A good example of national legislation which reflects such principles is the Freedom of Access to Information Act adopted in Bosnia Herzegovina. The

Bosnian FOIA mandates the Federation Ombudsmen to perform certain functions in relation to the law. One function is to propose "instructions on the implementation of this Act to all competent bodies within the Federation". Prior to 1<sup>st</sup> February 2002, the due date for the Act to enter into force, the Ombudsmen issued a Recommendation to the Federation Government, Ministry of Justice and other executive, legislative and judicial authorities. The recommendation suggested that the authorities publish a guide for requesters explaining the "essential elements of the request procedure" and including a sample request letter; that they create an indexed register (i.e., stating what types of information are held by the authority, the form it is held in and where the information may be accessed); and they appoint an Information Officer. Importantly, the Ombudsmen state that authorities should separate the functions of the Information Officer from that of their press officers/ spokespersons. If the two functions are held by one person, then "this person and the public authority must see these duties as two separate posts with specific obligations and procedures."

Of course, it is crucial that the implementation of such a Recommendation be followed up, both by the issuing authority (i.e., in this case the Federation Ombudsmen) and also civil society organisations.

Tackling the culture of secrecy in newly democratic societies is arguably the greatest challenge in making freedom of information a living reality. As was stated by an Irish Minister:

FOI constitutes profound change. It reaches across political, organisational and interpersonal domains. It assaults well-established practices and rejects traditional values of secrecy and anonymity.

In order for a freedom of information culture to grow up and take root, responsible public authority officials at the national, regional and local levels must be made aware of the FOIA's existence, and educated/trained regarding their duties under it. Mechanisms for achieving the necessary transformation and change of 'mind-set' should be provided for on the face of the FOIA:

ARTICLE 19's *The Public's Right to Know: Principles on Freedom of Information Legislation* PRINCIPLE 3. PROMOTION OF OPEN GOVERNMENT states that:

**Tackling the culture of official secrecy**

The law should provide for a number of mechanisms to address the problem of a culture of secrecy within government. These should include a requirement that public bodies provide freedom of information training for their employees. Such training should address the importance and scope of freedom of information, procedural mechanisms for accessing information, how to maintain and access records efficiently, the scope of whistleblower protection, and what sort of information a body is required to publish.

The official body responsible for public education should also play a role in promoting openness within government. Initiatives might include incentives for public bodies that perform well, campaigns to address secrecy problems and communications campaigns encouraging bodies that are improving and criticising those which remain excessively secret. Another possibility is the production of an annual report to Parliament and/or Parliamentary bodies on remaining problems and achievements, which might also include measures taken to improve public access to information, any remaining constraints to the free flow of information which have been identified and measures to be taken in the year ahead.

Public bodies should be encouraged to adopt internal codes on access and openness.

ARTICLE 19's Model FOI Law, at Article 20 prescribes:

Every public body shall ensure the provision of appropriate training for its officials on the right to information and the effective implementation of this Act.

The failure of government to support the implementation of a FOIA with appropriate training and educational activities aimed at altering a culture of official secrecy can render the law virtually useless. In Albania, for example, restrictions on access to information are routine and occasionally threatening, in spite of the adoption of the Law on Access to Official Documents in 1999. The adoption of the FOIA seems to have had little impact on the obstructive attitude of officials and members of the government to requests for information, particularly from the media. Incidents of journalists being physically denied access to government institutions or access to government information were recently documented in an investigation by Human Rights Watch (HRW) into violations of media freedom in Albania. HRW report that the denial of information is typically used in apparent retaliation for critical reporting by a given media outlet or journalist and cite the case of a social affairs reporter from the newspaper *Republika* who was threatened by a bodyguard of the Minister of Health, following publication of an article reporting on the problem of unlicensed dental clinics. The courts have also failed to change their behaviour in correspondence with the new 1999 FOIA. According to the FOIA, copies of court decisions must be made available to the public, but in practice journalists find it impossible to obtain judicial decisions, due to contradictory internal regulations and the persistent culture of official secrecy.

As important as training of those with the responsibility to give out information, are activities targeted at the general public to raise awareness about the existence of the law and the rights under it. As stated above, the ideal is for the FOIA to include a positive obligation upon the government to carry out public education and dissemination of information in relation to the law. If promotion is to be done by official sources, then it must be adequately resourced which implies the introduction of a specific item in the government's annual budget. As discussed in the previous chapter, the lack of resources can seriously hinder official efforts by the government to follow up the adoption of a FOIA with an active campaign for its implementation.

While civil society initiatives should in principle not substitute such official activities, in reality NGOs play an important role and have the benefit of a

captive audience in specific sectors of society, for example, journalists, environmental activists, consumer groups, some or all of whom may have been involved in the campaign for the adoption of a law. Activities for generating interest in the law and encouraging its use include, preparing posters or leaflets and distributing them in various locations, such as the premises of public authorities, public libraries, doctors surgeries; and/or larger scale publicity campaigns using public advertising hoardings, radio and TV advertising spots.

An approach which actively engages the general public, rather than treating them as passive targets of information, is to organise public meetings to discuss the existence of the FOIA and how to use it. If stakeholders and authorities' are present, significant issues and/or possible misunderstandings can be aired and discussed and, hopefully, resolved.

Another technique which goes even further in offering direct practical assistance in the use of the FOIA is to write and disseminate user-friendly, informative handbooks/guides targeted at both users of the FOIA and public officials who are obliged to disclose information. Obviously, the preparation of such handbooks requires a sound and detailed knowledge of the FOIA, as well as time and resources which can be devoted to preparation and dissemination. The content needs to be very practical, based on sound technical knowledge. It is obviously also important that the material be updated, particularly in the light of any court decision which progressively clarifies the meaning of the FOIA's provisions.

## **4.2 Specific country experiences**

### **4.2.1 General activities**

Bulgaria, Slovakia and Romania each offer good examples of civil society initiatives, which are helping to foster awareness and understanding about the FOIA.

In Slovakia, the *Association for the Support of Local Democracy* has initiated a programme entitled, "Information for Citizens" . The aim of the programme is to foster greater acceptance of the FOIA and to assist in its implementation.

The three-year programme comprises six components:

1. A Standing Conference of all parties involved in implementation of the FOIA in Slovakia (Government, National Council, Association of Municipalities, libraries, NGOs, journalists etc.; altogether some 15 members);
2. The use of the existing library network to provide access to publicly available documents;
3. Training public administrators (both state and local government level) and participants in a FOIA focused network (libraries, municipal government information offices, involved NGOs; the latter two will be connected to library network) and, citizens;
4. Creation of a legal advisory centre to follow FOIA issues (to produce handbooks, analyses, promotional materials, seminars for experts, public lectures, etc and (later) sample court trials);
5. Provision of sample forms (for example web site templates for use by smaller local government departments) and promotion of model forms to be used by government authorities to facilitate the process of requesting information e.g. basic request forms, appeal forms.
6. A web site containing everything pertaining to the FOIA implementation (case studies, forms, analyses and press articles, events calendar and links to similar web sites all around the world).

#### **4.2.2 Publications**

In both Slovakia and Bulgaria, useful guides both for the general public and duty-holders have been prepared and published.

In Slovakia, (as mentioned in the previous chapter), *The Open Society Foundation in Bratislava* published 12 000 copies of its publication, *Act on Free Access to Information: a Practical Handbook for Public Administration Officials and Local Self-Government Officials*. The Foundation explained that by publishing such a handbook, they intended to bridge the adoption of the FOIA which 'only sets the conditions, way and procedure of providing access to information' and the aimed-for improvement in 'the quality of the relationship between citizen and public administration'. Clearly, much depends on whether such a publication features in officials' training programmes and the extent to which it is studied, absorbed and acted upon.

In Bulgaria, *AIP* has published (jointly with the Local Government Reform Foundation) *How to apply The Access to Public Information Act: Local*

*Administration handbook*. This and the Slovakian publication are rather similar, each describing and interpreting the sections of the respective FOIAs. Both have a similar structure, dealing with the main issues:

- who has the obligation to grant access?
- what kind of information is available?
- what are the main exemptions limiting the right of access to information?
- what are the procedural provisions for getting access?

The Bulgarian publication also helpfully provides a "model list" of legally obliged entities under the FOIA and a list of the "administrative structures" under the control of the Council of Ministers. It is clear, from the countries studied, that there is a relative lack of transparency regarding the structure and elements of the public administration, which, in any case is often in flux. Such a checklist (if maintained) is useful. Duty-holders will know that they are covered by the FOIA and requesters will be able to determine if refusals on the ground of non-applicability are genuine.

Both publications very helpfully provide sample forms. For example, the Bulgarian publication includes a model decision for granting information and a model decision for granting partial access; the Slovakian publication includes a model record for filing a verbal request for information, a model resolution for denial of access to information and a model resolution for disclosing information of public interest while protecting an individual's right to privacy (partial access).

Finally, both provide a copy of the Act; not everyone has easy access to the text of laws and this, in itself, is a useful contribution to raising awareness of the existence of the FOIA and its provisions.

*AIP* has also published *How to Use the Access to Public Information Law: Citizens Guide*, which aims to 'help the citizens seek information by explaining all the required steps envisaged in the law to exercise the right of access to information.'

Refreshingly candid, the Foreword states that: 'The main difficulty was to translate the legal norms into understandable language.'

Topics covered in the guide include:



- Who has the right to access information?
- Who has the obligation to grant information?
- What kind of information can we require under the law?
- What are the grounds to refuse access?
- How to appeal to the court?

The guide also includes similar appendices to those included in the Local Administration handbook:

- the list of "legally-obliged entities under the Access to Public Information Act;
- the categories of "state secrets";
- information constituting official secrets under the various official secrets acts;
- a model letter requesting access to information under the APIA;
- the Act itself

#### **4.2.3 Training seminars**

In addition to preparing and publishing handbooks, another useful activity is the systematic and regular holding of training seminars for public officials. ARTICLE 19 has supported the organisation of training seminars for public officials in Romania and Bulgaria and *A/P* has also carried out a series of training seminars throughout the country in conjunction with the American Bar Association Central and East European Initiative (*ABA/CEELI*). The aim of these seminars is to foster a better understanding of the specific provisions of the recently adopted freedom of information legislation in each country, leading to its enhanced implementation.

The seminars have been attended, variously, by public officials from local government administrations, territorial branches of the executive power in regional towns and regions, municipalities, and central administration.

In addition to presentations on the procedures for seeking and providing information, under the Bulgarian APIA and related practices, the seminars also, on occasion, address the issue of the relevant international standards.

The feedback from the public officials to these seminars has been overwhelmingly positive and invariably a key recommendation to emerge is that more training and concrete guidance is needed at all levels to assist the public officials with implementing the APIA correctly.

A pattern of problematic issues and topics has arisen during the seminars in Romania and Bulgaria:

- how to set up appropriate systems for registering a request under the FOIA – for example, AIP discovered in a survey carried out into implementation of the law that officials were mistakenly registering ordinary administrative requests as requests for information under the FOIA;
- how to interpret and apply the exemption clauses – in Bulgaria, initial problems with interpreting the law were attributed to conflicting or absent legislation (e.g. Data Protection Act and Protection of Classified Information Act), or inconsistency with wording in other laws (e.g. Tax law defining tax secrets);
- how to deal with requests within the legally prescribed time-limits when large numbers of documents are requested, or where there is a need to consult third-parties, or where a decision about partial-access has to be made;
- confusion over the different functions of public relations and information officers – this arises in Bulgaria and Romania because often PR officers are designated the additional responsibility of dealing with FOIA requests. Dealing with additional workloads and distinguishing between PR and information requests, particularly from the media, caused anxiety.
- conflicting loyalties of public officials dealing with FOIA requests – many expressed a positive attitude towards the new legislation and a willingness to improve transparency within their administrations and develop a more open relationship with the public; but they also feared the consequences of disclosing information against the will of their superiors.

In a recent sociological survey carried out by *AIP* into the fulfillment of the APIA obligations by public bodies there are several Recommendations regarding training:

- Develop brochures and other information materials to guide [...]officials about the nature and form of the requested information and the ways to attack ill-grounded refusals to grant access;
- Conduct training on the application of the APIA
- Hold seminars and workshops to share good practices and improve the performance of institutions.

#### **4.2.4 Public discussions**

In Slovakia, in March 2001, the Presov Civic Forum organised a public discussion to debate the Law on Access to Information and the 'General Binding Regulation' (GBR), a piece of secondary legislation which the Presov Municipality had adopted in order to define information which constitutes an 'official secret'. Opposition politicians, journalists and NGOs criticised the GBR as being far too general and for including data that is already protected by existing laws. They argued that the GBR effectively undermined the Law on Access to Information as it gave the municipality the discretion to classify any documents, even minutes of the meetings of the town council, as official secrets. The report of the meeting states that, as a result of the debate, the Town Council noted the original complaint of the District Prosecutor, and delegated the Chair to prepare an amendment to the GBR, in accordance with the Law on Access to Information.

On 30 May 2001, the Law on Restricted Information was adopted, which abolished the category of official secret and provides for the list of restricted information to be maintained by the newly created National Security Bureau.

#### **4.2.5 Indirect assistance to the public**

In Romania, the approach of organisations which campaigned for the FOIA, such as the Romanian Academy of Sciences, (*SAR*) and the Romanian Helsinki Committee is to accept that there is little likelihood that, at least in the first years after the adoption of the FOIA, many "ordinary" people will either know enough about the FOIA or have the requisite mind-set to use it, involving as it does encountering and challenging public officials.

Therefore, both organisations advocate an indirect approach, whereby civil society NGOs, in effect, act on behalf of citizens, by filing requests for complex public interest information (e.g. budgetary details; public officials expenses reports etc). The hoped for outcome is that the NGOs will not only receive the requested information, but will also be able to review it and, where necessary, take follow-up action, for example, seeking further data; clarifications of the data; challenging interpretations of sections of the FOIA;

and suing the authorities in the courts. Since the FOIA came into force in March 2002, several written requests for information have been lodged by private individuals or by the Romanian Helsinki Committee as a legal entity. Particular attention has been targeted towards institutions dealing with information of a national security or public finance character. In four of the cases an administrative denial of information has been received and the Committee is in the process of appealing the denial in the courts.

### **4.3 Strategic Options for FOI awareness raising and education**

The activities undertaken in Bulgaria, Slovakia and Romania are all instructive examples of possible strategies which could be employed in other countries which have adopted a FOIA. Preparing and publishing handbooks; assisting requesters; holding training seminars; and publicising the existence of the FOIA are all good elements of what this aspect of implementing a FOIA is all about.

Educating the public and officials and training authorities' information officers is crucial to the effective implementation of freedom of information laws. In most of the countries studied, there is a lack of systematic information about the existence of awareness raising, education and training programmes; the amount of resources provided for them; and their effectiveness.

Whilst there are notable civil society efforts, for example, in Bulgaria and Slovakia, such efforts need to be supplemented by properly resourced and systematic governmental training schemes, without which the prospect of transforming a culture of secrecy into a culture of openness is much less assured. The lack of educational and training activities co-ordinated and funded by government is a feature of all the countries studied.

For example, in Albania, until now, there has been no centrally driven training programme, although there is a growing awareness in official circles that the lack of understanding and knowledge of the provisions in the 1999 FOIA, particularly at the local administration level is a serious impediment to the realisation of the right of access to official documents. In Latvia, a report commissioned by the Ministry of Justice, to assess the existing institutional framework and suggest a program for implementing the laws on

administrative procedures and access to information, noted the need for a broad –based programme of government training and public education on the Law on Freedom of Information. The report suggested that such training should include practical ways in which the legal obligations could be translated into efficient bureaucratic processes.

On a more general note, more information and discussion is needed regarding this aspect of making freedom of information work. Is there, for example, an ideal % of GNP that should be devoted to freedom of information? What is the best budgetary source for the money? Should it all be public money? Should resources be allocated on a demand-driven basis? Another important strategic issue is, should the education/training for officials be done exclusively by public authorities? And if so, should it be left up to each authority to organise and manage for itself? Should there be a centralised official service to ensure maximum consistency of approach to freedom of information across public authorities and competence of trainers? Arguably, "ensuring the provision of adequate training," means that people with a non-authority/non-official perspective should expose public officials working at different levels of the administration to training. There is a danger that the training body is staffed by either ex-government officials who train with a protective/non-disclosure mentality or MPs, who rather than providing the information/insights *pro bono*, actually charge for their service.

On the other hand, the benefit of NGOs organising training seminars is that the emphasis of the training will be on working with the law to guarantee maximum possible disclosure. NGOs also have the advantage of relatively easy access to regional and international trainers who can share experience and expertise from FOIA regimes in other countries. However, resources for such activities are limited and as long as there is an absence of systematic and comprehensive government-led training programmes, consideration needs to be given to how best to multiply the effect of one-off training seminars. One solution promoted by NGOs in Romania and Bulgaria has been to encourage FOI decision-makers, particularly in local administrations to network with each other and organise regular meetings to discuss complex FOIA requests and generally support each other in their 'pioneering' work.

Using existing forums/networks such as associations of local municipalities and publicising FOI problems and solutions in local administration newsletters and bulletins is an equally valid way forward.

## **CHAPTER 5 MONITORING THE IMPLEMENTATION OF THE FOIA**

### **5.1 Overview**

Closely related to the task of educating duty holders and the general public about the existence and purpose of the FOIA, is the accompanying (and never-ending) task of monitoring exactly how the law is being applied.

Credible and sustained research into how and how many FOI requests are being processed, how exemption clauses in the law are being interpreted and so on, serves to evaluate the effectiveness of educational activities and highlight any ambiguity in the law and its relationship with related legislation.

The FOIA may well require amendment or reform in the future, either in the light of experience, or because it is not a strong FOIA from the outset.

A good FOIA should contain provisions for monitoring the way in which public authorities are carrying out their duties under the Act.

ARTICLE 19's Model FOI Law, PART III: MEASURES TO PROMOTE OPENNESS, at Articles 21 and 39 prescribes:

21. The Information Officer of every public body shall annually submit to the Commissioner a report on the activities of the public body pursuant to, or to promote compliance with, this Act, which shall include information about: –

- a. the number of requests for information received, granted in full or in part, and refused;
- b. how often and which sections of the Act were relied upon to refuse, in part or in full, requests for information;
- c. appeals from refusals to communicate information;
- d. fees charged for requests for information;
- e. its activities pursuant to section 17 (duty to publish);

- f. its activities pursuant to section 19 (maintenance of records);  
and
- g. its activities pursuant to section 20 (training of officials)

39. (1) The Commissioner shall, within three months after the termination of each financial year, lay before [insert name of legislative body or bodies] an annual report on compliance by public bodies with this Act, the activities of his or her office and audited accounts of the office during that financial year.

(2) The Commissioner may from time to time lay before [insert name of legislative body or bodies] such other reports as he or she deems appropriate.

In addition to official reports on the implementation of the FOIA, it is desirable and advisable for civil society organisations to systematically monitor the law's implementation. As regards the question of *when*, after adoption of the law the monitoring should begin, there are, basically, two views.

One is that the law requires a fundamental change in the culture and practices of public authorities. This needs to be understood and appreciated. So, a "realistic" time period should be allowed to pass before beginning to review public authorities' conformity with their legal obligations. Indeed, tactically, some "grace period" might be in order, so as not to alienate the authorities. The other view is that there should be an almost immediate review. The Slovakian *Citizen and Democracy Foundation (CDF)* suggests that monitoring should start very soon after the law comes into force. This contrasts with the more conventional approach, of waiting for six months or even a year from adoption. *CDF* argues that an early start means that the first annual comparison can be done from just after the date of the law's adoption .

The *Romanian Academy of Sciences (SAR)* suggests that laying the groundwork for monitoring the implementation of the law should begin *before* the law is adopted. *SAR* sent round its policy on implementation to its coalition partners and selected Romanian public authorities five or six months before the law's adoption .

## 5.2 Specific Country Experiences

Using Bulgaria, Slovakia, Latvia and Romania as primary examples, and Moldova and Ukraine as secondary ones, there is an increasing amount of data available about the experiences of monitoring; the methodologies employed; the points to look for; and some "snap-shot" results.

In Bulgaria, *AIP* has been highly effective in carrying out monitoring of authorities' implementation of and compliance with the Bulgarian Access to Public Information Act (APIA). *AIP* carried out a pilot survey of the implementation of the Act, five months after adoption. To carry out the survey, 22 co-ordinators were recruited and appointed in each region of the country. The survey focused, initially, on the regional subdivisions of central government bodies and local administration. It was extended to other areas and, finally, to the capital municipality and central government bodies.

The questions asked covered the following topics:

- Is there a designated place where APIA-disclosed documents can be read?
- Is there a designated place where a request can be submitted?
- Is there a designated Information Officer responsible for granting requests under the law? Does that Information Officer do searches; make the documents available for reading; copy the documents; and prepare transcripts?
- If there is no designated Information Officer, have the relevant responsibilities been allocated to other personnel?
- What arrangements have been made for the disclosure of Article 15(1) information? i.e., description of an authority's powers and information about it; list of acts issued; description of the information "arrays" [sic] and resources; names, addresses, phone numbers and working hours of contact personnel?

The pilot survey was followed up by a more in-depth study, the results of which were published eighteen months after the adoption of the FOIA. It covers the central government authorities and the 100 largest municipalities (out of a possible 262). 363 bodies received requests to be interviewed; in 60 cases there was an implicit/explicit failure to reply. The results of the study are published in a stand-alone report: *Fulfilment of the obligations under APIA by the bodies of the Executive Power* and is summarised in the 2002 edition of *The Current Situation of the Access to Public Information in Bulgaria*.



A conclusion of the study is that the "practices of publishing information", i.e., mandatory disclosure of information (under Article 15 of the Bulgarian FOIA) is a function of the "overall condition and competence of institutions". This means that more information is published in cases where the personnel of the authorities have undergone some training and where an official has been designated the responsibility for processing applications and maintaining a register of applications.

An investigation carried out in Slovakia by the *Nadácia občan a demokracia* (*Citizen and Democracy Foundation*), as part of the project "State Apparatus to People", indicates that there are certain preliminary issues to be confronted. For example:

- who should be recruited to carry out the monitoring?
- what background and skill should such persons have?
- when should monitoring start?
- which bodies should be monitored?
- how should it be done? what is the best methodology?

*CDF* suggests that an initial survey should focus on relatively few bodies and that a "template" for standardising the categories of information sought should be created. For example, what is X's cellular phone no? What are the salaries of the officials in the authorities? Where, physically, is information located in the offices?

Questions for the survey were divided into two categories:

a) general questions, allowing for comparison between different authorities, focusing on:

- i. whether the institution fulfils its legal obligations and
- ii. the quality of information given to a citizen, "which reveals the approach of the institution to citizens."

b) specific questions, dealing with the specific function of each State institution

Using a 42 point-scale, the results revealed that the most 'open' of the Ministries was the Ministry of Finance (27); followed by the Government Office

(24), the Anti-monopoly Office (24), and the Ministry of Defense (23). In last place was the Ministry of Justice (7).

For the initial survey, Slovakian NGO(s) opted to recruit *journalists* to undertake the monitoring, in order to take advantage of the media's existing contacts, including the geographic reach of the local and regional press and to exploit the journalist's professional inclination for persistence in requesting information. In addition, using the media to carry out such an exercise underscores the point that monitoring should be undertaken with a view to publicising the results. If "newsworthy", the results offer a basis on which to meet the media's need for stories on which to hang reports about FOI.

Although not information primarily sought by CDF, the survey revealed some interesting results about the media's relationship with the FOIA: many journalists do not know the content of the Slovakian FOIA; they make little use of it; and/or they become frustrated when officials refuse to make information available under the provisions of the law.

Importantly, *CDF's* approach involves giving the results of both sets of questions to the authority, with the intention that officials learn from them and work to improve their record. In many cases, authorities may not be wilfully concealing information and welcome the results of the study. For example, the Slovak Ministry of Life Environment posted additional information on its web site within a few hours of being informed that it was missing.

Interestingly, the study concludes that the expected problems of authorities being unprepared or being overwhelmed with demands for information did not, in fact, materialise.

Reporting on the results of the survey to the conference on access to information, Wilton Park, Autumn 2001, Emilia Sickakova said that, positively:

- a majority of authorities seem to have introduced their own guidelines to regulate procedures regarding access to information requests;
- fees are "rather moderate" and cover "only the information medium";
- the number of requests is "substantially lower than expectations".

Negatively, findings revealed that:

- repeated requests diminished willingness to provide the information, as well as the completeness or quality of the information; this trend also was present "when asking for more complex information(in particular, information relating to the justification of the authorities' own existence)
- for those turning-up in person to seek information, there is an "entrance barrier" as front-line employees are poorly informed about the law
- authorities' "self-presentation" is not as good as it should be;
- authorities do not proactively disseminate information as much as they should do - almost none of the obligees publish, on its own bulletin boards, all the information the law requires.

In Romania, *SAR* has evolved a two-year strategy . Year One is devoted to monitoring the administrations' capacity building in terms of the law's requirements. Efforts to this end should involve:

- establishing an information office
- pro-actively publishing documentation
- developing a web site
- posting the information electronically
- editing a "compulsory" newsletter

Such activities involve gathering the data to be published or posted or offered in response to individual inquiries; organising the data and preparing it in a user-friendly manner; publishing it in a user-friendly and cost-effective manner (for both producer and consumer); and collecting and responding to consumer feedback regarding the quality of the information obtained by requesters and by those browsing the authorities' web sites etc.

*SAR* argues that the inherent capacity of most public authorities to perform these tasks is lacking, due to the low level of requisite skills present in public authorities. The information skills required by the law are more the *forte* of good journalists, who, for salary reasons will not be working in the public sector. *SAR*, thus, proposes that journalists should be recruited to assist the public sector to enhance its capacity to produce what, at least in the short-term, the law obliges, particularly with respect to editing newsletter/activity reports.

In Latvia, the Freedom of Information Law (FIL) was adopted in 1998, and *DELNA* carried out a research project between October 1999 and February

2000, to ascertain whether people really were able to enjoy the rights foreseen by the new law. The survey primarily addressed the right to access information as prescribed in the FIL, but it also took into account implementing regulations issued by the government, for example the 1999 regulation on the order in which information at the disposal of State and Municipal institutions should be delivered to the public. A key objective of the survey was to assess the manner in which information was delivered to the public, an important element of which was the attitude of individual public officials and their ability to follow basic administrative processes.

Ten students, from different educational backgrounds, were recruited (i.e., not just law students) and attended a short introductory course in the laws and regulations pertaining to accessing information. Then, the institutions to be tested were selected by the *DELNA* staff. A wide range of 300 authorities was selected, including state and municipal institutions; schools; courts; health-care authorities and state economic enterprises. Different ways of approaching the authorities to request the information were considered: submitting the information request in person; making the request over the telephone; or sending a letter. In co-ordination with *DELNA*, the researchers themselves decided what information they would attempt to obtain and in what form.

As in Slovakia, creating a standardised template was considered to be an important feature of the methodology. A questionnaire was designed to be filled in by the student researchers, collating the following: the time the information was requested; the name of the institution; the nature of the information requested; the form of the request (by phone, mail or personal visit); the nature of the response (was a reply obtained, how long did it take, and if no answer was provided how was the refusal justified) and their own comments (e.g., about the attitude shown toward the person requesting information). Unsuccessful attempts were followed up by a repeat request in a different form.

The aims of the exercise were to ascertain (a) what obstacles does the ordinary citizen face in attempting to obtain information and (b) how well do

the officials of the central and local government authorities know their obligations, and do they act in conformity with the law?

The results of the study indicate that:

- When requests were submitted in writing, a positive or negative answer was received in approximately 80% of cases. In 15-20% of cases there was no response.
- Of the requests submitted in writing to which answers were received, in 30% of cases comprehensive information was provided. In 70% of cases a letter refusing information was received. After a repeated request (usually citing a legal justification) in approximately 50% of cases a satisfactory answer was provided. In the other half of cases there was no answer or the refusal was repeated.
- It is more difficult to get information if the person looking for information is "an ordinary person from the street," as many researchers were assumed to be.
- In a majority of cases the researchers were required to explain what the obtained information would be used for. This contradicts Paragraph 1 of Article 10 of the Law on Freedom of Information, which provides that "the person requesting information need not provide any special justification for his/her interest in such information, and the information may not be denied on the basis that it does not concern the person requesting it."
- It is easier for representatives of particular segments of the public, in particular journalists and students, to obtain information.
- When an identical question was put to various city councils in Latvia, their responses varied widely. Some provided the information with no objections. Some declined to answer, arguing that "such information may not be transmitted over the telephone because it is not possible to establish how trustworthy is the person making the phone call." Others declared, without possibility of appeal, that the information was confidential. Such actions and the inability to provide legal justification for restricting information indicate a lack of competence and inadequate familiarity with relevant legislation.
- Routine inquiries generally receive adequate responses. As questions become more specific the likelihood of obtaining information decreases dramatically, especially if questions relate to the operational activities of the institution, its use of resources, the price schedule for services, internal rules, co-operation with commercial structures or real estate ownership issues.
- In some cases refusal to release information was defended by reference to laws no longer in force.
- The high fees charged in some cases could block access to necessary information.
- In most cases the visitors had to endure such behaviour by government employees as scornful remarks, rude grins, deliberate inattention and private

conversations with colleagues or over the telephone, all reflecting the attitude, "Don't bother me."

- Many institutions lack signs guiding visitors to where information can be obtained.
- The courts turned out to be the institutions most inaccessible to the process of openness. Contrary to the law "On Judicial Authority," which provides that courts in Latvia are open, only in one small town out of the 11 towns tested, was it possible to gain access to court decisions or case materials.

Moldova and Ukraine also offer interesting examples of monitoring initiatives. Moldova's *Access-Info Center for Promotion of Freedom of Expression and Access to Information* published a report, on 27<sup>th</sup> July 2001, entitled the *Mirage of Transparency*, just over a year after the adoption of the *Law on Access to Public Information* (11 May 2000). The report analysed the results of a survey involving 200 central and local public authorities. The authors aimed to identify the main problems during the "first phase" of the law's implementation.

Key issues relating to implementation of the FOIA were addressed by the following questions:

- has the authority established a specific office to deal with FOIA requests?
- has the authority appointed a specific individual, or personnel to oversee and deal with requests?
- what level of knowledge regarding the law's provisions do officials display?
- do officials just ignore FOIA's provisions ("in an effort to cover up their professional inactivity"?)

The *Access-Info Center* also carried out a survey of 253 journalists from 10 districts of the country, representing 83 national and local news organisations during Autumn 2001, to ascertain which categories of information they reported as being difficult to obtain, particularly in the context of the fight against corruption. The main ones included:

- the disbursement of foreign credits;
- the way the state budget is spent;

- salaries and perquisites of officials; and
- aspects of the privatisation process.

The main 'reason' for denial was 'commercial confidentiality'. Other 'reasons' offered were 'the person in charge is not available; 'permission for release must be granted by a higher authority'; and 'the information is not for public use'. The institutions most likely to be secretive were reported to be the Presidency; Parliament; government; political factions; economic structures; and the Security Service. The author of the study concluded that the main problems are:

- lack of awareness in the absolute majority of people of their information rights; and
- the preference of state leaders etc. to operate with "excessive secrecy".

In Ukraine, the *Kharkiv Group for Human Rights Protection*, in conjunction with their partners in the Human Rights Network, carried out a research project during August 2001, seeking information dated 1998 – 2001 from central and local authorities. The results are published in its report, *Analysis of Practice: Access to Governmental Information* .

Information was requested about a very large number of topics, e.g., on mortality and its causes, on the number of suicides, pensions and wages in various industries, on unemployment, on environmental pollution in Ukraine, on mortality and desertion in the armed forces, on the number of people infected with TB and HIV/AIDS, on the number of legal and illegal immigrants etc.

The Group's general conclusion was that "the attitude of state organs to the Ukrainian Law on Information which obliges a state organ to inform all interested parties about its activities, is somewhat disrespectful. It proves that the state organs still disrespect the society, which entrusted them to execute some functions and has the right of control. This attitude was especially visible in responses to the requests about illegal actions of law-enforcers."

On 1<sup>st</sup> August 2002, the President of Ukraine signed a Decree envisaging the involvement of a group of NGO experts in a study on the implementation of the Law on Information and other normative legal acts. The Decree states

that special attention will be paid 'to the availability of mechanisms to ensure the opportunities in practice for citizens and legal entities to receive corresponding information within a reasonable timeframe and at a reasonable cost'. Following the study, the Cabinet will present statistics about information actually released in 2000-2001 and on the basis of the results of the investigation and public discussion, prepare a draft Law on Free Access to Public Information. Ukrainian NGOs have formally expressed their support to the President for this initiative and have expressed their hope that the selection of the NGO experts to be involved in the investigation will be transparent and pluralistic.

### **5.3 Strategic Options for Monitoring**

From the outset, campaigners should lobby to ensure that the FOIA contains measures for legally compelling monitoring of the extent/manner to which public authorities are carrying out their duties under the Act.

The FOIA should oblige every public body to appoint an Information Officer to be responsible for compiling and publishing an annual report on the activities undertaken by the authority to promote compliance with the Act. Also, if the law establishes a supervising body (e.g., as in Hungary) that institution should be legally obliged to present an annual report to the Parliament on the compliance of public bodies with the FOIA and the activities of his/her office to promote freedom of information. The reports themselves will and should be a valuable resource of data and insights, as, indeed are the reports of the Hungarian Parliamentary Commissioner.

As important as the legal provisions contained in the FOIA and the obligations on official bodies to report on compliance with the law, are the systematic monitoring activities carried out by civil society organisations and NGOs regarding the law's implementation. Such monitoring can act as a valuable check on official reports and may well deal with issues, such as the attitude and experience of journalists in using the FOIA, which are not covered by reports under the law.

Strategies determining how and when monitoring is to be undertaken should, ideally, be drawn up even prior to the law's adoption, perhaps when it is clear



that the draft will pass the necessary legislative stages. Although there are differing views as to when the monitoring should begin, there is a strong argument for requesting information from authorities and determining their level of compliance with the FOIA as early as possible, whether done, as in Bulgaria, as a "pilot-project, or, as in Slovakia, as a matter of principle. Civil society may take the view that, in light of the extent of cultural change required, criticism of public bodies' relative failures should be tempered and emphasis placed on offering constructive and innovative advice. However, that does not mean that non-compliance and problems with systems established to apply the FOIA should not be described; analysed; and publicised.

A good practice, as in Bulgaria, is to recruit researchers in each region of the country in order to ensure a country-wide understanding of the spread or otherwise of freedom of information, particularly in the context of local government and municipalities' responses to the FOIA. In Slovakia, the use of local journalists to monitor FOIA implementation carries potentially positive and negative spin-offs. It encourages journalists to use the law and publicise their experience thus raising general awareness about the FOIA, but it also carries the danger that they may become disenchanted with the slow or delayed responses and generate negative publicity about the FOIA's worth. Given the general suspicion with which officials regard the media there is also a fine line between provoking an unnecessarily defensive reaction to requests for information by public officials and promoting active use of the law. Several other points in relation to the practice of monitoring should be borne in mind, for example, the usefulness of creating a "template" questionnaire to gather data relating to the quality of information provision in order to ensure consistent and comprehensive reporting.

Publishing and indeed publicising the results of a monitoring exercise are crucial to ensuring follow-up to exposed deficiencies and to generally maintaining a level of awareness about the existence of the FOIA after the publicity generated by campaigning for its adoption has subsided. In situations such as in Bulgaria, where an organisation is dedicated exclusively to the issue of freedom of information, it is possible, as *AIP* does, to regularly and

systematically monitor FOIA implementation and present the results in a regular report accompanied by a publicity event, such as a press conference. However, even ad-hoc monitoring and reporting, such as in Latvia and Moldova, is useful for informing society and politicians, officials and members of the government as to the extent of the commitment and compliance with FOI principles and legal duties.

## Index of Acronyms

AIP Access to Information Programme (Bulgaria)  
APIA Access to Public Information Act (Bulgaria)  
APADOR-CH Romanian Helsinki Committee  
CDF Citizen Democracy Foundation (Slovakia)  
DELNA Transparency International, Latvia  
DPI Data Protection Inspectorate (Estonia)  
ENA Estonian Newspaper Association  
FIL Freedom of Information Law (Latvia)  
FOI Freedom of Information  
FOIA Freedom of Information Act  
GBR General Binding Regulation (secondary legislation, Slovakia)  
IGOs Inter-governmental organisations  
NGOs Non-governmental organisations  
SAR The Romanian Academic Society  
ZPLD Association for Support of Local Democracy (Slovakia)

## List of useful internet resources on freedom of information

### **GENERAL**

#### **ARTICLE 19**

(Click on "access to information")

<http://www.article19.org>

#### **Campaign for Freedom of Information**

<http://www.cfoi.org.uk>

#### **Walter Keim's Freedom of Information (FOI) Laws**

<http://home.online.no/~wkeim/foi.htm>

The online network of freedom of information advocates

<http://www.freedominfo.org/>

### **REGIONAL**

#### **World Bank Institute/CESI Program**

E-DIALOGUE: Freedom of Information Access

<http://www2.worldbank.org/hm/hmces/0035.html>

Council of Europe Recommendation on Access to Official Documents

[http://cm.coe.int/stat/E/Public/2002/adopted\\_texts/recommendations/2002r2.htm](http://cm.coe.int/stat/E/Public/2002/adopted_texts/recommendations/2002r2.htm)

## **COUNTRY SPECIFIC**

### **BOSNIA**

Recommendation for the implementation of the freedom of access to information act <http://www.bihfedomb.org/eng/reports/special/secretfiles.htm>

### **BULGARIA**

*Access to Information Programme*

<http://www.aip-bg.org>

### **CROATIA**

**Everyone interprets access to public information  
their own way**

<http://www.medienhilfe.ch/News/CRO/MOL0605.htm>

[m](#)

### **ESTONIA**

Text of Public Information Act

<http://www.legaltext.ee/text/en/X40095.htm>

**ENA launches Freedom of Information campaign**

<http://www.netexpress.ee/eall/algusi.html>

### **HUNGARY**

Parliamentary Commissioner for Data Protection and Freedom of Information

<http://www.obh.hu/adatved/indexek/index.htm>

### **LATVIA**

How Accessible is Information From National and Local Governments in Latvia?

(www. <http://www.delna.lv/english/index.htm>)

## **MOLDOVA**

Freedom of expression group publishes report on access to information

<http://ijc.iatp.md/en/mmnews>

Collection of access to information legislation

[www.lexaccess.org.md](http://www.lexaccess.org.md)

NGO Access- Info web site (in Romanian)

<http://www.acces-info.org.md/>

## **MONTENEGRO**

*Free Access to Information Program Montenegro*

<http://www.faip.cg.yu/eng/>

## **ROMANIA**

Human Rights Developments in Romania: the activities of the Romanian Helsinki Committee

(APADOR-CH) 2001 Report

"The law on access to public information"

<http://www.apador.org/ranuale.htm>

## **SLOVAKIA**

"The Presov Civic Forum organised a public discussion to debate the Law on Access to Information and the General Binding Regulation"

[www.changenet.sk/spravy/show.asp?smid=3075&mid=55](http://www.changenet.sk/spravy/show.asp?smid=3075&mid=55)

Transparency International – Slovakia

<http://www.transparency.org.sk/english/law.htm>

Foundation for Support of Local Democracy

Implementation of the Law No. 211/2000 in Practice

<http://www.info211.sk>

Monitoring Discovered a Paradox

<http://www.changenet.sk/>

Everything that is not secret by law is public

<http://www.changenet.sk/spravy/show.asp?smid=2397&mid=54>

*Minority Rights Group Slovakia*

The Monitoring of FOI implementation (coming soon) and Report from the monitoring of FOI implementation (coming soon)

<http://www.changenet.sk/mrgs/eng/index.html>

***UKRAINE***

Freedom of Access to Governmental Information and Analysis of Practice –  
Access to Governmental Information

[http://www.khpg.org/index\\_en.html](http://www.khpg.org/index_en.html)

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