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Summary of the Legal Framework on Access to Public Information in Georgia

30 June 2008, Signagi
2 July 2008, Kutaisi
3 July 2008, Batumi

Prepared by:

Tamar Gurchiani
Council of Europe Expert (Georgia)

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For any additional information please contact:

Corruption and Fraud Unit
Economic Crime Division
Directorate of Co-operation – DG-HL
Council of Europe
F-67075 Strasbourg Cedex
Tel +33 3 8841 2354/Fax +33 3 8841 3955
Email: tanya.peshovska@coe.int
Web: www.coe.int/economiccrime (www.coe.int/gepac)

Introduction

The Council of Europe organised, in the framework of GEPAC, three regional workshops on Public Access to Information in Signagi (30 June 2008), Kutaisi (2 July 2008) and Batumi (3 July 2008), Georgia. The aim of the meetings was to present the legal and practical framework/solutions for efficient and lawful dissemination of public information to representatives of local authorities. An interactive methodology was applied at the meetings in the form of discussions and work in groups. Participants undertook practical exercises, namely discussion on freedom of information (FOI) request and making a decision on providing information, and discussion of an administrative complaint and making a decision on providing information.

1 Procedures for Providing Public Information

According to the General Administrative Code of Georgia "public information is received, processed, written or sent information as an official document (among them drawing, prototype, plan, outline, photo, electronic information, video and audio recordings), so preserved at public institution, also information regarding the activities by public institution or employee".

The person responsible for accessibility of public information has obligations under legally effective procedures of information and providing information within established terms which are to be adopted by all public institutions. Such a function may be implemented by the person appointed at a different staff unit, e.g. the head of chancellery, a public relations' employee etc. Though having taken into consideration the growing demand on public information, participants recommend appointing an independent person for performing the mentioned function.

Requests for public information may be performed only in writing. Otherwise, a public official is not obliged to provide the requested information. The law also establishes obligatory requisites of a written statement (Article 78 of GAC):

- The name of the administrative body being applied to by the applicant;
- The name and address of the applicant;
- The request;
- The date of submitting the statement and the applicant's signature;
- If available, the list of documents attached to the statement.

The administrative body is obliged to accept and register the request, put a registration date and number on it, even if it does not meet the set requirements. If requested by an applicant, it (the request) is to be immediately sent or its registration be confirmed, on the basis of what the term on providing public information is assessed.

The law does not oblige an applicant to state the purpose of requesting information.

As for the form of providing public information, it depends on the type of information requested by an applicant: obtaining a copy of the document, getting access to the original document, receiving a drawing etc.

It should also be noted that, if requested by an applicant, a public institution is obliged to prove the authenticity of a copy to the original.

According to the Georgian legislation, a public institution is obliged to provide public information in an immediate manner. In some cases it might be difficult for public official to meet this requirement. For such situations, the law allows 10-day period if the preconditions for the provision of information are fulfilled:

- Collection and procession of information out of its structural subdivision or other institutions being in different location;
- Collection and procession of certain documents of essential volume irrelevant to each other;
- Consultation with its structural subdivision or other public institution being in another settled point.

In case of the above listed three cases apply, an employee of a public institution is obliged to notify an applicant immediately about necessity of 10 day period for providing the necessary information.

While requesting information, administrative bodies have been given the major burden of obligations by the legislator. If "other administrative body is entitled to

make a decision under requested statement, then an administrative body is obliged to send the statement and its attached documents to authorised administrative body no later than the fifth day". But the information is to be delivered to an applicant on delivery within 2 days (Article 80 of GAC). The statement may be returned to the applicant only if the administrative body is not able to identify the authorised administrative body, or the issue is to be decided by court. In such a case, the applicant is to be informed about all of the mentioned issues within a period of 5 days.

As for the refusal on providing information, it is to be explained/justified, and the applicant has to be immediately informed (within a 3-day period after the decision is made). A refusal to provide information has to meet the requirements/limitations set by the Constitution of Georgia and the General Administrative Code of Georgia from both procedural and materials standpoints.

2 Fee for Duplicating Public Information

The Georgian Law "About Fee on Duplicating Public Information" also states that "the fee for duplicating public information is obligatory to be paid to the Georgian budget by a person requesting public information for duplication via proper body".

The fee-payers are physical and legal persons interested in obtaining public information. The mentioned fee will be paid by an administrative body, if the amount of the fee required for duplicating public information is more than 50 GEL (Article 4 of Law "About Fee on Duplicating Public Information").

A fee on "Duplicating Public Information" is not due:

- While copying information on a disk or a compact-disk ;
- While duplicating personal data on physical persons at a public institution (Article 7 of Law "About Tax on Duplication Public Information").

It is not allowed to establish any payments while providing public information, besides the fee set under the law "About Fee on Duplicating Public Information".

As for the amount of the fee, the law "About Fee on Duplicating Public Information" considers the exact amount for duplicating public information:

- 4 and 5 format paper – one page – 0,05 GEL;
- Printing on laser printer – one page – 0,10 GEL;
- Writing information on compact-disk – 1 disk – 2.65 GEL
- Writing information on diskette – 1 diskette – 1,3 GEL
- Writing information on an applicant's video cassette – 1 hour 2,75 GEL;
- Writing information on an applicant's audio cassette – 1 hour 0,50 GEL.

3 Protection of Personal Data

Personal data is information enabling a person's identification. The law also defines the concept of personal privacy. It is not allowed for a public institution to divulge personal data deemed to be of personal nature. Information deemed to be of personal nature may be divulged in precisely defined cases, only. Namely, if there is a consent of the person, or a well-grounded court decision.

The given rule does not include information related to officials (also candidates nominated for this post). The list of officials is defined in the Georgian law "About Conflict of Interests and Corruption in Public Office".

The legislation establishes two grounds for considering personal data for personal privacy purposes:

1. Decision of a person about whom the information is given;
2. Cases considered under the law.

In the first case, the person provides a written statement by his/her will to cover his/her personal information at a public institution. It can be performed by submitting a statement by him/her, or via signing a statement approved by a public institution and etc.

As for the case foreseen by the law, for example, the law "about Protection of Patients' Rights" considers that the information about a patient's health may be delivered only to this patient. Also, the law directly notes that the information may be provided without a patient's advance consent only if the information is requested for purposes of education. At the same time, the patient is to remain anonymous and the possibility of his/her identification should be ruled out.

It is not allowed to collect, process, and save personal information related to the person's religion, sexual relation, ethnicity, political or ideological issues.

It is important that the person should not be refused getting information regarding his/her personality. Moreover, while requesting his/her personal data, he/she is free from fees considered under the law.

While collecting and processing personal data, a public institution is obliged to notify the person about whom the data is being collected. The person should be informed about the fact of collecting his/her personal data, the purposes and juridical basis of the procedure should also be explained to him/her. It should also be clarified to the person whether it is obligatory or voluntary to deliver personal information.

Information may be acquired from other sources only if some concrete information may not be gained from a person whose information is being collected. If the personal information is acquired via other sources, a concrete person (whose personal data is being collected by the institution) is to be informed about the sources and content of that information.

It is important that a person receives an explanation of the legal basis on providing his/her identification information to others, so a public institution is obliged to inform the person about those third persons to whom this person's personal data may be delivered.

One of the important requirements for procession of personal data is the right of making amendments to the data. A public institution has to annul the data defined under the law after the request of a person or a court decision. Public institution should also annul incorrect, unreliable, incomplete and not related to the case data. In certain cases, data may not be annulled, but substituted with correct, reliable, timely and complete data. A decision on making amendments is to be made by a public institution within a 10 day period. All of the above mentioned procedures by all means are to be recorded in the public institution's records. Namely, the institution is obliged to keep amended data according to the period of their application together with the proper data during their existence, but no less than for a 5-year period.

4 Discussion of an Administrative Claim in case of not providing information

According to the amendments made to the General Administrative Code and Administrative Procedural Code of Georgia approved on 28 December 2007, any person interested making a case about the violation of the requirements and provisions of the freedom of information legislation is obliged to present an

administrative claim to the same administrative body having adopted the act, if there is a superior official. Otherwise administrative claim is to be presented to the superior administrative body.

Only after submitting and discussing an administrative complaint, the right to submit a claim to the court is established.

An administrative complaint is to be submitted within a one month period after the decision of denial on providing public information has been made. If the administrative body does not respond, then the term of making a complaint will be counted from the date when action had to be accomplished.

Regarding the terms of discussing a complaint and making a decision about it by an administrative body, this has to be done in a period of one month period. However, a public institution has the discretion, in particular where it concerns decision-making on complex issues, to extend this period for up to an additional one month period, with an obligation to notify the person who issued to the complaint.

While discussing an administrative complaint, it is very important to follow the rules of administrative proceedings, in order to ensure protection of personal interests by an interested person before an administrative body. First of all, an administrative body has to make a written decision within a 5 day period after registration of the complaint on admitting an administrative complaint. If the administrative complaint does not meet obligatory requisites set under the law, an administrative body has to underline the flaws in the complaint and set a term for improving them. During the proceedings, an administrative body is obliged to investigate completely all factual and legal circumstances.

During investigating the circumstances, an administrative body has to give the author of an administrative complaint the possibility to present additional materials and opinions. Also, an administrative body has to hold a verbal hearing in addition to the cases considered under the law (an administrative body is entitled to discuss and decide an administrative complaint without a verbal hearing if the basis for refusing a discussion of an administrative complaint exists and all of the parties involved in administrative proceedings agree on the discussion of the issue without any verbal hearing). An administrative body has to record minutes of the meeting during the verbal hearing and if requested by an interested person, to present a copy of the minutes.

An administrative body is entitled to make one of the given decisions after the end of the administrative proceedings on discussing an administrative complaint:

- To satisfy the request considered in an administrative complaint;
- To refuse to satisfy the request considered in an administrative complaint;
- To partially satisfy the request considered in an administrative complaint.

The administrative body issues an individual legal-administrative act regarding an administrative complaint.

5 Reports on Freedom of Information as of 10 December

According to an Article 49 of the General Administrative Code, every year on December 10 any public institution is obliged to present a report to the President and the Parliament of Georgia on meeting requirements of freedom of information.

The report is to be presented by all public institutions, such as:

- All state or local self-government and administrative bodies or institutions;
- Any public legal entity (besides political and religious union);
- Any other body providing public judicial authorities on the basis of legislation;
- Private Law legal persons being financed from the state or local budget, within the frameworks of the given financing.

The report presented by a public institution is to completely reflect the situation on meeting the requirements on freedom of information at the institution presenting the report.

The law foresees obligation on presenting quite a detailed report.

Namely it is to include:

- The amount of requests on providing public information and amendments to public information entered in a public institution. Amount of decisions made on meeting requirements or their refusal;
- Information on the public employee making decisions regarding meeting the requirements or their refusal;
- Information on making decision on closing personal sessions by collective public institutions and the amount of such decisions;
- On the collection, procession, preservation and delivery to others of personal data by public database and public institutions;
- On the amount of violations of law requirements and disciplinary actions towards the responsible person related to the issue on transparency of public information by a public employee;
- On those legislative acts being applied by a public institution while refusing to provide public information or closing of collegial public institution session;
- On submitting a complaint regarding the decision made on a refusal to provide public information;
- On making a complaint regarding the expenses for the procession and disclosure of information by a public institution, also decisions made on the refusal on disclosing information or closed session of collegial public institution among them related to the amount paid for the benefit of the party.

The current practice confirms the fact that the reports are not presented in the way to satisfy requirements of the law. According to the presented reports, no realistic picture emerges on how protected and well-realised the right on freedom of information is in the country. That is why it is essential for the reports foreseen under law not only to be composed of statistical figures, but also to consider certain analysis related to each definite issue.