

LAW ON FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE

I Basic Provisions

Purposes of the Law

Article 1

This Law regulates the rights to access information of public importance held by public authority bodies, with the purpose of the fulfillment and protection of the public interest to know and attain a free democratic order and an open society.

In order to implement the right to access information of public importance, held by public authority bodies, a Commissioner for Information of Public Importance shall be established (hereinafter: Commissioner) by this Law, as an autonomous state body, independent in fulfilling its authority.

Information of Public Importance

Article 2

Information of public importance, within the meaning of this Law, is information held by a public authority body, created during work or related to the work of the public authority body, contained in a document, and related to everything that the public has a justified interest to know.

Information of public importance held by a public authority body shall denote the following notwithstanding: whether the source of information is a public authority or another person; the information medium (paper, tape, film, electronic media, et al) containing the document with the information; the date of creation of information; the manner of obtaining information; or another feature of information.

Public Authority Body

Article 3

In terms of this Law, a public authority body (hereinafter: public authority) shall denote notably:

- 1) A state body, territorial autonomy body, a local self-governance body, as well as an organization vested with public authority (hereinafter: state body);
- 2) A legal person founded by or funded wholly or predominantly by a state body.

Legal Presumptions of Justified Interest

Article 4

It shall be deemed that there is always a justified public interest to know information held by the public authority, in terms of Article 2 of this Law, regarding a threat to, i.e. protection of public health and the environment, while with regard to other information the public authority holds, it shall be deemed that there is a justified interest of the public to know, in terms of Article 2 of this Law, unless proven otherwise by the public authority.

Content of the Right to Access Information of Public Importance

Article 5

Everyone shall have the right to be informed whether a public authority holds specific information of public importance, i.e. whether it is otherwise accessible.

Everyone shall have the right to access information of public importance by being allowed insight in a document containing information of public importance, the right to a copy of that document, and the right to receive a copy of the document upon request, by mail, fax, electronic mail, or in another way.

Principle of Equality

Article 6

Everyone shall be able to exercise the rights in this Law under equal conditions, notwithstanding their citizenship, temporary or permanent residence, i.e. seat, or personal attribute such as race, confession, nationality, ethnicity, gender, et al.

Ban of Discrimination of Journalists and Media Outlets

Article 7

A public authority may not give preference to any journalist or media outlet, when several have applied, by allowing only him/her or allowing him/her before other journalists or media outlets to exercise the right to access information of public importance.

Limitations of Rights

Article 8

The rights in this Law may be exceptionally subjected to limitations prescribed by this Law if that is necessary in a democratic society in order to prevent a serious violation of an overriding interest based on the Constitution or law.

No provision of this Law may be interpreted in a manner that could lead to the revocation of a right conferred by this Law or its limitation to a greater degree than the one prescribed in Para 1 of this Article.

II Exemption and Limitation of Free Access to Information of Public Importance

*Life, Health, Security, Judiciary, National Defense, National and Public Safety,
National Economic Welfare and Classified Information*

Article 9

A public authority shall not allow the applicant to exercise the right to access information of public importance, if it would thereby:

- 1) Expose to risk the life, health, safety or another vital interest of a person;
- 2) Imperil, obstruct or impede the prevention or detection of criminal offence, indictment for criminal offence, pretrial proceedings, trial, execution of a sentence or enforcement of punishment, any other legal proceeding, or unbiased treatment and a fair trial;
- 3) Seriously imperil national defense, national and public safety, or international relations;
- 4) Substantially undermine the government's ability to manage the national economic processes or significantly impede the fulfillment of justified economic interests;
- 5) Make available information or a document qualified by regulations or an official document based on the law, to be kept as a state, official, business or other secret, i.e. if such a document is accessible only to a specific group of persons and its disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and outweigh the access to information interest.

Information of Public Importance Held by a Public Authority and Already Accessible to the Public

Article 10

A public authority need not allow the applicant the right to access information of public importance, if the information has already been published and made accessible in the country or on the Internet.

In the event set out in Para 1 of this Article, a public authority shall in its response notify the applicant on the information medium (number of the official medium, name of the publication, et al), where and when the sought information was published, unless these data are common knowledge.

Denial of Published Information by a Public Authority

Article 11

If a public authority disputes the accuracy or completeness of information of public importance that has been published, it shall make public the accurate and complete information, i.e. shall enable insight into the document containing accurate and complete information, except in cases specified in Articles 9 and 14 of this Law.

Extraction of Information

Article 12

If the requested information of public importance can be extracted from other information contained in the document a public authority is not obliged to allow the applicant insight in, the public authority shall allow the applicant insight in the part of the document containing only the extracted information.

Abuse of Free Access to Information of Public Importance

Article 13

A public authority shall not allow the applicant to exercise the right to access information of public importance if the applicant is abusing the rights to access information of public importance, especially if the request is irrational, frequent, when the same or already obtained information is being requested again, or when too much information is requested.

Privacy and Other Personal Rights

Article 14

A public authority shall not fulfill the applicant's right to access information of public importance if it would thereby violate the right to privacy, the right to reputation or any other right of a person that is the subject of information, except if:

- 1) The person has agreed;
- 2) Such information regards a personality, phenomenon or event of public interest, especially a holder of a state or political post, and is relevant with regard to the duties that person is performing;
- 3) A person has given rise to a request for information about him/her by his/her behaviour, especially regarding his/her private life.

III Access Procedure before a Public Authority

Request for Information, Insight, Duplication and Referral

Article 15

An applicant shall submit a request in writing to a public authority to exercise the right to access information of public importance (hereinafter: request).

The request shall contain the name of the public authority, the full name and surname and address of the applicant and as many specifics as possible of the sought information.

The request may also contain other data that will facilitate the search for the requested information.

The applicant need not list the reasons for the request.

If the request does not contain data in Para 2 of this Article, i.e. if the request is deficient, the authorized person of the public authority shall be obliged to instruct the applicant free of charge how to rectify the deficiencies in the request, i.e. to give the applicant instructions on supplements.

In the event the applicant does not rectify the deficiencies within a specific deadline, i.e. within 15 days upon receipt of the instructions on supplements, and the deficiencies are such that they prevent the processing of the request, the public authority shall reach a decision to dismiss the request as deficient.

The public authority is obliged to allow an applicant access to information when the request is lodged orally, for the record, and such a request shall be specially recorded and deadlines apply accordingly, as if the request was submitted in written form.

A public authority may prescribe a sample request form, but it shall also be obliged to review requests that have not been lodged in that form.

Processing of Requests

Article 16

A public authority shall without delay and within 15 days from receipt of the request at the latest inform the applicant whether it holds the requested information, allow insight in the document containing the requested information i.e. issue or send out to the applicant a copy of the document. The copy of the document shall be deemed sent out on the day it leaves the office of the public authority from which the information was requested.

If the request regards information, which is presumed to be of relevance to the protection of a person's life or freedom, i.e. to the protection of public health and the environment, the public authority must inform the applicant it holds such information, allow insight in the document containing the requested information i.e. issue a copy of the document to the applicant within 48 hours upon receipt of the request.

If a public authority is for a justified reason unable to inform the applicant within the deadline in Para 1 of this Article that it holds the information, to allow him/her insight in the document containing the sought information, to issue i.e. send him/her a copy of the document, the public authority shall promptly inform the applicant thereof and set another deadline that may not exceed 40 days from receipt of the request, within which it shall inform the applicant that it holds the information, allow him/her insight in the document containing the sought information, issue i.e. send the applicant a copy of the document.

If a public authority does not respond to the request within the deadline, the applicant may lodge a complaint with the Commissioner, except in cases prescribed by this Law.

Simultaneously with the notice on allowing the applicant insight in the document containing the requested information i.e. issuing the applicant a copy of the document, the public authority shall inform the applicant of the time, place and manner in which information shall be available for insight, the necessary costs of duplicating the document, or inform the applicant of the possibility to use his/her own equipment for duplication in the event it does not have the technical means for duplication.

The applicant shall be allowed insight in a document containing the requested information on the public authority's official premises.

The applicant may for justified reasons ask to gain insight in the document containing the requested information at a time different from the one set by the authority from which the information was sought.

A person, unable to have insight in a document containing the requested information without an escort, shall have the opportunity of insight with the assistance of an escort.

If the public authority grants the request it shall not issue a separate decision, but shall make an official note about it.

In the event a public authority refuses to inform the applicant, either entirely or partially, whether it holds the sought information, to allow the applicant insight in the document containing the requested information, to issue i.e. send to the applicant a copy of the document, it shall be obliged to issue a decision on the rejection of the

request and give a written explanation of such a decision, and to notify the applicant in the decision of the legal means at his/her disposal to appeal such a decision.

Reimbursement

Article 17

Insight in a document containing the requested information shall be free of charge.

A copy of the document containing the requested information shall be issued and the applicant shall be obliged to reimburse the necessary costs of duplication, and also in the event of sending, the costs of sending.

The government shall sign the list of expenditures on the basis of which the public authority shall calculate the costs referred to in the previous Para.

Journalists, requesting a copy of a document for professional reasons, and non-governmental organizations, focusing on human rights and requesting a copy of a document for the performance of their registered activities, and all persons that request the information due to the imperilment, i.e. protection of public health and environment, shall be exempted from the obligation of reimbursement in Para 2 of this Article, except in cases referred to in Article 10, Para 1 of this Law.

The Commissioner shall follow the practice of reimbursement of costs and exemption from reimbursement and issue recommendations to the public authorities with the aim of standardizing the practice.

Insight and Duplication

Article 18

The equipment at the disposal of the public authority shall be used for insight in a document containing the requested information, unless the applicant asks to gain insight in the document by using his/her own equipment.

A public authority shall issue a copy of the document (photocopy, audio copy, video copy, digital copy, et al) containing the requested information in the form the information is in.

If a public authority does not have the technical means to make a copy of the document in terms of Para 2 of this Article, it shall make a copy of the document in another form.

If a public authority holds a document containing the requested information in the language in which the request was submitted, it shall be obliged to allow the applicant insight and make a copy of the document in the language in which the request was submitted.

Referral of Requests to the Commissioner

Article 19

When public authority does not hold the document containing the requested information, it shall refer the request to the Commissioner, and inform the Commissioner and the applicant who, to its knowledge, holds the document.

Processing of the Referred Request by the Commissioner

Article 20

Upon receipt of the request, the Commissioner shall check whether the document containing the information sought in the request is held by the public authority that had referred him the request.

In the event the Commissioner determines that the document in Para 1 of this Article is not held by the public authority that had referred the request of the applicant, the Commissioner shall refer the request to the public authority that holds the document, unless specified differently by the applicant, and inform the applicant thereof or refer the applicant to the public authority that holds the requested information.

The manner of acting described in Para 2 of this Article shall be determined by the Commissioner, depending on the efficiency of the realization of rights to access information of public importance.

In the event the Commissioner refers a request to the public authority from Para 2 of this Article, the deadline envisaged in Article 16 of this Law shall commence upon the day of receipt.

Other Procedural Provisions

Article 21

Provisions of the Law on General Administrative Procedure on decisions by a first instance body shall be applied to the procedure of a public authority, unless specified differently by this Law.

IV Procedure Related to the Commissioner

Right to a Complaint

Article 22

An applicant may lodge a complaint to the Commissioner within 15 days upon receipt of the public authority decision, if:

- 1) In contravention of Paras 1 and 3 of Article 16 of this Law, the public authority refused to inform the applicant whether it holds specific information of public importance or whether it is otherwise accessible to it, refused to allow insight in the document containing the requested information, to issue i.e. send to the applicant a copy of the document, or failed to do so within the prescribed deadline;
- 2) In contravention of Para 2 of Article 16 of this Law, the public authority failed to reply to a submitted request within the prescribed deadline;
- 3) In contravention of Para 2 of Article 17 of this Law, the public authority conditioned the issuance of the copy of the document containing the requested information by payment of a fee exceeding the necessary costs of duplication;
- 4) The public authority does not allow insight in the document containing the requested information in the manner set forth in Para 1 of Article 18 of this Law;
- 5) The public authority does not allow insight in the document containing the requested information, i.e. does not issue a copy of the document in the manner prescribed in Para 4 of Article 18 of this Law.

A complaint cannot be lodged against the decision of the National Assembly, the President of the Republic, Government of the Republic of Serbia, the Supreme Court of Serbia, the Constitutional Court and the republican Public Prosecutor.

An administrative dispute complaint may be lodged against the decision in Para 2 of this Article, in accordance with law, on which the court notifies Commissioner *ex officio*.

Consideration of Complaints by the Commissioner

Article 23

Provisions of the Law on General Administrative Procedure related to the appellate decisions of second instance body shall be applied to the procedure before the Commissioner, unless specified differently by this Law.

Article 24

The Commissioner shall reach a decision promptly and within 30 days from the submission of the complaint at the latest, upon giving the public authority and, if necessary the applicant, the opportunity to reply in writing.

The Commissioner shall dismiss a complaint that is inadmissible, overdue or filed by an unauthorized person.

The public authority shall prove it has acted in accordance with its obligations set forth in this Law.

Commissioner Decisions on Measures to Promote Transparency of Work

Article 25

Upon receipt of a request or *ex officio*, the Commissioner shall reach the decision establishing that a public authority has not fulfilled its obligations set forth in this Law, with the exception of public authorities referred to in Para 2 of Article 22 of this Law, and order the measures the authority is to take to fulfill them, upon giving the opportunity to the authority to reply in writing.

The request referred to in Para 1 of this Article cannot be submitted in cases when this Law foresees the right to complaint.

Inquiry by the Commissioner

Article 26

The Commissioner shall undertake actions to determine the facts necessary for reaching the decision referred to in Articles 24 and 25 of this Law.

In order to determine the facts referred to in Para 1 of this Law, the Commissioner shall be allowed insight in every information medium this Law applies to.

Legal Remedies against Commissioner's Decisions

Article 27

An administrative dispute complaint may be lodged against a Commissioner's decision.

Obligatory character of Commissioner Decisions and Conclusions

Article 28

The decisions and conclusions of the Commissioner shall be obligatory.

The enforcement of the decisions and conclusions of the Commissioner shall be procured by the Government of the Republic of Serbia if necessary.

V Appointment, Position and Authority of the Commissioner

Seat of the Commissioner

Article 29

The seat of the Commissioner shall be in Belgrade.

Appointment

Article 30

The National Assembly of the Republic of Serbia (hereinafter: National Assembly) shall appoint the Commissioner by a majority of votes of the MPs at the proposal of the Board of the National Assembly competent for information.

A person of renowned reputation and expertise in the field of protecting and promoting human rights shall be appointed Commissioner.

A person, who fulfills the requirements for employment in state bodies and has a Bachelor's degree in Law and at least ten years of working experience, may be appointed Commissioner.

A person holding a post in or employed by a state body or a political party may not be appointed Commissioner.

The Commissioner shall be appointed to a seven-year term of office.

The same person may be appointed Commissioner twice the most.

End of Term of Office

Article 31

The term of office of a Commissioner shall cease before the expiration of his/her term of office at his/her request, or upon turning sixty-five years of age, and upon dismissal.

The National Assembly shall decide on the end of Commissioner's term of office.

A Commissioner shall be dismissed if he/she has been convicted of a crime with a sentence of imprisonment, in the event of permanent working incapacity or if he/she holds a post in or is employed by a state body or political party, if he/she loses the citizenship of the Republic of Serbia, or if he/she performs his duties unprofessionally and unconscientiously.

The procedure for dismissing the Commissioner shall be launched on the initiative of one third of MPs.

The Board of the National Assembly competent for information shall establish whether there are reasons for dismissal and shall inform the National Assembly thereof.

The Board of the National Assembly competent for information shall also inform the National Assembly about the request of the Commissioner to have his/her duties terminated, as well as about the fulfillment of requirements for the termination of term of office due to age.

If the National Assembly does not decide about the request within 60 days, it shall be deemed that with the expiration of that deadline the Commissioner's duties terminate.

In other events, the Commissioner's duties cease on the day the National Assembly states so in its decision.

Status of the Commissioner

Article 32

The Commissioner shall be autonomous and independent in the exercise of his/her powers.

In the exercise of his/her powers the Commissioner shall neither seek nor accept orders or instructions from state bodies or other persons.

The Commissioner shall have the same salary as a judge of the Supreme Court, other labor rights, in accordance with law, and the right to reimbursement of costs incurred during the discharge of his/her duties.

The Commissioner may not be held liable for an opinion he/she expressed or a recommendation he/she made while performing his/her duties; in the event of a legal proceeding initiated over an act of crime committed in the exercise of his/her functions, he/she may not be detained without the consent of the National Assembly.

Deputy Commissioner

Article 33

The Commissioner shall have a Deputy, who shall be appointed by the National Assembly, upon the recommendation of the Commissioner.

The Commissioner shall nominate for the post of Deputy Commissioner a person fulfilling the requirements for employment by state bodies.

The Deputy Commissioner shall be appointed to a seven-year term of office.

The same person may be appointed Deputy Commissioner twice the most.

The Deputy Commissioner shall perform the duties of the Commissioner in the event of the absence, death, tenure expiration, dismissal, or the temporary or permanent incapacity of the Commissioner to exercise his/her powers.

Provisions of this Law on the cessation of duties of the Commissioner shall accordingly apply to the cessation of duties of the Deputy Commissioner.

Procedure for dismissing the Deputy Commissioner shall start upon initiative of the Commissioner.

Staff of the Commissioner

Article 34

The Commissioner shall have staff that will help him/her exercise his/her powers.

The Commissioner shall pass a book of regulations on the work of his/her staff, with approval from the National Assembly. The Commissioner shall independently decide on the employment of expert staff and other employees, in accordance with law, guided by the need to professionally and efficiently exercise his/her powers.

The regulations on working conditions in state bodies shall accordingly apply to staff working for the Commissioner.

The funds required for the work of the Commissioner and his/her staff shall be secured in the budget of the Republic of Serbia.

Powers of the Commissioner

Article 35

The Commissioner shall:

- 1) Monitor the respect of obligations by the public authorities regulated by this Law and report to the public and National Assembly thereof;
- 2) Initiate the preparation or change of regulations for the implementation and promotion of the right to access information of public importance;
- 3) Propose to public authorities measures to be taken to improve their work regulated by this Law;
- 4) Undertake necessary measures to train employees of state bodies and to inform the employees of their obligations regarding the rights to access information of public importance with the aim of their effective implementation of this Law;
- 5) Consider complaints against the decisions of public authorities that violate the rights regulated by this Law;
- 6) Inform the public of the content of this Law and the rights regulated by this Law;
- 7) Perform other duties stipulated by this Law.

Reports

Article 36

The Commissioner shall lay with the National Assembly an annual report on the activities undertaken by the public authorities in the implementation of this Law and his/her own activities and expenses within three months from the end of the fiscal year.

In addition to the report in Para 1 of this Article, the Commissioner shall lay with the National Assembly other reports as he sees fit.

VI Measures for Improving the Transparency of Work of Public Authorities

Manual for Exercising Rights

Article 37

The Commissioner shall without delay publish and update a manual with practical instructions on the effective exercise of rights regulated by this Law in the Serbian language, and in languages that are defined as official languages by law.

The manual in Para 1 of this Article shall obligatorily contain the content and scope of rights to access information of public importance, as well as how these rights can be exercised.

The Commissioner shall be obliged to inform the public of the content of the manual in Para 1 of this Article via the press, electronic media, the Internet, public panel discussions and in other ways.

Authorized Person of the Public Authority

Article 38

A public authority shall appoint one or more official persons (hereinafter: authorized person) to respond to request for free access to information of public importance.

The authorized person shall:

- 1) Receive requests, inform the applicant of holding information and give insight in the document containing the requested information, i.e. deliver the information in an appropriate manner, reject the request with a decision, provide the necessary assistance to the applicants to exercise their rights regulated by this Law;
- 2) Take measures to promote the practice of administering, maintaining, storing and safeguarding information mediums.

If an authorized person referred to in Para 1 of this Article has not been appointed, the duties of the authorized person shall be performed by the head of the public authority.

Obligation to Publish a Directory

Article 39

A state body shall at least once a year publish a directory with the main data about its work, notably:

- 1) Description of its powers, duties and in-house organization;
- 2) Data on the budget and means of labor;
- 3) Data with regard to the types of service it directly provides to interested parties;
- 4) Procedure for submitting a request to this state body, i.e. for lodging a complaint against its decisions, actions or negligence;
- 5) Overview of the requests, complaints and other direct measures undertaken by the interested parties, of the decisions by this state body on the submitted requests and lodged complaints, i.e. responses to other direct measures undertaken by interested parties;
- 6) Data on the manner and place of storing information mediums, type of information it holds, type of information it allows insight in and the description of the procedure for submitting a request;
- 7) Names of the heads of this state body, descriptions of their powers and duties and procedures by which they reach decisions;
- 8) The rules and decisions of this state body regarding its transparent work (working hours, address, contact telephones, logo, accessibility for persons with special needs, access to sessions, permissibility of audio and video recording, et al), as well as every authentic interpretation of these decisions;

- 9) Regulations and decisions on exemptions or limitations of the transparency of work of the state body and explanations thereupon;

The state body shall allow an interested party insight in the directory free of charge, or give him/her a copy of the directory provided the party reimburses the necessary costs.

Guidebook for Publishing the Directory

Article 40

The Commissioner shall publish a guidebook according to which the directory from Article 39 of this Law shall be published and proffer advice at the request of a state body to ensure the correct, complete and timely fulfillment of the obligation to publish a directory.

Maintaining Information Mediums

Article 41

The public authority shall maintain the information mediums so as to enable the exercise of the right to access information of public importance in keeping with this Law.

Training of Staff

Article 42

With the aim of effectively implementing this Law, a state body shall train its staff and instruct its employees on their obligations regarding the rights regulated by this Law.

The staff training in Para 1 of this Article shall notably include: the content, scope and importance of the right to access information of public importance, the procedure for exercising those rights, the procedure for administering, maintaining, and safeguarding information mediums, and types of data which the state body is obliged to publish.

Reporting to the Commissioner

Article 43

A state body authorized person shall submit an annual report to the Commissioner on the activities of the body undertaken with the aim of implementing this Law, which shall contain the following data:

- 1) Number of submitted requests, number of wholly or partly approved requests and the number of rejected or dismissed requests;
- 2) Number and content of the complaints against the decisions to reject or dismiss a request;

- 3) Total sum of fees charged for the exercise of the right to access information of public importance;
- 4) Measures taken with regard to the obligation to publish a directory;
- 5) Measures taken with regard to maintaining information mediums;
- 6) Measures taken with regard to staff training.

VII Compensation of Damages

Article 44

The public authority shall be held liable for damages caused by the inability of a media outlet to publish information because a public authority had without justification denied or limited its rights to access information of public importance from Article 5 of this Law, i.e. because a public authority gave preference to a journalist or media outlet in contravention of provisions of Article 7 of this Law.

VIII Supervision

Article 45

The implementation of this Law shall be supervised by the Ministry in charge of information affairs.

IX Punitive Provisions

Article 46

A fine between 5,000 and 50,000 dinars shall be imposed upon the authorized person in a public authority if the public authority:

1. Acts in contravention of the principle of equality (Article 6);
2. Discriminates against a journalist or a media outlet (Article 7);
3. Fails to specify the information medium, where and when the requested information was published (Para 2 of Article 10);
4. Fails to communicate accurate and complete information, i.e. fails to allow insight in a document containing accurate and complete information. (Article 11);
5. Fails to allow the applicant insight in a document or to make a copy of the document in the language in which the request was submitted (Para 4 of Article 18);
6. Refuses to receive a request, fails to inform the applicant of possessing the information, or fails to allow insight in a document containing the requested information, i.e. does not deliver a copy of the document in an appropriate way, fails to issue a decision on rejecting the request and refuses to provide the applicants with the necessary assistance for exercising their rights (Sub-Para 1 of Para 2 of Article 38).

Article 47

A fine between 5,000 and 50,000 dinars shall be imposed on the responsible person in a state body if that state body fails to publish a directory with the prescribed data on its work (Article 39).

Article 48

A fine between 5,000 and 50,000 dinars shall be imposed on the authorized person of a public authority in the event he/she fails to submit to the Commissioner an annual report with the prescribed data on the activities the authority undertook with the aim of implementing this Law (Article 43).

X Final Provisions

Article 49

Public authorities shall nominate the authorized persons for deciding on requests for free access of information of public importance within 30 days after this Law takes effect.

The National Assembly shall appoint the Commissioner within 45 days after this Law takes effect.

Article 50

This Law shall come into effect the eighth day upon publication in the "Official Gazette of the Republic of Serbia".