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Council of Europe Group on Access to Information (AIG)

**Report submitted by Bosnia and Herzegovina
on legislative and other measures taken in Bosnia and
Herzegovina to give effect to the provisions of the Council of
Europe Convention on Access to Official Documents**

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I – GENERAL INFORMATION

The right of access to information in Bosnia and Herzegovina is governed by the laws adopted at the state and Entity levels. The Law on Freedom of Access to Information in Bosnia and Herzegovina was adopted in 2000, while the Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina and the Law on Freedom Access to Information of the Republika Srpska were adopted in 2001. Brčko District of Bosnia and Herzegovina applies the Instruction on implementation of the Law on Freedom of Access to Information in Bosnia and Herzegovina governing the matters that should contribute to more effective implementation of the Law on Freedom of Access to Information in Bosnia and Herzegovina in the Brčko District of Bosnia and Herzegovina and addressing the matters that contribute to the proper implementation of the Law and to determination of the costs of duplication services.

Bosnia and Herzegovina was the first country in the region that had these laws, which at the time of their adoption contained very advanced solutions. In the course of time and with the development of Internet and electronic media, the content of the right of access to information has developed significantly, which created the need to upgrade the existing legislation.

The Law on Freedom of Access to Information in Bosnia and Herzegovina partially followed this need and was amended several times. The most significant amendments to the Law related to prescribing the obligation to issue a decision on the request for access to information and the penal provisions, as well as to prescribing the competence of the Administrative Inspectorate in cases of non-compliance with the provisions of the Law.

The Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina was amended once in the part related to the obligation to issue a decision on the request for access to information and in the part related to the second-instance body deciding on appeals against the decisions.

The Law on Freedom of Access to Information of the Republika Srpska has not been amended so far.

The Council of Europe Convention on Access to Official Documents (CETS 205) (hereinafter: the Convention) was ratified by the Presidency of Bosnia and Herzegovina at its 13th regular session, held on 10 October 2011. Decision on ratification was published in the Official Gazette of BiH – International Treaties, 10/11.

Sector for Administration at the Ministry of Justice of Bosnia and Herzegovina is responsible for monitoring the implementation of the Law on Freedom of Access to Information in Bosnia and Herzegovina. Minister of Justice of Bosnia and Herzegovina tasked the Assistant Minister for Strategic Planning, Aid Coordination and European Integration to prepare this report because the Assistant Minister for Administration retired at the end of 2022, and since the date of writing this report, no election or appointment of a new Assistant Minister for Administration has been made.

Since the adoption of the Law on Freedom of Access to Information in Bosnia and Herzegovina in 2000, a great number of NGOs, civil society and individuals have been involved in monitoring its implementation.

Attached to this report is the Special report on experiences in the implementation of the Law on Freedom of Access to Information in Bosnia and Herzegovina, which was prepared by the Ombudsman for Human Rights of Bosnia and Herzegovina and published at the end of 2019.

II - LEGISLATIVE AND OTHER MEASURES GIVING EFFECT TO THE PROVISIONS OF THE CONVENTION

1. GENERAL PROVISIONS

1.1 Article 3, paragraph 1. point b) of the Law on Freedom of Access to Information in Bosnia and Herzegovina (Official Gazette of BiH, 28/00, 45/06, 102/09, 62/11 and 100/13) (hereinafter: The Law), stipulates that the *public authority* is any of the following in Bosnia and Herzegovina:

- 1) an executive authority;
- 2) a legislative authority;
- 3) a judicial authority;
- 4) a body appointed or established by law to carry out a public function;
- 5) any other administrative authority;
- 6) a legal person that is either owned or controlled by a public authority.

It is evident from the definition itself that public authorities include: legislative, executive and judicial authorities at all levels of government in Bosnia and Herzegovina (state, Entities, Cantons, Brčko District, cities and municipalities), other bodies performing public functions, appointed or established in accordance with the law, other administrative authorities, as well as legal persons owned or controlled by a public authority in Bosnia and Herzegovina.

Article 3, paragraph 1. point e) stipulates that the *competent public authority* is a public authority that has control over the requested information and is the public authority by whom or for whom the information was drawn up. If the latter cannot be identified, the competent authority is the public authority whose function most closely relates to the requested information.

1.2 The Law does not define the term *official document* but the term *information* in Article 3, paragraph 1. point a) *information* means any material which communicates facts, opinions, data or any other content, including any copy or portion thereof, regardless of physical form or characteristics, when it was created and how it is classified.

The mentioned provision covers information stored electronically or in databases.

Article 3, paragraph 1, point d) of the Law stipulates the following: *personal information* means any information related to a natural person who can be directly or indirectly identified by facts, including in particular: identification number, physical, mental, economic, ethnic, religious, cultural or social identity of that person.

1.3 Use of public archival material is prescribed by Articles 14 to 20 of the Law on Archival Material and the Archives of Bosnia and Herzegovina (Official Gazette of BiH, 16/01).

All users have the right to use public archival materials under equal conditions (Article 14).

Public archival material in the archives may be used in: official, legal, educational and publishing purposes, for the purpose of scientific research, as well as to meet the needs of citizens in resolving their constitutional and legal rights (Article 15).

Public archives are, in principle, accessible 30 years after their creation, if there are no special requests by their creator in the record of handover (Article 16).

Public archives related to individual persons (criminal cases, court files, medical documentation, personal files) may be used minimum 10 years after the death of the person, or earlier if it is approved by the spouse, children or parents of the deceased person. If, for scientific or other justified reasons, it is necessary to use archival material from the previous paragraph, that material may be used in a way which guarantee the protection of persons interests, without mentioning the names or in other appropriate way (Article 17).

The use of public archival material is restricted or prohibited if it:

- a) harms the interests of Bosnia and Herzegovina;
- b) harms the interests of the Entities of Bosnia and Herzegovina;
- c) causes damage to legal and natural persons;
- d) is used contrary to the request of the previous owner and creator;
- e) if there are indications of misuse of the material;
- f) if the material is being processed.

The act on prohibition, i.e. the act on earlier use, is issued by the director of the competent archive in accordance with law and by-law regulations (Article 18).

A special rulebook governs the manner, conditions and procedure of using the public archival materials, keeping records of users, making copies and transcripts (Article 19).

Original public archival material can be taken outside Bosnia and Herzegovina for the purpose of exhibition, expertise or implementation of protection measures, with the approval of the competent authority and the authorization of the Archives of Bosnia and Herzegovina. The approval specifies the conditions and the deadline in which the archival material must be returned to the country. Before taking it out of the country, it is mandatory to record the material for protection (Article 20).

The Law on Archival Material and the Archives of Bosnia and Herzegovina contains special provisions on private archival material (Articles 21 to 29).

2. Right of access to official documents

2.1 The right of access to information in Bosnia and Herzegovina is governed by the laws adopted at the state and Entity levels. The Law on Freedom of Access to Information in Bosnia and Herzegovina was adopted in 2000, while the Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina and the Law on Freedom Access to Information of the Republika Srpska were adopted in 2001. Brčko District of Bosnia and Herzegovina applies the Instruction on implementation of the Law on Freedom of Access to Information in Bosnia and Herzegovina governing the matters that should contribute to more effective implementation of the Law on Freedom of Access to Information in Bosnia and Herzegovina in the Brčko District of Bosnia and Herzegovina and addressing the matters that contribute to the proper implementation of the Law and to determination of the costs of duplication services.

2.2 Article 4 of the Law stipulates that every natural and legal person has the right to access information controlled by public authorities, and each public authority has a corresponding obligation to disclose such information.

The mentioned provision of the Law provides the right of access to information controlled by public authorities to any natural and legal person, regardless of the citizenship, except for the limitations set out by the Law.

2.3 Article 4 of the Law stipulates that the right of access to information is subject only to formalities and restrictions as prescribed by the Law.

3. Possible limitations to access to official documents

3.1 Exceptions in access to information are prescribed in Articles 5 to 9 of the Law.

On the basis of examination of every individual case, an exemption from disclosing the requested information is determined only when a competent public authority:

- a) claims an exemption under Articles 6, 7 or 8 for all or part of the information and
- b) determines, after completing the public interest test in accordance with Article 9, that disclosure of the information is not in the public interest (Article 5).

A competent public authority may claim an exemption in cases when the disclosure would reasonably be expected to cause substantial harm to the legitimate aims of the following categories in Bosnia and Herzegovina:

- a) foreign policy, defence and security interests, as well as the protection of public safety;
- b) monetary policy interests;
- c) crime prevention and crime detection and
- d) protection of decision-making process of a public authority in providing an opinion, advice or recommendation by the public authority, employee of the public authority, or any person acting for or on behalf of the public authority, and does not involve factual, statistical, scientific or technical information (Article 6).

When a competent public authority reasonably determines that the request for access to information involves confidential commercial interests of a third party, the competent public authority will immediately notify the third party in writing of the details of the request. The notice informs the third party about immediate disclosure of the information, unless the third party, within 15 days of receipt of the notice, responds in writing that it considers such information as confidential and provides reasons for damage that would result from disclosure of the information. Upon receipt of such a response, the competent public authority will determine an exemption (Article 7).

Competent public authority will determine an exemption when it reasonably claims that the requested information involves personal interests related to the privacy of a third person (Article 8).

Competent public authority will disclose the requested information, notwithstanding the determined exemption under Articles 6, 7 or 8, if it is justified by the public interest, and will take into consideration any benefit and any damage that may result from doing so.

2. In determining whether disclosure of information is justified by the public interest, a competent public authority will consider circumstances such as, but not limited to, any failure to comply with a legal obligation, the existence of any offence, miscarriage of justice, abuse of authority or negligence in the performance of an official duty, unauthorized use of public funds, or danger to the health or safety of a person, public or environment.

3. If disclosure of the requested information for which a competent authority has claimed an exemption under Articles 7 or 8 is determined to be in the public interest, the competent authority will notify the third party in writing that the information will be disclosed upon the expiry of 15 days of receipt of the notice. The notice will inform the third party of the right to appeal, the competent body to which the appeal should be addressed, including the necessary information for addressing such body, as well as the deadline for and cost of filing an appeal. The notice will also inform the third party of the right to address the Ombudsman and will include all necessary information for addressing such office (Article 9).

3.2 As can be observed from the mentioned legal provisions, access to official information is limited only to the matters listed in Article 3, paragraph 1 of the Convention.

3.3 Limitations to the right of access to official information prescribed by the Law are necessary and proportionate to the aims listed in Article 3, paragraph 1 of the Convention.

3.4 Article 9, paragraph 1 of the Law stipulates that access to information contained in official documents may be refused if the disclosure of the information would or would likely to harm any of the interests listed in Article 3, paragraph 1 of the Convention, unless there is an overriding public interest in disclosure.

3.5 Article 9, paragraph 2 of the Law stipulates that in determining whether disclosure of information is justified by the public interest, a competent public authority will consider circumstances such as, but not limited to, any failure to comply with a legal obligation, the existence of any offence, miscarriage of justice, abuse of authority or negligence in the performance of an official duty, unauthorized use of public funds, or danger to the health or safety of an individual, public or environment.

4. Requests for access to official documents

4.1 Article 11, paragraph 4 of the Law stipulates that the public authority neither examines nor requests reasons for having access to information.

4.2 The Law does not provide for the possibility of submitting an anonymous request for access to official information.

4.3 In Bosnia and Herzegovina, no measures are taken to assess the necessity of the formalities applicable to requests for access to official information or to review such formalities.

5. Processing of requests for access to official documents

5.1 Article 14 of the Law stipulates that the decision on access to official information is made by the competent public authority.

Article 13 of the Law stipulates that if the respondent public authority is not the competent public authority, it will, as soon as possible and not later than eight days from receipt of the request, forward the request to the competent public authority and notify the requester in writing thereof. The request will not be forwarded if, within the mentioned time period, the requested information is determined to be in the control of the respondent public authority and the competent public authority, upon being notified of the details of the request, has no objections to the respondent authority processing the request. The respondent public authority will be considered as the competent public authority and will process the request in accordance with Article 14.

If the seat of the competent public authority cannot be determined, and in case when the respondent public authority has the control over the requested information, the respondent public authority shall be considered as the competent public authority. If the seat of the competent public authority cannot be determined, and in case the respondent public authority does not have control over the requested information, the respondent authority will provide the requester with written notice that the request cannot be processed for this reason.

5.2 Upon receiving the request for access to information, the competent public authority will take all necessary measures to collect the requested information and will consider all facts and circumstances relevant to processing the request.

If access to the information is denied, either in whole or in part, the competent public authority will notify the requester in writing thereof. This notice will provide the following:

a) legal grounds for the exemption status of the information in accordance with this Law, including all material issues relevant to the decision, as well as the public interest factors taken into account;

b) instruction on right to appeal, address of the body to which the appeal should be addressed, deadline for and cost of filing an appeal, as well as the instruction on the right to appeal to the Ombudsman, and will include the necessary contact information of the Ombudsman.

Appeals against these decisions will be submitted to the head of the competent second-instance public authority.

Article 18 of the Law stipulates that the public authority will take all necessary measures to assist any natural or legal person seeking to exercise any right under this Law.

5.3 Requests for access to official information are dealt with in such a way that no distinction is made on the basis of nature of the request or the status of the requester.

Article 15 of the Law stipulates that the access to information will be provided in one of the official languages in Bosnia and Herzegovina; and, where possible and reasonable to do so, in the original language which is different from one of the official languages in Bosnia and Herzegovina. Competent public authority is not obliged to translate the requested information from one of the official languages in Bosnia and Herzegovina into another.

5.4 Decisions granting or denying the requests for access to information are sent to the requesters as soon as possible, and no later than 15 days from the receipt of the request. For the requests processed under Article 7 (Exemption for Confidential Commercial Information) and/or Article 9.3 (Public Interest), this deadline of 15 days will be extended by the period of time specified in those Articles. The requester will be immediately notified in writing of the extension of the deadline, as well as of the reasons for such extension.

5.5 The competent body of the public authority is obliged *ex officio* to give reasons in case of refusal of access to official information in the explanation of the decision, which is always made in written form.

6. Forms of access to official documents

6.1 If access to the information is granted, either in whole or in part, the competent public authority will notify the requester in writing thereof. The notice will:

- a) inform the requester of the possibility of personal access to the information in the premises of the competent public authority; and/or
- b) inform the requester of the possibility of duplication, duplication costs and that duplication will be provided to the requester upon payment. When the duplication of the information is very complex or time-consuming, the duplication will be provided to the requester at time mutually acceptable to the requester and the competent public authority; or
- c) include copy of the requested information when it can be provided free of charge as referred to in Article 16 of this Law.

6.2 Article 10 of the Law stipulates that when the part of the requested information is determined as the exemption, the competent public authority will separate that part and disclose the rest of the information, unless the information has become incomprehensible due to such separation.

7. Charges for access to official documents

7.1 The Law stipulates that there are no fees or taxes for personal access to information in the premises of the competent public authority.

7.2 Article 16 of the Law stipulates that the competent public authority will not charge fees or taxes for submission of requests or for written notices provided under this Law. Fees are determined only for duplication services and are determined by the decision of the Council of Ministers issued pursuant to this Law and published in the official gazette. For standard size photocopies, the first 20 pages are free of charge.

7.3 Article 19 of the Law on Archival Material and the Archives of Bosnia and Herzegovina stipulates that a special rulebook will set out the manner, conditions and procedure of using public archival materials, keeping records of users, making copies and transcripts, for which the costs of their making will be paid.

8. Review procedure

8.1 The party whose request for access to information was denied may initiate an administrative dispute against the final administrative act before the Administrative Division of the Court of Bosnia and Herzegovina.

8.2 Article 37 of the Law on Administrative Disputes of Bosnia and Herzegovina stipulates that the Administrative Division of the Court of Bosnia and Herzegovina resolves disputes by judgements.

The judgement accepts or rejects the action as unfounded. If the action is approved, the Court will annul the disputed final administrative act.

The judgement will annul the final administrative act and remand the case to the competent institution in cases stipulated in Article 34 paragraph 2 of this Law and other cases stipulated by this Law.

The final administrative act will be annulled by the judgement and administrative matter will be settled in cases referred to in Article 34 paragraph 3 of this Law and other cases stipulated by this Law. Such judgement completely replaces the disputed final administrative act.

By the judgement annulling the final administrative act, the Court will also decide on the request of the plaintiff on repossession of objects or compensation of damages if the data on the procedure give sound grounds. Otherwise, if the issue is more complex procedure (presentation of evidence, evaluation of documentation etc.), the Court will decide according to the provisions of the Law on Civil Procedure.

When the action was lodged based on Article 21 of this Law and if the Court finds it justified, it will approve the action by the judgement, annul the disputed final administrative act and give the guidelines to the authorized institution as to a new decision or it will settle the administrative matter by judgement.

In cases when the Court does not decide by judgement it will issue a decision.

8.3 Law on Administrative Disputes of Bosnia and Herzegovina does not specify a deadline for rendering judgements in administrative disputes. The practice has shown that administrative disputes are resolved within a reasonable time and that there are no backlogs in resolving the cases by the Administrative Division of the Court of Bosnia and Herzegovina.

Article 61 of the Law on Administrative Disputes of Bosnia and Herzegovina stipulates that the costs of administrative disputes procedure are the expenses incurred in connection with administrative dispute from the time it is instituted until it is completed. In every decision terminating administrative dispute procedure, the Court decides as to who will pay the costs of procedure and as to the amount of those costs. The Court will decide that the costs will be paid in full by any party who initiated or maintained the procedure in bad faith or through recklessness.

9. Complementary measures

9.1 The Law stipulates that the public authority will take all necessary measures to assist any natural or legal person seeking to exercise any right under this Law.

Each public authority appoints an Information Officer who processes the requests made in accordance with this Law. The name and contact information of the Information Officer is delivered upon the appointment to the Ombudsman (Article 19).

Each public authority publishes and disseminates:

a) a guidebook which enables any person to access information controlled by the public authority including, but not limited to, the information necessary for addressing the public authority and its Information Officer, essential elements of the procedure for submitting request together with a sample of the request in written form, information regarding the categories of exemptions, procedure of access to information, costs of duplication, access to legal remedies and any applicable deadlines. The guidebook also refers to the index register, as provided for in paragraph 1. point b) of this Article, as well as how the register may be accessed. The guidebook is submitted to the Ombudsman, every public and legal library in Bosnia and Herzegovina, on the Internet when possible to do so, and is available upon request. This guidebook is free of charge.

b) an index register of the types of information controlled by the public authorities, the form in which the information is available, as well as where that information may be accessed. This index register is made available in accordance with the dissemination requirements provided for in paragraph 1 point a) of this Article.

c) statistics, on a quarterly basis, concerning, but not limited to, the number of requests received, types of requested information, determined exemptions, as well as decisions made during the procedure and final decisions. These statistics are submitted to the Parliamentary Assembly of Bosnia and Herzegovina and to the Ombudsman, and are available upon request.

d) annual report, which specifies functions, policies, tasks, organizational structure and financial affairs of the public authority including, but not limited to, its proposed budget and annual financial report containing the details of revenues and expenditures in the previous year. This report is submitted to the Parliamentary Assembly of Bosnia and Herzegovina and is available upon request (Article 20).

Ombudsman for Human Rights of Bosnia and Herzegovina performs its functions in accordance with this Law and in accordance with its mandate and responsibilities as provided for in Article II 1 of the Constitution of Bosnia and Herzegovina and Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina, and in accordance with any subsequent legislation regulating its competence and responsibilities (Article 21).

In performing its functions in accordance with this Law, the Ombudsman for Human Rights of Bosnia and Herzegovina may *inter alia* consider the following:

a) creating and disseminating information such as guidebooks and general recommendations concerning the implementation and application of this Law;

b) including in the annual report a special part regarding its activities in accordance with this Law and

c) proposing instructions on the implementation of this Law to all competent ministries within Bosnia and Herzegovina (Article 22).

9.2 The Information Officer and other civil servants responsible for access to information have initial and continuous training organized by the Agency for Civil Service in the institutions of Bosnia and Herzegovina, as well as specialist training organized through donor projects.

9.3 Document management of public authorities is carried out by specially organized units or working positions within the registry offices, established in all institutions of Bosnia and Herzegovina.

Management and storage of documents of public authorities is set out by the Instruction on office operations in the institutions of Bosnia and Herzegovina, issued by the Minister of Justice of Bosnia and Herzegovina on the basis of the decision of the Council of Ministers of Bosnia and Herzegovina on the office operations in the institutions of Bosnia and Herzegovina. Most of the institutions of Bosnia and Herzegovina keep various case records in electronic form.

9.4 Case management system, document archiving, destruction of worthless material and archiving of valuable material created in the work of the institution of Bosnia and Herzegovina is governed by law and by-laws, which is a decades-long practice and mostly functions well.

10. Documents made public at the initiative of the public authorities

10.1 Through their communication plans, the institutions of Bosnia and Herzegovina provide different ways of communication, both internally and externally. This includes various and numerous activities.

10.2 Public authorities in Bosnia and Herzegovina, on their own initiative and when possible, publish information on websites, and provide in the policy-making process the participation of civil society and NGOs, as well as the wider public, including inter-institutional (horizontal and vertical consultations) and public consultations for all regulations and public policies through various channels, including the eConsultation web platform.