

Enhancing institutional capacities on freedom of expression and information in Bosnia and Herzegovina (EFEx)

REPORT

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Mapping and Gap Analysis Report on Freedom of Access to Information in Bosnia and Herzegovina

The role and responsibility of the Council of Europe in protecting freedom of expression has been underlined in the "Reykjavik Principles for Democracy", the [Reykjavík Declaration – United around our values](#).

Funded through the voluntary contribution of the Swedish International Development Cooperation Agency (Sida), the Project ["Enhancing Institutional Capacities on Freedom of Expression and Information in Bosnia and Herzegovina" \(EFEx\)](#) aims to enhance the protection of FoE and FoI in BiH by making a contribution towards human-rights based legal framework and practices, through enhancing the capacities of key duty bearers (the Ministry of Human Rights and Refugees - MHRR - and other institutions with responsibilities in this area) and right-holders representatives (media actors and CSOs), to integrate a human rights-based approach in their work.

The action builds on past and current Council of Europe (CoE) activities in the area of Freedom of Access to Information/Media and Freedom of Expression in BiH, including a pilot project funded by SIDA and implemented in 2019/2020.

The objective of this project will be achieved through three inter-connected components focusing on:

- (1) freedom of expression;
- (2) freedom of access to information and
- (3) capacity building of Ministry of Human Rights and Refugees

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Prepared within the Project Enhancing Institutional Capacities on Freedom of Expression and Information in Bosnia and Herzegovina (EFEx) by Ajla Škrbić, Council of Europe Consultant.

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I. Executive summary

This document provides a mapping of gaps and deficiencies within the legal framework concerning freedom of information (FoI) in Bosnia and Herzegovina, along with an analysis of the effectiveness of this legislation in practice.

The results of the research indicate that FoI landscape in Bosnia and Herzegovina faces numerous challenges and deficiencies, underscoring the urgent need for change in both legislative and practical aspects.

Current laws lack clarity and effectiveness, with the recent adoption of the FoI law at the State level making the likelihood of a new one improbable. Therefore, it is crucial to amend existing legislation, including entity-level laws, to address these shortcomings. The revisions are needed particularly in establishing an effective institutional framework for protecting and advancing the right to access information. Furthermore, there is a pressing need for substantial improvements in the practical implementation of the laws. To ensure alignment with international standards, the active involvement of civil society and experts in the whole process of amending the laws and their implementation is essential.

In view of the above, the final chapter of the paper contains recommendations for the development of a quality framework for the exercise of the right to FoI in Bosnia and Herzegovina, along with recommendations to improve the practical implementation of this framework. These recommendations are aimed at all key stakeholders in Bosnia and Herzegovina in the field of FoI.

For legislators, it is advised to engage with experts, civil society organisations, and the Working Group on Monitoring and Reporting on Freedom of Expression and Freedom of Information in Bosnia and Herzegovina to either amend or introduce new FoI legislation, emphasising clarity, simplicity, and effectiveness. Legislation must align with international standards and be uniform across the State.

The Working Group on Monitoring and Reporting on Freedom of Expression and Freedom of Information in Bosnia and Herzegovina is encouraged to operate as a cross-sectoral platform, focusing on human rights monitoring and reporting in FoI. This involves knowledge-sharing, data collection, and the development of monitoring methodologies aligned with international standards.

Public authorities are advised to appoint individuals or departments responsible for managing FoI requests and evaluating potential harm or public interest when disclosing information. The practice of prohibiting FoI when partial access is recommended should cease, and decisions restricting FoI must undergo timely review.

Civil society is encouraged to initiate discussions on legislative amendments, collaborate with the above-mentioned Working Group, raise awareness about FoI, highlight practical challenges through public events, oversee FoI implementation, and take legal action against FoI violations.

In conclusion, establishing a robust human right monitoring and reporting mechanism for FoI, characterised by effective multisectoral cooperation and coordination, is fundamental to enhance the FoI framework in Bosnia and Herzegovina.

II. Introduction

Freedom of information (FoI) is a cornerstone of any democratic society, representing the right of the public to access information held by public authorities. This right facilitates democratic scrutiny, transparency, and monitoring. It is essential to the self-development of people, and it strengthens public authorities' legitimacy in the eyes of the public.¹ Hence, domestic legal systems should effectively enforce the right of everyone to access documents held or produced by public authorities.²

In Bosnia and Herzegovina, the constitutional, legal, and institutional framework for safeguarding FoI already exists. Nevertheless, there are both legislative gaps and implementation shortfalls in this domain.³ The legislation remains fragmented, failing to meet international standards, and the prevailing practice is marked by public authorities consistently interpreting the laws in a manner that prioritises private interests over public concerns.⁴

Therefore, this paper explores gaps and deficiencies within the legal framework regarding FoI in Bosnia and Herzegovina and the implementation of this legislation. The aim is to contribute to the enhancement of the protection of freedom of expression (FoE) and information (FoI) in Bosnia and Herzegovina by contributing towards a human rights-based legal framework and practices, which is the main objective of the project "[Enhancing Institutional Capacities on Freedom of Expression and Information in Bosnia and Herzegovina](#)" (EFEx). The project focuses on strengthening FoE and FoI monitoring and reporting capacities, including facilitating the work of the Cross-Sectoral Working Group on Monitoring and Reporting on Freedom of Expression and Freedom of Information in Bosnia and Herzegovina, established by the Ministry of Human Rights

¹ Council of Europe, [Convention on Access to Official Documents, CETS 205 \(Tromsø Convention\)](#), entered into force on 1 December 2020, preamble.

² [Explanatory report to the Council of Europe Convention on Access to Official Documents \(Tromsø Convention\)](#), adopted by the Committee of Ministers on 27 November 2008 at the 1042bis meeting of the Ministers' Deputies, preamble, paragraph 1. See also: Inter-American Court of Human Rights (IACtHR), Order, [Case of Claude-Reyes et al. v. Chile](#), Judgment of September 19, 2006, which confirms a general right of access to state-held information.

³ See, e.g., the 2021 and 2022 reports from the European Commission, available at: https://neighbourhood-enlargement.ec.europa.eu/bosnia-and-herzegovina-report-2021_en (chapters Public administration reform, Rule of law and fundamental rights, Economic criteria, and Environment and climate change), https://neighbourhood-enlargement.ec.europa.eu/bosnia-and-herzegovina-report-2022_en (chapters Public administration reform and Rule of law and fundamental rights).

⁴ Ibid.

and Refugees to support cross-sectoral and cross-institutional cooperation and accordingly to strengthen the implementation of international standards and obligations in this area.

The Working Group is intended to enhance domestic capacity to monitor, analyse, and report on Bosnia and Herzegovina's compliance with international obligations in the areas of FoE and FoI. The Working Group will not only contribute to the development of reporting guidelines on FoE and FoI but will also work on a Pilot Report covering these two topics as sub-sections through an analysis and a set of recommendations. This Mapping and Gap Analysis will feed into the report serving both as a reference point and a basis for capacity-building.

The research relies on secondary sources, encompassing:

- 1) a content analysis of the relevant legislation in Bosnia and Herzegovina and international standards⁵ and
- 2) an assessment of the conduct of relevant public authorities in Bosnia and Herzegovina.

As for the latter, it is evaluated through various means, including reports from the public authorities responsible for overseeing FoI in Bosnia and Herzegovina, reports from international, regional, and domestic organisations actively engaged in this field, including the Baseline Evaluation Report on the implementation of the Council of Europe Convention on access to official documents (CETS No. 205 –Tromsø Convention) in respect of Bosnia and Herzegovina (Baseline Evaluation Report),⁶ court rulings (both domestic and international), complaints

⁵ One of the most important international documents related to FoI is the Tromsø Convention. It came into force on 1 December 2020 and it is the world's first binding convention on access to information held by public bodies. At present, the Tromsø Convention has been ratified by sixteen states, while another five have signed it but have not yet completed the ratification process. (Chart of signatures and ratifications of Treaty 205, available [here](#). Still, the Convention holds significance even in countries where the instrument is not legally binding. See, e.g., the case of [Šeks v. Croatia](#) (2022), in which the European Court of Human Rights referenced articles from the Tromsø Convention, despite Croatia neither having signed nor ratified the Convention. ECtHR, [Šeks v. Croatia](#), Application No. 39325/20, judgment of 3 February 2022.

The Tromsø Convention was ratified by the Presidency of Bosnia and Herzegovina at its 13th regular session in 2011. The decision on ratification was published in the Official Gazette of BiH – International Treaties, 10/11.

Numerous other international and regional documents underscore the significance of FoI, including the African Charter on Human and Peoples' Rights (1986), the Council of Europe Committee of Ministers' Recommendation Rec(2002)2 to the member states on Access to Official Documents, Declaration of Principles on Freedom of Expression in Africa of the African Commission on Human and Peoples' Rights (2002), Declaration of the Committee of Ministers of the Council of Europe on the freedom of expression and information (1982), European Union's Charter of Fundamental Rights (2009), International Covenant on Civil and Political Rights (1966), Regulation (EC) No 1049/2001 of the European Parliament and the Council regarding public access to European Parliament, Council, and Commission documents, The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 (ETS No. 108), The UN Human Rights Committee General Comment no. 34 (2011), The United Nations Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998) (Aarhus Convention), and the Universal Declaration of Human Rights (1948). The European Convention on Human Rights does not explicitly affirm the right to access official documents and information. However, recent case law from the European Court of Human Rights suggests that Article 10 of the Convention implies a right to access documents held by public authorities. See, e.g., ECtHR, [Šeks v. Croatia](#), Application No. 39325/20, judgment of 3 February 2022; ECtHR, [Centre for Democracy and the Rule of Law v. Ukraine](#), decision of 3 March 2020; ECtHR, [Magyar Helsinki Bizottság v. Hungary](#), Application No. 18030/11, judgment of 8 November 2016; ECtHR, [Youth Initiative for Human Rights v. Serbia](#), Application No. 48135/06, judgment of 25 June 2013; ECtHR, [Társaság a Szabadságjogokért \(Hungarian Civil Liberties Union – TASZ\) v. Hungary](#), Application No. 37374/05, judgment of 14 April 2009.

⁶ Available [here](#).

submitted to the Institution of Human Rights Ombudsman of Bosnia and Herzegovina (Ombudsman), media reports, and other publicly available data.

Following the introduction, the paper first provides an overview of the legislation of Bosnia and Herzegovina and bodies responsible for ensuring Fol, with a specific focus on the recently enacted state-level Freedom of Access to Information Act (2023 FOIA). Subsequently, the paper delves into the explanation of primary concerns discerned within the legislative framework and highlights key challenges encountered in practice. The paper ends with final observations and recommendations aimed at enhancing both legislation and practical implementation in the field of Fol in Bosnia and Herzegovina.

III. Overview of legislation and bodies responsible for ensuring freedom of information in Bosnia and Herzegovina

i. Key legislation

Bosnia and Herzegovina led the South East Europe as the first country to introduce Fol laws,⁷ initially at the State level in 2000, and subsequently with two laws adopted at the entity level in 2001. Upon their adoption, these laws incorporated highly progressive provisions. Over time, however, the scope of Fol expanded significantly, especially with the development of Internet and electronic media, prompting the necessity for revising and modernising the existing legislation.⁸

Currently, the main⁹ Fol framework in Bosnia and Herzegovina includes the already mentioned 2023 FOIA at the State level,¹⁰ the 2001 Freedom of Access to Information Act in the Federation of Bosnia and Herzegovina (2001 FOIA FBiH),¹¹ the 2001 Freedom of Access to Information Act in Republika Srpska (2001 FOIA RS),¹² and the Instruction for the Implementation of the Freedom of Access to Information Act in Bosnia and Herzegovina (Instruction of the BD) at the Brčko District of Bosnia and Herzegovina level.¹³

⁷ Most countries have relatively recent Fol laws, enacted in the last 25 years.

⁸ Council of Europe Group on Access to Information (AIG), Report submitted by Bosnia and Herzegovina pursuant to Article 14, paragraph 1 of the Tromsø Convention, Received by the Secretariat on 29 March 2022, p. 2, available [here](#).

⁹ There are other laws that apply to Fol. The 2023 FOIA, for instance, makes references to regulations concerning personal data protection, the Law on Prohibition of Discrimination in Bosnia and Herzegovina, the Law on Gender Equality in Bosnia and Herzegovina, regulations governing intellectual property rights, the Law on Protection of Classified Information in Bosnia and Herzegovina, and the Administrative Procedure Law. As a result, all these laws can affect access to Fol.

In some parts of the law, the excessive referencing of other regulations has been noted by the Ombudsman, the Personal Data Protection Agency in Bosnia and Herzegovina, and Transparency International in Bosnia and Herzegovina. They have pointed out, for instance, that it is unnecessary to explicitly state that public institutions must adhere to personal data protection regulations and that the Act should avoid favoring one right over another. See Report on Public Consultations Held with Stakeholders, available [here](#).

¹⁰ In force starting 13 September 2023. The Act is available [here](#).

¹¹ Available [here](#).

¹² Available [here](#).

¹³ Available [here](#).

The 2023 FOIA was enacted as a new law following several amendments to the 2000 Freedom of Access to Information Act in Bosnia and Herzegovina (2000 FOIA).¹⁴ The 2001 FOIA FBiH was amended only once in 2011,¹⁵ while the 2001 FOIA RS has remained unamended thus far. The Instruction of the BD has likewise remained unaltered and focuses on enhancing the effective implementation of the 2000 FOIA within the Brčko District. It addresses various issues related to proper law implementation and the determination of the costs of duplication services.

Considering that the 2023 FOIA was passed recently, came into effect on 13 September 2023, and that limited literature is available on it compared to the previous law and the entity-level laws, the primary focus in the following lines will be on this Act.

Various institutions in Bosnia and Herzegovina have initiated amendments and revisions to the 2000 FOIA and have also put forth proposals for new FOI laws on multiple occasions. These proposals, however, encountered significant opposition from international institutions, civil society, and journalists. The Draft Law that was eventually adopted was drafted by the Ministry of Justice of Bosnia and Herzegovina in early 2021. Public consultations on the proposed text were conducted from 16 February 2021 to 18 March 2021,¹⁶ which resulted in a number of comments pointing out deficiencies of the Draft Law. The latter was considered not in line with international standards and undermining established rights and achievements under the 2000 FOIA. However, the Ministry of Justice of Bosnia and Herzegovina concluded that none of these suggestions could be accepted, either partially or in their entirety.¹⁷ Therefore, the Parliamentary Assembly of Bosnia and Herzegovina included only one amendment proposed to the final Draft Law, rectifying a technical error in Article 38(3) that referred to non-existent paragraphs in Article 1.¹⁸ The Parliamentary Assembly of Bosnia and Herzegovina has not accepted other amendments even though they were in line with those of the Delegation of the European Union to Bosnia and Herzegovina.¹⁹ The Act was adopted on 30 August 2023 and subsequently published in the Official Gazette of Bosnia and Herzegovina No. 61/23. It came into effect on 13 September 2023.

¹⁴ The 2000 FOIA and its amendments are available [here](#).

¹⁵ Regarding the requirement to make decisions on information access requests and the authority responsible for reviewing appeals against such decisions. The Act and its amendment are available [here](#).

¹⁶ During this period, 16 participants in the public consultations submitted a total of 220 proposals and six comments on the proposed legislation.

¹⁷ The answers given by the Ministry of Justice of Bosnia and Herzegovina in response to the proposals submitted during the public consultations lack well-reasoned explanations. Specifically, a substantial number of proposals and comments received uniform responses, regardless of their unique content and nature. (See Report on Public Consultations Held with Stakeholders, available [here](#)).

¹⁸ Minutes from the session available [here](#).

¹⁹ In the House of Representatives session transcript, it is evident that all MPs received a letter from the Ambassador of the European Union to Bosnia and Herzegovina on 12 July 2023. The letter pointed out that the current Draft Law does not comply with the EU acquis and suggested necessary amendments. These are the same amendments that MP Šerif Špago proposed (session transcript available [here](#); amendments available [here](#)). Here, it is important to highlight that Bosnia and Herzegovina has committed to harmonising its legislation with the legal framework of the European Union.

ii. Oversight and enforcement mechanisms

Several bodies are responsible for ensuring Fol in Bosnia and Herzegovina at both the State and entity levels.

At the State level, every public authority is required to designate an Information Officer responsible for maintaining records of the use of Fol.²⁰ These records should be provided to the head of the public authority, the Appeals Board,²¹ and the Ombudsman on a quarterly basis.²² Moreover, the Information Officer is required to provide an annual report outlining the activities of the relevant public authority to the Council of Ministers of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, and the Ombudsman.²³

As for the appeals mechanism, the applicant requesting official documents can file an appeal with the Appeals Board against the decision of the public authority in the first-instance procedure, or in the case of administrative silence.²⁴ There is, however, no option to appeal the decision made by the Appeals Board; instead, one can initiate an administrative dispute before the Court of Bosnia and Herzegovina. The Council of Europe Access Info Group emphasised in its Baseline Evaluation Report that this is in accordance with Article 8 of the Tromsø Convention.²⁵

The Sector for Administration at the Ministry of Justice of Bosnia and Herzegovina oversees the enforcement of the 2023 FOIA with the precise scope of supervision and the measures that inspectors can enforce being outlined in Articles 38(1) and 43(1) of the 2023 FOIA. Should a public authority fail to comply with these measures, the Chief Administrative Inspector submits a report to the Council of Ministers of Bosnia and Herzegovina (in cases where the head of the public authority reports directly to the Council of Ministers of Bosnia and Herzegovina) and to the founder of the public authority.

²⁰ The deficiency of the 2023 FOIA lies, among others, in its failure to explicitly specify that the Information Officer is responsible for conducting the procedure when someone requests information from the public authority.

²¹ The Appeals Board is an already existing body within the Council of Ministers of Bosnia and Herzegovina. The novelty of the 2023 FOIA is that it grants this body, among other responsibilities, the authority to handle appeals in the second-instance proceedings in cases related to Fol.

²² Under the previous law, these reports were submitted to the Parliamentary Assembly of Bosnia and Herzegovina and the Ombudsman. According to the new law, the records should include the number of received requests for access to information, the types of information requested, the number of issued decisions, the number of final decisions, the number of requests for which no decisions were made, and the procedures followed by public authorities. They should also include an analysis and assessment of the exercise of Fol and the re-use of documents held by public authority. Additionally, the records should contain data and analysis regarding appeals, inspection supervision, and offenses committed due to violations of Fol and the right to re-use documents. Finally, they should include proposals for measures to rectify deficiencies and irregularities in the field of Fol. It seems that the 2023 FOIA uses the terms 'record' and 'report' interchangeably. Regrettably, however, the Act does not provide any specific guidelines regarding their format.

²³ The Ombudsman also compiles its own annual Fol report.

²⁴ The Appeals Board is also tasked to propose measures to public authorities for improving Fol implementation and to initiate the adoption, amendment, and revision of regulations.

²⁵ Baseline Evaluation Report, paragraph 63, p. 24

At the entity level, the situation differs somewhat and is more in line with the 2000 FOIA. The entity ministries of justice are responsible for undertaking appropriate measures to ensure the proper and effective implementation of the Fol laws. In addition, instead of placing the responsibility for maintaining records on Fol with the Information Officer, the laws of the two entities broadly stipulate that public authorities publish them. Importantly, however, the Ombudsman plays a broader role in the Fol field at the entity levels. Among other things, this institution may consider developing guidelines and general recommendations to facilitate the implementation and administration of the laws on Fol and propose instructions for implementing these laws to all competent authorities within the entities.

IV. Primary concerns identified within the legislative framework

As highlighted in the preceding chapter, entity-level laws are largely aligned with the 2000 FOIA. However, a recently enacted State-level Fol law differs notably from its predecessor. Consequently, this chapter focuses on comparing the former (2000) and the current (2023) State-level Fol laws. The objective is to assess the extent to which the 2023 FOIA represents novel legislation and how much it integrates provisions from the 2000 FOIA. More specifically, the analysis aims to shed light on where the new law introduces changes (and in what direction), as well as areas where continuity with the previous law(s) is maintained.

The specific focus is on scope, forms of access, timeframes for responses and other aspects of processing requests, limitations and how to apply them, and appeal procedures and oversight bodies.

i. Scope

One difference between the two laws is certainly in their subject matter. The new law has a wider scope and not only regulates the right to access information held by public bodies but also the re-use of documents held by these authorities.²⁶

Furthermore, although the new law introduces some additional definitions compared to its predecessor, it still lacks comprehensive definitions for some specific terms²⁷ and sufficient detail for others.²⁸

Finally, a concern regarding the scope of application of the 2023 FOIA is that information classified as confidential may be completely excluded. Specifically, Article 2(2) stipulates that

²⁶ Therefore, the title of the Act should be reconsidered, considering that the Act also addresses the matter of re-using public documents.

²⁷ The Delegation of the European Union to Bosnia and Herzegovina and the Personal Data Protection Agency in Bosnia and Herzegovina voiced their criticism regarding this aspect and recommended that the Act should include definitions for terms like ‘anonymisation’, ‘dynamic data’, ‘research data’, ‘high-value datasets’, and ‘reasonable return on investments’. They proposed that these terms could align with Article 2 of Directive (EU) 2019/1024 of the European Parliament and of the Council, available at: [Directive - 2019/1024 - EN - psi directive - EUR-Lex \(europa.eu\)](#).

²⁸ For instance, in Article 14(2).

the Act does not apply to information subject to confidentiality requirements in accordance with special regulations governing confidential information. However, it is unclear which information falls under this provision and which rules govern access to it. The Baseline Evaluation Report notes that a typical practical consequence of excluding certain official documents from the scope of a FoI legal framework is that these documents may not be disclosed under this framework, as there is no recognised right of access to them.²⁹ This is similar to the practical effect of absolute statutory exemptions to FoI, which are automatically applied by the public authority holding such information, without considering the public interest test or balancing public access to official documents with protected interests.³⁰ According to international standards, however, unconditional exemptions should only apply to extremely sensitive information, and statutory absolute exemptions should be kept to a minimum.

ii. Form of access

What both laws have in common (and lack proper regulation for) is that they grant access to information held by public authorities only when the request is written in one of the official languages of Bosnia and Herzegovina and includes the requester's name and surname. The new law, however, should have incorporated clauses permitting requests to be made and information to be provided orally³¹ and, if possible, anonymously.³²

Still, the 'proactive disclosure of information', which is mandatory in the new law and did not exist in the previous one, should enhance institutional transparency and facilitate access to information of public importance. It should particularly pertain to frequently requested information.

The new law additionally envisages the creation of a Central Public Information Portal as a publicly accessible online tool ensuring users equal and uninterrupted access to information stored in electronic document databases and/or physical document collections. The responsibility for maintaining the Central Public Information Portal lies with the General Secretariat of the Council of Ministers of Bosnia and Herzegovina. Nevertheless, the law lacks the inclusion of even fundamental principles governing the establishment and structure of the Central Public Information Portal.

Finally, the new law introduces the (new) request registry (Article 18).

iii. Timeframes for responses and other aspects of processing requests

²⁹ Baseline Evaluation Report, paragraph 15, p. 10.

³⁰ Ibid.

³¹ As, for instance, in Finland and Armenia. However, it should be mentioned that Article 22(1)(b)(1) contains a somewhat unclear possibility of "direct provision of the information". It remains unclear whether this implies the option to request and receive information orally.

³² Except when disclosure of identity is essential to process the request.

The Tromsø Convention does not obligate Parties to grant applicants the right to submit requests anonymously, but it encourages this by including an optional provision (Article 4(2) of the Tromsø Convention).

Both the new and old laws set various deadlines. However, establishing a strict maximum time limit should not encourage public authorities to postpone the release of new, updated, and/or requested information until that maximum limit is reached.³³

The new law, unlike the previous one, mandates that public bodies regularly publish and update information within their purview on their websites within 15 days of the information's creation.³⁴ This aligns with the Tromsø Convention, which stipulates that a public authority shall, on its own initiative and where appropriate, take the necessary measures to make public the official documents it holds (Article 10). However, the Tromsø Convention does not specify any timeframe for this obligation. Nonetheless, it establishes a general standard earlier in Article 5(4), stating that decisions on requests for information must be made, communicated, and executed “as soon as possible or within a reasonable time limit specified beforehand”. The Baseline Evaluation Report has concluded that the 15-day timeframe in the 2023 FOIA essentially meets this requirement. However, the Ombudsman and SIGMA have both emphasized that this timeframe should be shorter, recommending it be reduced to 7 days.³⁵

Furthermore, both in the new and old laws, there is a maximum deadline of 15 days from the receipt of a valid request, within which a decision³⁶ on Fol must be made.³⁷ The same deadline is provided for the re-use of documents.³⁸

iv. Limitations and their application

In addition to the limitations present in the 2000 FOIA (such as defence and security interests, and commercial interests), the 2023 FOIA extends the list of exceptions and potential limitations concerning access to information held by public authorities.³⁹ Nevertheless, both laws stipulate

³³ The approach of having a law that only stipulates that information should be published “as soon as possible” – which is considered progressive in some countries – is inadequate in Bosnia and Herzegovina, as underlined by the Legislative Office in its feedback on the draft of the new law. See [here](#). This is because the absence of a legal maximum could lead to situations where a public authority delays its obligation to disclose information for an extended period. In contrast, Sweden's law does not specify a particular timeframe but simply states that if access is granted, the document “shall be made available on request forthwith, or as soon as possible”. See also cases before the European Court of Human Rights, such as [Guseva v. Bulgaria](#) and [Observer and Guardian v. the United Kingdom](#), where the Court asserts that delaying the publication of news may effectively strip the news of its entire worth and significance. ECtHR, [Guseva v. Bulgaria](#), Application No. 6987/07, judgment of 17 February 2015; [Observer and Guardian v. the United Kingdom](#), Application No. 13585/88, judgment of 26 November 1991.

³⁴ This obligation is part of the requirement for « proactive disclosure of information ».

³⁵ The Ombudsman, Special report on experiences in the implementation of legislation governing freedom of access to information in Bosnia and Herzegovina, December 2019, Annex III, point 4, p. 6, available [here](#).

³⁶ In the 2000 FOIA, this was done through a letter.

³⁷ In the 2023 FOIA, the 15-day period can be extended by an additional five working days if the requester seeks many different pieces of information.

In contrast, see, e.g., the 2014 Law in Albania, which establishes a 10-working-day timeframe for initial responses.

³⁸ However, the timeframe may be prolonged 20 extra days in case a more extended period is necessary for information gathering.

³⁹ According to Article 19 of the 2023 FOIA – and with certain exceptions – access to information may be restricted:

- with the aim of protecting the privacy of natural persons and the personal data protection of domestic and foreign natural and legal persons,

that, when making decisions, public bodies must consider two principles: the public interest test⁴⁰ and the balance between public access to official documents and protected interests.⁴¹ The explanation of the criteria for implementing two principles in both laws is valuable, but it should not serve as a substitute for a comprehensive evaluation of the principles on a case-by-case basis. Additionally, according to the new law, the public body 'may' – meaning it is not obliged – disclose information even when its publication is justified by these two principles.

When limitation only applies to some of the information in a document, the 2000 FOIA requires that the rest of the document should be released only if the remainder of the information is not incomprehensible. The 2023 FOIA does not acknowledge this exception and mandates the publication of the remainder of the information regardless. That should be considered as an improvement.⁴²

Finally, a gap in both laws is the absence of mandatory training for public authorities on how to apply the limitations prescribed in laws, and how to remove part of the information if necessary.

Generally, it seems that the 2023 FOIA model resembles the one in Croatia; however, Croatia has an independent body for appeals and oversight in this field. In Bosnia and Herzegovina, on the other hand, the list of exceptions has been expanded without an independent oversight institution. This could potentially lead to a situation where accessing information held by public bodies becomes excessively restricted.

v. Appeal procedures and oversight bodies

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- if it can reasonably be expected that enabling access to information would cause serious damage to the following interests: national security and international relations, public order, if the publication of the information would hinder the work of the authority that performs administrative inspection, control or supervision of the legality of work and acts, commercial and other economic interests, as well as economic, monetary, and exchange rate policies, environment.
 - if the information in question could endanger the equality of parties in court proceedings, the efficiency of the judiciary, or proceedings conducted by the competent authorities in previous criminal or disciplinary proceedings, as well as when the publication of the information would make it impossible to effectively, independently, and impartially execute the decision or sanction of Bosnia and Herzegovina's institution,
 - if the information in question is in the process of being created within one or more of Bosnia and Herzegovina's institutions, working groups, or commissions, and the publication of part of the information before the completion of the preparation of the complete and final information could seriously disrupt the process of its creation,
 - if the information is a tax secret,
 - in case of the re-use of information – when the information is protected by regulations governing intellectual property rights.

⁴⁰ Public interest test to determine whether the public interest outweighs other considerations (such as classification of information as confidential) to mandate provision of information.

⁴¹ This is in line with Article 3, paragraph 2 of the Tromsø Convention. Namely, if public access to an official document does not cause any harm to one of the protected interests, there should be no limitations on access to that document. If it might cause harm to one of these interests, the document should still be released if the public interest in having access to the document overrides the protected interest. See Article 14(2) of the Spanish Law, which stands as best example of the application of these two principles. The Law is available [here](#).

⁴² Regarding the possibility of partial access, see, e.g., the Tromsø Convention, the Albanian Law on FoI, and the case of *Guseva v. Bulgaria* before the European Court of Human Rights. ECtHR, *Guseva v. Bulgaria*, Application No. 6987/07, judgment of 17 February 2015.

The primary criticism of the appeal process, as emphasised by the Ombudsman, civil society and some international organisations, centers on two aspects: the establishment of the Appeals Board within the Council of Ministers of Bosnia and Herzegovina as the second-level authority and the reduced role of the Ombudsman. Specifically, these bodies have emphasised that the Appeals Board cannot be regarded as an independent entity since its members are appointed by the Council of Ministers of Bosnia and Herzegovina upon the recommendation of the Minister of Justice of Bosnia and Herzegovina.⁴³ The Directorate for European Integration also highlighted that this solution does not align with Article 4(4) of Directive (EU) 2019/1024 of the European Parliament and of the Council, which stipulates that the means of redress shall include the option of review by "an impartial review body with the appropriate expertise".⁴⁴ However, Access Info Group, in its Baseline Evaluation Report, argued that the solution is consistent with the Tromsø Convention, as there is an independent review of appeals before the Court of Bosnia and Herzegovina.⁴⁵

Regardless of whether the criticism of the independence of the Appeals Board is justified and in accordance with international standards, this body has already faced operational challenges that led to procedural delays, missed deadlines, and subsequent human rights infringements, as emphasised by several civil society and international organisations. In addition, it lacks the administrative capacity to effectively carry out all the responsibilities outlined in the new law, including proposing measures for enhancing the right to access information and the re-use of public documents. Consequently, as proposed by these organisations, a more effective solution might involve extending the Ombudsman's jurisdiction in this domain or creating an entirely new, independent body equipped with the authority and capabilities to handle and enforce appeals related to FoI. Courts are also an option for appealing and challenging decisions on FoI, but due to the associated legal costs and the often-slow pace of their work in practice, it is preferable to provide an alternative avenue for applicants requesting official documents.⁴⁶

Currently, the new law allows for the submission of an appeal to the Appeals Board within 15 days of receiving the decision denying access to information (or in case of administrative silence). The Appeals Board is then obliged to make its decision within 30 days of receiving the appeal. If it fails to do so, the requester can initiate administrative proceedings before the Court of Bosnia and Herzegovina (after which the Court has a deadline of 60 days to decide on the lawsuit).⁴⁷

⁴³ Even the Legislative Office has highlighted that the Appeals Board is not an independent body. Information available [here](#). Nonetheless, the Ministry of Justice of Bosnia and Herzegovina asserts that the proposed solution involving the Appeals Board as the second-level authority is preferable to creating a new body since the latter would impose an additional financial burden on the country's budget. Still, it remains unclear why the Ministry did not consider the Ombudsman, who was the sole independent entity overseeing the 2000 FOIA, to be a suitable solution.

⁴⁴ Its comments available [here](#).

⁴⁵ Baseline Evaluation Report, paragraph 63, p. 24.

⁴⁶ The limitation of the Ombudsman model lies in the fact that its recommendations are non-binding, which greatly limits their enforceability. As a result, it would be important to empower the Ombudsman with a specific mandate in FoI that includes the authority to issue binding decisions and impose sanctions.

⁴⁷ The identical procedure is also applicable for the re-use of documents. However, these legally mandated timeframes are unrealistic in practice (see chapter 4.3. Appeal procedures).

The 2000 FOIA mandated the same procedures, excluding the presence of the Appeals Board, but allowing the possibility of appealing to the head of the competent public authority and the Ombudsman.⁴⁸

V. Key challenges in practice

Given that the 2023 FOIA has taken effect only in mid-September 2023, it has not been possible to evaluate the gaps and deficiencies in its implementation. Consequently, this chapter addresses the application of other FOI laws in Bosnia and Herzegovina, with a focus on long-standing issues that have persisted throughout the entire territory of Bosnia and Herzegovina. It is presumed that these issues will continue to pose significant challenges in the implementation of the 2023 FOIA.

i. Form-related challenges

Based on the Ombudsman's analysis, it appears that only half of the public bodies adhere to FOI laws.⁴⁹ The process of obtaining information is often protracted, which can deter requesters from persisting in their efforts to exercise their right to access public information.

One of the major concerns is the frequent failure of public bodies to adhere to the prescribed response forms when answering requesters. Additionally, the practice of scrutinising the justification or requesting an explanation for requests for information persists.⁵⁰

In addition, public authorities note that applicants are increasingly submitting requests seeking analyses, document comparisons, and legal interpretations, instead of information or documents that the public body held in its possession.⁵¹ Additionally, due to understaffing and the volume of work within public authorities, there is a challenge in preparing requested information.⁵² In this regard it is important to incorporate training of responsible officials on the appropriate classification of submissions to public authorities.

ii. The public interest test and legally established limitations

Most of the challenges in applying FOI laws revolve around the public interest test and vaguely defined limitations for access to information held by public authorities.

The 2000 and 2023 FOIAs lack a detailed explanation of the process for conducting the public interest test, which has proven to be a significant drawback.⁵³ However, the 2023 FOIA provides

⁴⁸ For requests processed under the exemption for confidential commercial information and/or public interest, this 15-day deadline is extended by an additional period of up to 15 days.

⁴⁹ The Ombudsman, Special report on experiences in the implementation of legislation governing freedom of access to information in Bosnia and Herzegovina, December 2019, available [here](#).

⁵⁰ *Ibid*, p. 86.

⁵¹ *Ibid*, p. 70.

⁵² *Ibid*.

⁵³ *Ibid.*, p. 78.

certain indications on the basis of which a public authority can evaluate whether there is an overriding public interest in disclosure [Article 20(2)]. Still, public bodies have been refusing access to information either without conducting the test or without providing any clarification of how they conducted it.⁵⁴ Additionally, when provided, the rationale is very often the same for different requests and is related to the protection of personal data, protection of commercial interests, or the absence of public interest.⁵⁵

As for the challenges associated with the defined limitations, the most significant one is related to privacy protection. Public bodies interpret this limitation differently. For some, it encompasses all information related to a third party (individual) from which the identity of that person has been or can be established. Others consider it as information that intrudes upon the personal interests of third parties. Additionally, some broaden the definition of privacy protection to include any information about public funds allocated for social benefits, healthcare, unemployment protection, and any information related to the performance of public functions, along with all judicial decisions not included in the restricted list of information.⁵⁶ The majority refer to the definition provided in the Law on Protection of Personal Data in Bosnia and Herzegovina. They, moreover, make limited use of the possibility of partial access to information.⁵⁷ Their primary focus is to protect the rights of third parties, often without considering the public interest.⁵⁸

Therefore, there is a need for a more detailed explanation of both the limitations and the procedure for conducting the public interest test within the laws. Additionally, providing specialised training to individuals tasked with handling FoI matters within public authorities would contribute to the effective implementation of the legislation.

iii. Appeal procedures

In recent years, and particularly since 2015,⁵⁹ there has been a significant increase in complaints submitted to the Ombudsman, alleging violations of the right to access information. Furthermore, there has been a rise in numbers of administrative disputes on this matter too.⁶⁰ It is challenging to definitively ascertain whether this increase in complaints reflects heightened

⁵⁴ Transparency International in Bosnia and Herzegovina, Izvještaj o primjeni Zakona o slobodi pristupa informacijama u 2021. godini: Rezultati istraživanja praćenja primjene Zakona o slobodi pristupa informacijama na svim nivoima vlasti u Bosni i Hercegovini sprovedenog u prvih devet mjeseci tekuće godine, 2021, available [here](#).

⁵⁵ Transparency International in Bosnia and Herzegovina, Primjena Zakona o slobodi pristupa informacijama u BiH, 2022, available [here](#).

⁵⁶ The Ombudsman, Special report on experiences in the implementation of legislation governing freedom of access to information in Bosnia and Herzegovina, December 2019, pp. 75-76, available [here](#).

⁵⁷ *Ibid.*, p. 77. Namely, if a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to the remainder of the information it contains (Article 6, paragraph 2 of the Tromsø Convention).

⁵⁸ *Ibid.*, p. 76.

⁵⁹ *Ibid.*, p. 15.

⁶⁰ Over the past 12 years, only the Transparency International in Bosnia and Herzegovina initiated more than 200 administrative disputes due to the improper application of FoI laws at all levels in Bosnia and Herzegovina. (Transparency International in Bosnia and Herzegovina, Primjena Zakona o slobodi pristupa informacijama u BiH, 2022, available [here](#)).

public awareness of the right to access information or deteriorating conduct by public authorities. It seems likely that both factors may have contributed to this trend.

One of the initial challenges in appeal procedures is related to the failure of public bodies to adequately inform requesters about their right to file an appeal and initiate administrative proceedings.⁶¹ Moreover, when cases do reach the appeal stage, the decision-making process frequently experiences delays.⁶² Additionally, when eventually delivered, final decisions often lack some of the legally mandated elements, such as an introduction, the operative part of the judgment, the reasoning, and the notice of legal remedy. What is particularly concerning, however, is that in numerous instances where applicants succeeded, request compliance remained unfulfilled. This situation has prompted journalists and civil society to emphasise the necessity of establishing an independent body to handle appeals and oversee the implementation of FoI laws.⁶³

VI. Concluding observations and recommendations

The exercise of the right to access public information is a fundamental pillar of a democratic society, serving as a litmus test for the country's commitment to human rights and transparency. This right imposes an obligation upon the State to ensure that everyone can freely access public information. However, it may be subject to restrictions aimed at protecting the important State values and freedoms of others.

In Bosnia and Herzegovina, there is a plethora of challenges and deficiencies in the field of FoI, demonstrating the pressing need for improvement, both in terms of legislation and practice.

Practice reveals that current laws at all levels lack clarity, simplicity, and effectiveness when it comes to the aspects analysed in this paper. Given that the 2023 FOIA was only recently adopted, the prospect of enacting a new law seems unlikely. Therefore, amending the existing legislation (including FoI laws at the entity level) is suggested to fix shortcomings. Civil society and experts should be actively involved in this process to ensure that any changes align with international standards.

The amendments should lead to substantial improvements, especially concerning the implementation of limitations and the public interest test, as well as in terms of the institutional framework for protecting and advancing FoI. Public bodies are already legally required to evaluate, on a case-by-case basis, whether publication of information might pose potential harm

⁶¹ The Ombudsman, Special report on experiences in the implementation of legislation governing freedom of access to information in Bosnia and Herzegovina, December 2019, p. 79, available [here](#).

⁶² The duration of the disputes varies depending on case complexity and the specific courts involved, with an average wait of approximately two years for a first-instance court decision. However, it is common for legal proceedings to extend well beyond this timeframe. (Transparency International in Bosnia and Herzegovina, *Primjena Zakona o slobodi pristupa informacijama u BiH*, 2022, available [here](#)).

⁶³ Selma Učanbarlić, *Zakon o slobodi pristupa informacijama u Bosni i Hercegovini: prednosti i mane postojećeg Zakona, (ne)transparentnost institucija i analiza predloženih izmjena Zakona*, 2021, available [here](#).

to individuals, or if there is an overriding public interest in disclosing it. This obligation must be consistently implemented in practice. Additionally, either a new body needs to be created for handling appeals in the appellate procedure, or the existing one needs to be strengthened. Finally, the review of any decision restricting FoI must be delivered timely, in accordance with the existing legal requirement.

To achieve this, mandatory and regular training of individuals tasked with handling FoI matters within public authorities is necessary. Awareness-raising campaigns are equally vital for civil society and citizens. Society as a whole should recognise the significance of FoI, and this should be accompanied by citizens initiating proceedings for FoI violations and civil society possessing the capacity to monitor FoI regulations and practices. The latter includes regularly updating and informing both domestic and international audiences about these matters. Taking into account, however, that previous suggestions from both international and domestic entities have been largely disregarded by public authorities, it is essential to enhance their alignment with the recommendations of international and domestic experts. Fostering partnerships between public bodies and civil society can be beneficial in making this goal achievable.

In conclusion, the establishment of a robust human rights monitoring and reporting mechanism for FoI, characterised by effective multisectoral cooperation and coordination, stands as a fundamental building block for enhancing the FoI framework in Bosnia and Herzegovina.

Recommendations to legislators:

- Engage in consultations with experts, civil society organisations, and the Working Group on Monitoring and Reporting on Freedom of Expression and Freedom of Information in Bosnia and Herzegovina to amend existing or introduce new FoI legislation. The amendments / new law(s) should focus on improving clarity, simplicity, and effectiveness.
- Ensure that the new legislation is in line with international standards.
- Establish uniform FoI laws in all parts of Bosnia and Herzegovina.
- Enhance institutional framework and establish an effective structure for protecting and advancing the right to access information. This should include clear provisions on the roles and responsibilities of public authorities, Information Officers, and oversight bodies.
- Enforce mandatory explanations and timely delivery of FoI decisions.
- Strengthen oversight and appeal mechanisms. Consider creating an independent body for appeals and oversight in the field of FoI to manage appeals and ensure the enforcement of FoI laws. Alternatively, strengthen existing bodies to enhance their capabilities.

Recommendations to the Working Group on Monitoring and Reporting on Freedom of Expression and Freedom of Information in Bosnia and Herzegovina:

- Operate as a cross-sectoral and inter-institutional platform for information exchange and the development of a more dynamic and collaborative human rights monitoring and reporting approach in FoI in Bosnia and Herzegovina. This includes fostering the protection and

advancement of Fol by facilitating cross-sectoral awareness, knowledge, methodological skills, and capacity building.

- Participate in, support, and contribute to accurate and reliable data collection, organisation, and analysis pertaining to Fol.
- Evaluate and endorse the adoption, operation, testing, and refinement of monitoring and reporting methodologies, models, and tools for Fol. Develop new reporting guidelines and produce a pilot report based on this analysis and the new guidelines.
- Develop a detailed procedure for conducting the public interest test.
- Contribute to the creation and dissemination of high-quality domestic information papers, including pilot projects, and other outputs related to domestic and international reporting on Fol, in collaboration with the Ministry of Human Rights and Refugees of Bosnia and Herzegovina and other relevant ministries and public bodies.
- Support the identification and planning of training and capacity development needs for public institutions and civil society across Bosnia and Herzegovina in the context of Fol, both substantively and in terms of monitoring and reporting, and especially on balancing access to information and personal data protection.
- Advocate for and encourage the establishment of a sustainable, enduring hub for government-civil society collaboration across Bosnia and Herzegovina in the realm of monitoring, reporting, protection, and promotion of Fol. Initiate regular consultations with civil society organisations regarding Fol, aiming to identify practical issues and collaboratively find solutions. This concerns the identification of key focal points, the enhancement of communication and coordination, including by developing a clear protocol for communication concerning Fol, and facilitating the engagement of all stakeholders.

Recommendations to public authorities:

- Appoint an individual or department responsible for managing Fol requests and gathering essential data for reporting purposes.
- Evaluate, on a case-by-case basis, whether the publication of certain information might pose potential harm to individuals or if there is an overriding public interest in disclosing the information.
- Cease the practice of prohibiting Fol when partial access to information is recommended.
- Ensure that any decision restricting Fol is subject to timely review and that requesters are promptly informed of the outcome.
- Implement regular and mandatory training programs led by experts specialising in Fol and aimed at individuals tasked with handling Fol matters. Ensure that these training sessions incorporate international standards and the case-law of the European Court of Human Rights.
- Develop standard transparency programs that balance the protection of personal data with the goal of increasing transparency in public institutions, fostering both accountability and the responsible handling of sensitive information.

Recommendations to civil society:

- Start discussions regarding potential amendments to existing laws or the introduction of new legislation concerning the right to Fol.
- Collaborate with the Working Group on Monitoring and Reporting on Freedom of Expression and Freedom of Information in Bosnia and Herzegovina to formulate guidelines for reporting and monitoring.
- Promote awareness among citizens and public authorities about the significance of Fol, their rights, and the legal framework governing it.
- Arrange public events to highlight challenges encountered in the practical application of Fol.
- Consistently oversee the implementation of practices and regulations related to Fol, regularly disseminating information to both domestic and international audiences.
- Take action against violations of the right to Fol through appropriate legal proceedings.