

Council of Europe Convention on Access to Official Documents (CETS No. 205)

Consultation of the Parties

Comments of Bosnia and Herzegovina on the conclusions and recommendations of the Consultation of the Parties on the implementation of the Council of Europe Convention on Access to Official Documents by Bosnia and Herzegovina

Note by the Secretariat: the comments concern point 2 of the conclusions and recommendations contained in document TC-CP(2024)01, 3 October 2024.

In this regard, we hereby submit the requested information to the Council of Europe Access Info Group, concerning the application of the Law on Freedom of Access to Information at the Level of the Institutions of Bosnia and Herzegovina (hereinafter: the LFAI BiH), as follows:

Point 2.1. Application of the LFAI of Bosnia and Herzegovina to the administration at the local level and to other entities carrying out administrative and other law-based procedures, as well as to judicial authorities in so far as they perform administrative functions (paragraph 78 of the AIG report);

The LFAI BiH applies, in accordance with Article 5 paragraph (1) point (b) of the Law, to all institutions of Bosnia and Herzegovina, whereby the term "*BiH institution*" is defined as a legislative, judicial or executive authority established by law, entrusted by law with the exercise of public authority, financed from public revenues, or entrusted by a specific law with administrative functions at the level of Bosnia and Herzegovina. The BiH institution is also a legal entity established by the institutions of Bosnia and Herzegovina in accordance with the provisions of the Law on the Registration of Legal Entities Established by the Institutions of Bosnia and Herzegovina, as well as other entities of Bosnia and Herzegovina established by a specific law.

Point 2.2. Application of the LFAI of the Federation and the LFAI of Republika Srpska to legal persons who exercise administrative authority (paragraph 79 of the AIG report);

Regarding the application of the LFAI BiH *at the local level*, the LFAI of the Federation of BiH and the LFAI the Republika Srpska, the Ministry of Justice of Bosnia and Herzegovina is unable to provide information, as the laws of the respective Entities are applied within the Entities, and the law of the Brčko District applies within the District.

Point 2.3. What information is excluded from the LFAI of BiH as being secret under its Article 2(2), what information is subject to limitations under Article 19 sub-paragraphs (4)a and b and sub-paragraph 7(a) (paragraphs 15, 19, 22, 80 and 84 of the AIG report)?

Regarding the application of the LFAI BiH, *non-discrimination* on any grounds is ensured, as explicitly prescribed in Article 6, which reads as follows:

"(1) All information held by BiH institutions shall be considered open and public, unless non-disclosure is fully justified and based on the exceptions prescribed by law.

(2) This Law shall be based on the principle of non-discrimination as provided under the Law on Prohibition of Discrimination in Bosnia and Herzegovina (Official Gazette of BiH, 59/09 and 66/16).

(3) This Law shall be based on the principle of gender equality as provided under the Law on Gender Equality in Bosnia and Herzegovina (Official Gazette of BiH, 32/10 - Consolidated Version).

(4) BiH institutions, as well as any natural or legal person affected by the provisions of this Law, shall be required to act in full compliance with the legislation concerning the protection of personal data."

Regarding the *limitation of the right of access to information*, this is regulated by Article 19 of the Law, which reads as follows:

"(1) Information held by BiH institutions shall be public, whereas the right of access to information shall be exercised by using the method and procedure prescribed by this Law.

(2) Access to information may be restricted in order to protect the privacy of natural persons and the personal data of users and third parties, in accordance with the law governing the personal data protection.

(3) The restriction referred to in paragraph (2) of this Article shall not apply to information concerning the names of employed senior officials and other persons participating in public

affairs, their salaries, other income disbursed from public funds, expenses related to their public activities, existence of conflicts of interest, and their qualifications.

(4) *Access to information may be restricted* if it can reasonably be expected that providing access to information would cause serious harmful consequences with regard to the following interests:

- a) national security and international relations, in the event that the information is classified as confidential, in accordance with a law or a general legal act adopted on the basis of the law governing data confidentiality;
- b) public order, in the event that the information is classified as confidential, in accordance with the law or a general legal act adopted on the basis of the law governing data confidentiality;
- c) during inspections, controls or supervisory procedures conducted by a BiH institution, in the event that disclosing the information would impede the operations of the body responsible for conducting administrative oversight, inspection or supervision to ensure the legality of operations and legal acts;
- d) commercial and other economic interests, as well as economic, monetary, or exchange rate policies; and
- e) environment.

(5) The BiH institution *shall restrict access to information* concerning the equality of arms in judicial proceedings and the effectiveness of the judiciary, as well as proceedings conducted by competent authorities in preliminary criminal or disciplinary matters while such proceedings are ongoing, unless otherwise provided by a specific law, and in the event that the disclosure of such information would hinder the effective, independent and impartial enforcement of a decision or sanction of a BiH institution.

(6) The BiH institution may restrict access to information concerning documents in the process of preparation within one or more BiH institutions, working groups or committees, or in the course of exchange of views and opinions, where the premature disclosure of such information could seriously undermine the process of drafting complete and final information.

(7) The BiH institution *may restrict access to information*:

- a) in the event that the information constitutes tax secrecy, in accordance with the law;
- b) in the event of reuse of information by the applicant, provided that the information is protected under the legislation governing the intellectual property rights.

(8) The information referred to in paragraphs (4) and (7) of this Article shall become available to the public once the grounds on which the BiH institution restricted access cease to exist.”

The proportionality and public interest test are regulated by Article 20 of the Law, which reads as follows:

“(1) BiH institutions may disclose the requested information, regardless of an exception provided for under this Law, if such disclosure is justified by public interest, taking into account all potential benefits and harms that may arise therefrom.

(2) When deciding whether the disclosure of the information is justified by the public interest, the respective BiH institution shall consider circumstances such as, but not limited to, any failure to comply with a legal obligation, existence of any misconduct, miscarriage of justice, abuse of authority or negligence in the performance of official duties, unauthorised use of public funds, or risks to the health or safety of an individual, the public, or the environment.

(3) If the BiH institution finds that the exception is outweighed by the public interest, it shall issue a decision informing the applicant accordingly.”

Point 2.4. The fees for access to official documents set by the Government under LFAI of Bosnia and Herzegovina (paragraphs 87 and 90 of the AIG report)

As regards the *fees for access to information*, Article 24 of the Law stipulates the following:

- (1) *No administrative fee* shall be charged for a request for access to information submitted in proceedings before BiH institutions.
- (2) The BiH institutions shall be entitled to request reimbursement from the applicant for the actual material costs incurred, such as the costs of photocopying, scanning or data carriers, including the costs of delivering the requested information.
- (3) The BiH institution shall inform the applicant of the method of calculating the costs referred to in paragraph (2) of this Article.
- (4) The amount and manner of collection of the reimbursement referred to in paragraph (2) of this Article, in line with market prices, shall be prescribed by a decision of the Council of Ministers of Bosnia and Herzegovina within six months following the date of entry into force of this Law, at the proposal of the Ministry of Finance and Treasury of Bosnia and Herzegovina.
- (5) The revenue generated from the reimbursement referred to in paragraph (2) of this Article shall constitute revenue of the Budget of the Institutions of Bosnia and Herzegovina.

On 29 August 2024, at its 58th session, the Council of Ministers of BiH, acting on a proposal by the Ministry of Finance and Treasury of BiH, adopted the *Decision on the Amount of Cost Reimbursement under the Law on Freedom of Access to Information at the Level of Institutions of BiH* (Official Gazette of BiH, 63/24). According to this Decision, the first 20 pages of the delivered document are not subject to any charge, while each additional standard-size photocopied page is charged BAM 0.50; conversion of one physical page to electronic format is charged BAM 0.30; each CD is charged BAM 1.00; each DVD is charged BAM 2.00; each USB stick for electronic documentation is charged BAM 10.00. Delivery costs are calculated in accordance with the valid price list of the postal service provider used for the delivery.

Regarding requests for information not held by the institution to which the request was submitted, the institution is obliged to forward the request to the competent authority and inform the applicant accordingly.

The time limit for deciding on a request is 15 days, and the law explicitly prescribes specific cases in which the institution does not issue a decision but instead informs the applicant about the submitted request, or that the information has already been disclosed to the public; that the same information has already been provided to the applicant and that the period of 90 days has not passed counting from the date when the prior request was submitted; that, as a party to a proceeding, the applicant has access to the information in court, administrative or other legally based proceedings under a specific regulation; that the requested information is subject to confidentiality requirement in accordance with Article 2, paragraphs (2) and (3) of this Law; or that the submission is not regarded as a request within the meaning of Article 23 of this Law, in which case the BiH institution instructs the applicant how to properly submit the request.

The right to the re-use of information is governed by Articles 30 to 37 of the Law and is further elaborated in the Guidebook and by-laws, while the applicable fees are prescribed by the above-mentioned Decision.

The LFAI *provides the right to appeal*, which is decided by the Appeals Panel of the Council of Ministers of Bosnia and Herzegovina, following the second-instance procedure, while the applicant also has the right to seek judicial protection before the Court of Bosnia and Herzegovina.

Point 2.5. „Measures taken at the State and Entities' level to implement Article 10 of the Convention (paragraphs 76-77; 93 of the AIG report)“

In order to provide easier and more efficient access to information, the Council of Ministers of Bosnia and Herzegovina, upon the proposal of the Ministry of Justice of Bosnia and Herzegovina, adopted the following by-laws:

- a) *Guidebook on Access to Information*, which, according to the Conclusion of the Council of Ministers of BiH, has been directly provided to all institutions at the level of BiH in Word format, enabling these institutions to publish the Guidebook and the accompanying forms on their websites;
- b) *Rulebook on the Types and Content of Conditions for the Reuse of Documents*, published in the Official Gazette of BiH, 72/24,
- c) *Rulebook on the Content and Manner of Keeping the Register of Requests for Access to Information*, published in the Official Gazette of BiH, 35/24 and
- d) *Rulebook on the Content and Manner of Keeping Records of Exclusive Rights for the Reuse of Documents*, published in the Official Gazette of BiH, 73/24.

In addition to comprehensive information regarding the submission of requests for access to information, the Guidebook also includes a form, the full content of which is attached to this document.

It is acknowledged that the applicant has the right to choose the manner in which the information will be delivered, including by receiving a copy of the document containing the requested information, as prescribed by Article 22 of the Law.

Form 1

Name and surname / Name of the applicant

Address / Seat of the applicant

Contact phone number and/or e-mail address of the applicant

Place and date

Name of the BiH institution to which the request is submitted

Seat of the BiH institution

Subject: Request for access to information

Pursuant to Article 23 of the Law on Freedom of Access to Information at the Level of Institutions of BiH, I hereby request access to the following information:

(Provide a clear and precise description of the requested information.)

Preferred method of providing the information:

- 1) Direct provision of the information;
- 2) Providing the information in writing;
- 3) Allowing access to documents and making copies of the document containing the requested information;
- 4) Providing copies of documents containing the requested information;
- 5) Other means suitable for exercising the right of access to information (electronically or other suitable method).

(Please circle the preferred method of providing the information.)

Attachment:

Applicant

(if enclosed)

(signature of natural person/signature and stamp
of legal entity)