

Freedom of Information and
Journalists in the
Western Balkans:

ONE STEP FORWARD, TWO STEPS BACK



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Introduction

This report is produced as part of the second phase of the “Paper Trail to Better Governance” project, by Balkan Investigative Reporting Network – BIRN, which aims to promote the rule of law, accountability and transparency in the Balkans.

The project contributes to the better functioning of the public sector that respects the principles of transparency and accountability to its citizens, which in the long term will contribute to the human security to the whole South-East Europe/Danube region. The project has exposed the wrongdoings of governments, public and private companies, as well as individuals through the promotion of the rule of law, accountability and transparency.

The main aims of the project, through multimedia, cross-regional investigations, were in-depth analyses of institutions’ openness to freedom of information requests, and the establishment of an online database.

The main target group of the project consisted of investigative journalists, researchers, journalists from other local/regional media and the public in general in the region and worldwide.

The second phase of the project has been supported by the Austrian Development Agency, ADA, the operational unit of the Austrian Development Cooperation. The first phase of the project covered the period of January 2013 to 2016, and the first report was published in December 2016.¹

¹ Transparency in the Balkans and Moldova, BIRN December 2016 <https://balkaninsight.com/wp-content/uploads/2016/06/transparency-in-the-balkans-and-moldova.pdf>

The second phase of the project has addressed the transparency of public institutions in Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro, and Serbia through tracking Freedom of Information requests, FOIs, monitoring public data and publishing watchdog journalism.

Over more than 30 months, the project has covered investigations on five key themes that are seen as critical for good governance in the region: energy, road building, the financial sector, the influx of money from the Middle East and the arms trade industry.

Through the extensive use of public documents, the investigations have exposed wrongdoings in governments, public and private companies and among powerful individuals.

BIRN has worked closely with some of the biggest names in international journalism to produce a dozen hard-hitting investigations that are re-shaping the public’s perception of their governments, business elites, and journalism.

As part of BIRN’s drive for openness, it has also established a free, user-friendly, searchable online library of public documents and scraped database, BIRN Source: <https://birnsource.com>

To increase access to open data for journalists, BIRN has also launched a new online platform, the BIRN Investigative Resource Desk, BIRD, which will provide a digital space and user-friendly tools for better and stronger investigative journalism.

BIRD will provide journalists with various types of assistance, including a set of useful tools and information in one place related to freedom of

information, data access and protection, cyber security and open source datasets.

Executive Summary

This report presents the findings on governmental transparency and accountability in the Balkans, and ranks selected institutions from best to worst practices in terms of granting access to public documents, mostly to journalists.

As the region still struggles in its efforts towards better governance and stronger respect for principles of transparency, accountability and free media, some international prestigious reports have highlighted a deteriorating trend in recent years.

A decline in media freedom and the increasingly unfavourable position of journalists is among the most serious problems. Media freedom, a core EU value and a cornerstone of democracy, although a priority reform area in the Western Balkans' EU accession agenda, remains limited in the region. EU aspirant countries struggle with systemic shortcomings in this field that require long-term, sustained efforts.

The year 2017 saw an increase in the number of threats made to media workers in Serbia sent via the internet and social networks, but also cases of surveillance.

In 2018, the situation in the region remained the same, if not worse. According to the US rights watchdog, Freedom House, a lack of media freedom, corruption and weak institutions remain issues throughout the Balkans; it singles out Serbia's growing authoritarianism as a matter

of special concern. Organised crime and corruption are among the key challenges facing all societies of the Western Balkans, with corruption being a key grievance for ordinary citizens and voters. Limited professional and technical capacities, along with security concerns, were a common constraint on media reporting on organised crime and corruption across Bosnia, Kosovo and Serbia, BIRN’s regional study on reporting about corruption and organised crime in Serbia, Bosnia and Herzegovina and Kosovo concluded.

At the beginning of 2018, a report from the British parliament’s upper chamber, the House of Lords, highlighted concerns that countries in the Western Balkans are turning to authoritarian leadership and nationalistic politics. “Gains made towards good governance and the rule of law are in danger of being lost as countries in the region turn to authoritarian leadership, nationalistic politics and state capture,” this report warned.

The situation of the media in 2019 in the targeted countries remains overwhelmingly negative, albeit with slight differences between the countries. According to Freedom House, the press freedom scores of almost all the countries in the region declined. Its report for 2019, Freedom in the World 2019, downgraded Serbia to the status of a “partially free” country, attributing this to a decline in the country’s level of democracy. Montenegro also came under strong criticism. North Macedonia and Kosovo recorded minor improvements, Bosnia and Herzegovina showed a minor decline, while Albania maintained its “partly free” status.

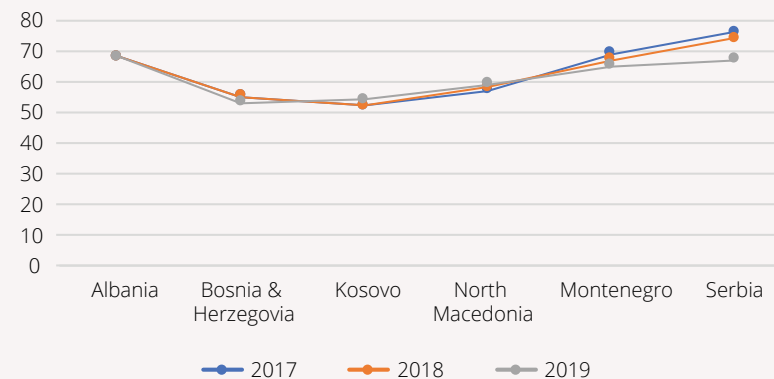


Table 1: Freedom House Scores²

In the index of Reporters Without Borders, RWB, which ranks countries and regions according to the level of freedom availability to journalists – based on an evaluation of pluralism, the independence of their media, quality of legislative framework and safety of journalists – only Kosovo and North Macedonia improved their index scores slightly. Albania, Bosnia and Herzegovina, Montenegro and Serbia were all given lower scores for 2019.

From 2017 to 2018, as the table shows, the index gave Albania, Kosovo, North Macedonia, and Montenegro improved scores, while Serbia had lower index scores.

2 Freedom House scores by country <https://freedomhouse.org/report/countries-world-freedom-2019>

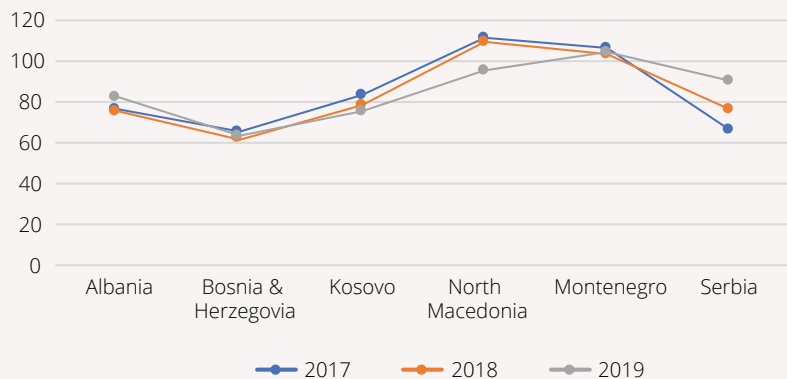


Table 2: Reporters Without Borders, WORLD PRESS FREEDOM INDEX³

The index ranks countries with scores from 0 to 100, with 0 being the best possible score and 100 the worst.

In short, despite a slight positive change noted in 2018 in a few countries, the last year showed only negative progress for all countries.

³ Reporters Without Borders for Freedom of Information, World Press Freedom Index <https://rsf.org/en/ranking>

Freedom of Information

Summary

On paper, FOI laws across the Balkans are very similar, but their implementation varies enormously. Some countries proactively publish large amounts of data and documents from public institutions, embracing the concept of open data. Others lag behind. Surprisingly, a country's strong performance in releasing data does not always translate into a well-oiled FOI system.

The right to information and the right to access public documents is enshrined in the constitutions and laws of democratic societies. The legislation in place in Albania, Kosovo, North Macedonia, Serbia, Montenegro, Bosnia and Herzegovina guarantees the public's right to access official documents. As part of BIRN's work testing transparency, we discovered that practice often falls short of the legislative framework, however. Many requests sent by BIRN journalists to access public documents were rejected, ignored or required repeated interventions on the part of the journalists to secure a response.

To increase transparency and accountability across the six Western Balkan countries, and examine the level of implementation of their FOI laws, BIRN submitted 854 official requests to access public documents between January 2017 and June 2019.

	January 2017-June 2019
Number of requests submitted	854
Number of requests approved	408
Number of requests partially approved	225
Number of requests rejected/not answered	221

Table 3: BIRN FOI Requests

Out of 854 submitted official requests to access public documents, only 408 were approved, 224 were partially approved (where institutions answered only technical information) and 221 were rejected, or no answer at all was received (even after repeated follow-ups from the journalists).

To better understand the challenging circumstances on accessing public documents in the Balkans, BIRN compared the annual reports of the FOI Commissioners in all six countries.

According to the 2018 Annual Reports of the Commissioners for Free Access to Public Information in Albania, North Macedonia, Serbia and Montenegro, and the Ombudsman Institutions in Kosovo and Bosnia and Herzegovina, the following chart presents the number of complaints received regarding denials of access to public information, administrative silence, or refusal with no legal bases.

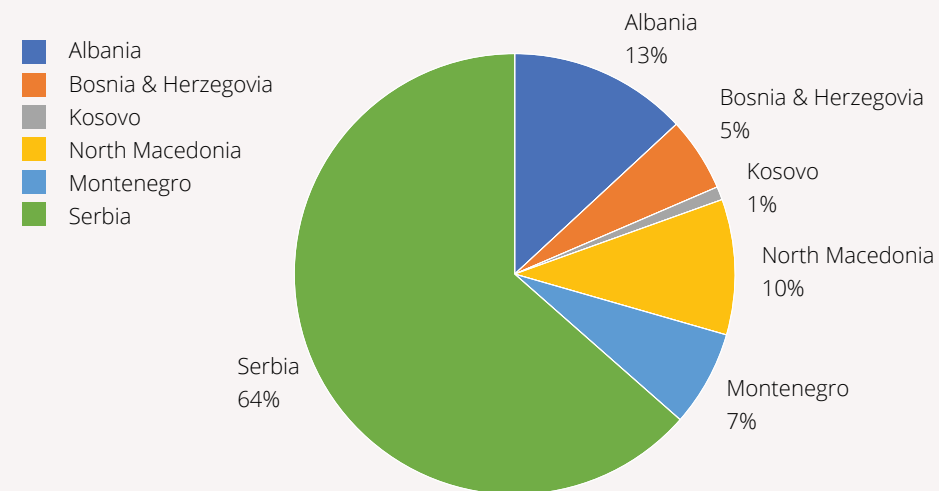


Table 4: Complaints received by the Commissioners/Ombudsman Offices

Serbia had the highest number of complaints received (64%) during 2018, followed by Albania, with 13%, North Macedonia, with 10% and Montenegro, with 7%. The lowest number of complaints reported by the Ombudsperson's Office were in Bosnia and Herzegovina (5%) and Kosovo (1%).

In Albania, during 2018 alone, the Information and Data Protection Commissioner received 820 complaints, of which 622 were settled with no intermediation; 37 were settled with Commissioner's decision; 116 were outside the score; 9 were submitted beyond the deadline; 17 were incomplete, and 24 were carried over to the next year.⁴

⁴ Information and Data Protection Commissioner, Albania, Annual Report 2018 - https://www.idp.al/wp-content/uploads/2019/03/ENGLISH_Annual_Report_2018_KDIMDP.pdf

According to the Ombudsperson's Office in Bosnia and Herzegovina, 340 complaints were received during 2018 against public Institutions. A recommendation was issued for only 50 cases.⁵

In Kosovo, the Ombudsperson received 61 complaints concerning denial of access to public documents. Of the total of 61, 56 were opened for investigation.⁶

The Commission for Protection of the Right to Free Access to Public Information in North Macedonia⁷ reported 622 complaints, of which only 142 were solved; the remaining 480 were reviewed during 2019. The received complaints regarding governmental Institutions numbered 369; 41 were against courts; 78 against municipalities; 94 against medical institutions; 11 against educational institutions; six against public servants; 13 against public department; and 10 against "Others".

In Montenegro, the Agency for Personal Data Protection and Free Access to Information,⁸ in its 2018 Annual Report, stated that 440 lawsuits were filed due to "silent institutions", of which 273 were filed against the Agency for Personal Data Protection and Free Access to Information. In 84 cases, the agency ordered the relevant institutions to issue a deci-

5 Human Rights Ombudsman of Bosnia and Herzegovina 2018 Annual Report - https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019030109434379eng.pdf

6 Kosovo Institution of the Ombudsperson Annual Report 2018 - <https://oik-rks.org/en/2019/04/08/annual-report-20188/>

7 Commission for Protection of the Right to Free Access to Public Information, North Macedonia - Annual Report 2018 - <http://komspi.mk/wp-content/uploads/2016/06/Годишен-извештај-за-работата-на-Комисијата-за-2018.pdf>

8 Montenegro, Agency for Personal Data Protection and Free Access to Information, Annual Report 2018 - http://www.ombudsman.co.me/docs/1554124685_final-godisnji-izvjestaj-2018.pdf

sion. In the other 356 cases, the respondent body subsequently issued a decision.

Serbia had the highest number of complaints received by its Commissioner for Information of Public Importance and Personal Data Protection. During 2018, the Commissioner was able to resolve and successfully handle 3,974 complaints out of some 5,190 complaints received in total. 4,842 (or 94%) of all complaints and petitions received were submitted by the citizens. And the main reason for the large number of complaints was the absence of liability for the violation of the law.

From total complaints received by the Commissioner, some 3,346 complaints were against ministries and other state bodies; and 1,846 were filed against other departments in administration.

Out of 3,974 resolved complaints in 2018, only 684 (17.24%) were filed against a decision or a conclusion of a public authority, and all other complaints, 3,290 complaints (82.76%), were filed due to the failure of authorities to act on a request, or due to a negative response without explanation.

Fully ignoring the requests was recorded in 2,117 resolved cases (53.3%), in 1,173 cases (29.5%) the complaint was filed against a negative response by the authorities and in 684 cases (17.2%) complaints were filed against the decision or conclusion made by the authorities.⁹

9 The Commissioner for Information of Public Importance and personal data Protection in Serbia, Annual Report for 2018 <https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2018/Report2018.pdf>

Laws on Free Access to Information in the Balkans

Changes, developments, practices and concerns

All Balkan countries have ratified and claim to have implemented laws on free access to information for several years. However, implementation of the laws faces challenges and difficulties, as public institutions deny more and more requests, often by declaring more and more information “classified”.

Albania

The Law on Access to Information in Albania¹⁰ entitles everyone, upon submission of a request, to get information on an official document, with no obligation to explain the motives of such a request. Public authorities must grant any information in relation to an official document, except when the law provides otherwise.

10 Law on the Right to Information in Albania (2014) http://www.qkr.gov.al/media/1307/119_2014-anglisht.pdf https://www.legislationline.org/download/id/7982/file/Albania_Law_right_information_2014_en.pdf and Law on the Right to Information over Official Documents (1999) <http://www.legislationline.org/documents/action/popup/id/6492>

Despite its shortcomings, an FOI law has been on the Albanian statute books since 1999. In 2014, this law received a legislative upgrade, providing greater public access to official documents as well as imposing concrete penalties on public officials who refuse to make information available. Now, by submitting an FOI request, a journalist in theory is able to gain access to most public information, documents and data in Albania.

The new law includes a number of novel concepts, including the possibility of reclassifying secret documents, the release of partial information and the use of information technology to make information held by public institutions more available to the public.

The law also obliges public institutions and authorities to appoint coordinations for access for the right to information and also created the institution of a Commissioner for the Right to Information, an appeals body in cases where institutions either refuse to answer FOI requests or hand out only partial information. So far, during 2018 only 331 public authorities have assigned internal (or institutional) coordinators for better implementation of the right to public information and more efficient handling of requests received and follow up on institutional answers.

The FOI law in Albania enables public bodies to charge for photocopying but there is no charge for providing electronic copies. Within ten days of the initial submission of a request, the public institution must decide whether it has been accepted. If the request is rejected, the applicant can appeal to the Commissioner and then to the courts. A number of exemptions are applied to the release of information, including docu-

ments related to national security and international and intergovernmental relations.

The Commissioner's annual report for 2018 noted the following issues related to the all ministries' transparency level:¹¹

- Transparency programmes are not updated, and several documents are missing, which should have been published in accordance with Article 7 of the Law "On the Right to Information". Specifically, information on the budget, on procurements and audit reports has not been published yet;
- Coordinators on the right to information were at expert level and have only limited access to other structures of the ministry. This renders making required documentation available within 10 days difficult;
- Requests for information were not filed with the coordinator, but delegated to other structures of the ministry. This means they were handled just like the other request letters on the authority's daily activity list;
- The coordinators for the right to information do not have sufficient knowledge of the legal framework, which places the implementation of the law on an improper level.

Regarding local authorities, the Commissioner's annual report notes some improvement in their transparency level. All municipalities have

11 Commissioner Annual Report 2018 https://www.idp.al/wp-content/uploads/2019/03/ENGLISH_Annual_Report_2018_KDIMDP.pdf

assigned coordinators for the right to information, and the number of requests for public information handled by the municipalities during 2018 was 7,244, while the number of rejected requests was 367.

European Commission progress reports for Albania for 2018 also noted the positive move of the municipalities. It said the Commissioner's mission should be further strengthened.

"With regard to public participation in local decision making, further progress has been made in the area of access to information: an increasing number of municipalities have disclosed public information and assigned a local coordinator responsible for the right to information." (EC Report on Albania 2018, page 11)

During the project period, BIRN submitted 49 requests to different authorities in Albania. The requested information included: prosecution files/declarations of wealth and assets of judges, prosecutors, mayors; concession contracts in the health sector; Declassified documents on the integrity of judges and prosecutors; court files on an organised crime figure; documents from a fraudulent procurement for a road construction; information from the Central Bank about money transfers; audio recordings of all meetings held by the High Council of Justice.

Only 30 of the 49 requests were fully answered, however; 10 were partially answered and nine were rejected.

Bosnia and Herzegovina

As a democratic country seeking EU membership, Bosnia was one of the first countries in the Balkan region to adopt a Freedom of Access to Information Act, in 2000. However, experts agree that the law requires amendments to address various shortcomings that have been identified over the years.¹² Furthermore, Bosnia and Herzegovina remains the only country in the Balkans that does not offer access to public records in electronic form.¹³

With a complex system of executive powers, the laws and regulations in Bosnia and Herzegovina broadly function, but governments' capacities for policy planning and coordination across all levels of government are still insufficient.

As part of a good governance practices, institutions should publish information on their own initiative, regularly and systematically, regardless of whether there is a request for access or not.

However, Bosnia lags far behind in institutional transparency, more concretely in terms of publishing information on official websites. Proactive transparency has still not been laid down by FOI acts in Bosnia, and information is by and large accessed reactively – by submitting a

request to the institution that possesses the desired information.¹⁴ In that respect, FOI legal acts in Bosnia and Herzegovina are outdated and do not meet the needs and expectations of the digital age.

The Law on Access to Information of Bosnia and Herzegovina¹⁵ gives every person the right to access information under the control of a public authority, and each public authority has a corresponding obligation to disclose such information. The law intends to facilitate and promote the maximum and promptest disclosure of information in the hands of public authorities at the lowest reasonable cost. Requests for information must be made in writing. The applicant must collect the requested documents in person at the relevant institution's premises. The applicant may be charged when the documents have to be photocopied or when the authority deems that the requests involve a substantial number of documents. Institutions have 15 days to respond to a request. When a request is rejected, the applicant has the right to appeal. The appeal steps include an administrative appeal, initiating a procedure with the ombudsperson, and finally with the relevant court. Bosnia restricts access to certain documents in the name of protecting state security interests, to ensure public safety, protect foreign and monetary policy interests, and in order not to harm the prevention or detection of crimes.

12 Analitika, Centre for Social Research - Towards Proactive Transparency in Bosnia and Herzegovina Policy Memo (2013) http://analitika.ba/sites/default/files/publikacije/proaktivna_transparentnost_policy_memo_eng_4juni_web.pdf

13 Analitika, Centre for Social Research, Proactive Transparency in Institutions of Bosnia and Herzegovina: good practices (2016) http://www.analitika.ba/sites/default/files/publikacije/primjena_standarda_eng.pdf

14 "Freedom of Access to Information Act for Bosnia and Herzegovina", Official Gazette of BiH 28/00, 45/06, 102/09, 62/11 and 100/13; "Freedom of Access to Information Act for the Federation of Bosnia and Herzegovina", Official Gazette FBiH 32/01; "Freedom of Access to Information Act for the Republika Srpska", Official Gazette of the RS 20/01. <https://www.legislationline.org/legislation/section/legislation/country/40/topic/3>

15 Freedom of Access to Information Act (2000), Bosnia and Herzegovina <http://www.legislationline.org/documents/action/popup/id/6402>

The European Union's 2018 progress report noted that access to public information is regulated differently at state and entity level in Bosnia. More importantly, it argued that mechanisms for monitoring the laws on free access to information are not implemented effectively. Problems in using the law on access to information result primarily from administrative silence, delays in replying, from provision of incomplete information and from insufficient institutional responsibilities in dealing with appeals.¹⁶

In short, access to information in Bosnia and Herzegovina is hampered by the legislation on data protection, which is interpreted in a way that protects private rather than public interests. Importantly, the latest change of the law has made it almost impossible for the public to access a document signed between the government with a private company, without the private company consenting to granting access to the documents to a third party (i.e. journalists, the public).

BIRN submitted 12 requests in Bosnia during the project period, which required constant follow-ups and reminders before the authorities responded somehow.

Although the legal deadline for institutions to respond is 15 days, the average response timeframe is one month – and it took BIRN journalists two to three months to obtain any response.

16 EU progress report, 2019 Bosnia and Herzegovina: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-herzegovina-analytical-report.pdf>

Only three requests were answered based on the request submitted: by the Central Bank, the Ministry of Foreign Trade and the Tax Authority at state level. The remaining eight requests were answered in some form, but none of the information requested was included in these official responses.

Kosovo

The Law on Access to Public Documents came into force in Kosovo in 2010¹⁷, aiming better governmental transparency. But yet, its implementation remains uneven. The law contains legal provisions that entitles every physical and legal person to access public documents, upon submission of a request. The request for access to information can be made in writing or orally. In practice, however, institutions often still request an official letter.

On paper, Kosovo has one of the best legislative frameworks when it comes to access to information. In reality, the law requires a thorough revision to address its challenging and fragmented implementation.

The law obliges all institutions receiving requests for access to public documents to respond within seven days, starting from the initial registration date of the request, and issue the relevant requested documents.

17 Law on Access to Public Documents (2010), Republic of Kosovo <http://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2724>

If a request is rejected, or if the authority fails to respond in time, the applicant can then appeal to the Ombudsperson or to the courts. Exemptions can be made in the following cases: for national security; defence and international relations; public safety; detection and investigation of criminal activities; disciplinary investigations; inspection, control and supervision by public institutions; privacy and other private legitimate interests.

Acting on the suggestions and recommendations of civil society, the European Union, and other media watchdogs, Kosovo changed the Law on Access to Public documents. Parliament adopted and ratified the new law in mid-2019.¹⁸

The changes to the law established a Commissioner, an independent body appointed by parliament. The Commissioner was added to the new Information and Privacy Agency, to supervise implementation of the legislation for personal data protection and access to public documents. No commissioner has yet been appointed, however, and civil society is keeping a close eye on the appointment process.

According to the Ombudsperson's annual report for 2018, the figures about public institutions denying release of public documents, or refusing to provide full documents to those requesting them are concerning.

Most complaints received by the Ombudsperson during the previous year related to access to public documents and were against central

18 New law on Access to Public Documents (July 2019), Republic of Kosovo <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20505>

public institutions. The table below represents the findings:¹⁹

Ministries were responsible for the highest percentage of denials – 23.41%, followed by municipalities, with 17.30%; the courts followed, with 4.7%; the Judicial Council, with 2.4%, the Prosecution, with 1.2% and the Prosecutorial Council, with 1.2%. Other institutions made up 8.4%.

The Ombudsperson's investigations into those complaints revealed a lack of classification of documents, lack of capacities of responsible officials in addressing requests for access to public documents, and a lack of will among law enforcement institutions, which together resulted in violations of the right of access to public documents. Furthermore, document requestors having to "walk" from one department to another remains an issue, as do the promises of responsible officials to deliver a document, and not do so.

Although institutions are often quick to confirm receipt of a request and do so within the legal deadlines, a decision to grant or refuse the request is often not taken within the deadlines set down by law, despite the importance of prompt delivery of information/documents. Public institutions also often fail to provide a law-based justification for not allowing/restricting access.

During the project period, BIRN Kosovo repeatedly submitted complaints about denial of access to public documents against several

19 Ombudsperson Institution of Kosovo, Annual Report, 2018 <https://oik-rks.org/en/2019/04/08/annual-report-20188/>

institutions. In all cases, the Ombudsman asked the Institutions to grant access – but only 45% of the requests resulted in access to the requested documents while 20% resulted in only partial access. The remaining 35% are still pending.

INSTITUTION	Type of Document
Ministry of Finance	bills of official dinners
Ministry of Health	Ministry's grantees (NGOs)
Ministry of Culture, Sports and Youth	files of candidates for a position in the ministry
Ministry of Trade and Industry	licences of "SHELL" company
Municipality of Podujeva	bills of official dinners
Municipality of Fushe Kosova	bills of official dinners
Municipality of Skenderaj	bills of official dinners
Municipality of Decan	bills of official dinners
Municipality of Prishtina	list of housing beneficiaries
Telecom Company	contracts with media

Table 5: BIRN Kosovo complaints to the Ombudsperson

During the project period, BIRN Kosovo submitted the highest number of FOIs. It submitted 337 requests to municipalities, ministries, the Telecom Company, Prosecutorial Council, Judicial Council, the President's Office, the Prime Minister's Office and the Procurement Review Body. Of these, 188 requests were approved, 27 were partially answered and 122 were rejected.

North Macedonia

The Law on Free Access to Information in North Macedonia is guaranteed by the 1991 Constitution as a fundamental right enjoyed by all citizens²⁰. Fifteen years later, in 2006,²¹ parliament adopted the Law on Free Access to Public Information. In 2010, the Law was subjected to significant changes, which resulted in an improved legal framework that guarantees the right to information and is more aligned with international and European standards. Although the legal framework was then assessed as satisfactory, implementation remains difficult.

The latest changes to the law were made in mid-2019 and ratified by the President. The changes shorten the waiting period on receiving a decision on the requested information from 30 to 20 days. In addition, the new changes off the law make all political financing public and accessible.

Although the law has a good legal basis, it is not fully implemented by all public institutions and departments.

For two years in a row, the European Commission's progress reports for Macedonia, covering 2017 and 2018, urged the government to oblige ministries and all other public institutions to publish more information on websites, and make more sets of information accessible for the public.

20 Article 16, paragraph 3 of the Constitution of the republic of Macedonia <https://www.wipo.int/edocs/lexdocs/laws/en/mk/mk014en.pdf>

21 Law on Free Access to Public Information, North Macedonia (in English): http://arhiva.mioa.gov.mk/files/pdf/en/LAW_ON_FREE_ACCESS_TO_PUBLIC_INFORMATION.pdf

The law has established the Commission for Protection of the Right to Free Access to Public Information, to promote, monitor and keep track of implementation of the law by all public institutions. The role of the Commission has been a great challenge, however, as the number of complaints has been high, and the responses of public institutions low.

In its annual report for 2018, the Commission's office reported 622 appeals against decisions from "information holders". In comparison with 2017, the Commission reported that the number of appeals was lower by 136, which reflects some progress made in the transparency of public institutions.²² The report notes that the highest number of appeals, 421, came from citizens and foundations, which it deemed positive, as the primary mandate of the Commission is to have more and more citizens use this right, and so access more public information. Of the total number of decisions made by the Commission, based on appeals for 2018, 89% were positive, i.e. made in favour of the requester.

The European Union progress report for 2018 marked a slight positive change, but also noted that the Commission still does not have enough capacity and power to monitor and implement the law. The report added that the government had declassified and published several documents and agreements signed with foreign investors. This declassification and publication had been one of the European Commission's "Urgent Reform Priorities" for the country. Fees charged to the public to receive public information were also lowered, and public information provided electronically is now free of charge. Although there has

22 Commission for Protection of the Right to Free Access to Public Information, Annual Report <http://komspi.mk/wp-content/uploads/2016/06/Годишен-извештај-за-работата-на-Комисијата-за-2018.pdf>

been a slight drop in the volume and quality of information published by local government bodies, ministries and other state institutions are now required to more proactively publish standard sets of information. The Commission that reviews appeals does not have sufficient capacity to monitor compliance with the requirement for proactive disclosure of information. The report also suggests that the Commission be given the power to impose penalties and to encourage public information providers to systematically enforce the relevant legislation²³.

In Macedonia BIRN submitted 233 requests during the project period. Out of these, only 79 were answered. BIRN submitted 32 complaints to the Commission for the Protection of the Right to Free Access to Public Information. In some cases, despite a positive decision from the Commission, the particular institution has still not acted properly and released the information to BIRN.

Montenegro

Access to information in Montenegro is guaranteed by the constitution. Parliament first adopted a Law on Free Access to Information in 2005. In 2012, a new law entered into force, providing a better standard of protection for freedom of information than the previous act.²⁴ The law was amended in 2017, requiring agencies to publish governmental information proactively, and an Open Data Portal was also launched.

23 European Commission's progress report, North Macedonia: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>

24 MANS - Freedom of Information in Montenegro <http://www.mans.co.me/en/wp-content/uploads/fai/FreedomOfInformation-Internship.pdf>

But the portal also maintains restrictions concerning confidentiality and personal data protection. And, although Montenegro has been a member of the Open Government Partnership since 2011, it still lags behind with publishing current information on agencies' websites.

The human rights watchdog Freedom House says the government of Montenegro publishes some information online, but that citizens have few opportunities to meaningfully participate in public consultations on legislation. Budget plans are not widely available, nor is information on government contracts.²⁵

Despite some positive developments achieved with the adoption of the new law, Montenegro still has problems with its implementation.²⁶ The European Commission's Progress Report, published in 2018, says implementation of the new law "has not contributed to ensuring more transparency and accountability in public service, as the authorities continue declaring requested information as classified, excluding it from the scope of application of this law".²⁷ The same report adds that although the amendments to the law on access to information were expected to speed up proceedings for obtaining information, there are concerns about authorities' increasing tendency to declare information classified.

The Montenegrin Network for Affirmation of the NGO Sector – MANS says the Law on Free Access to Information is a very strong access-to-in-

25 Freedom House <https://freedomhouse.org/report/freedom-world/2018/montenegro>

26 Balkan Insight - Montenegro Plan to Open Public Records Doubted <https://balkaninsight.com/2016/04/01/montenegro-ngo-doubts-govt-s-plan-to-open-public-records-04-01-2016/>

27 European Commission Progress Report, Montenegro <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-montenegro-report.pdf>

formation law, with many positive features that comply with international standards, but argues that there are still serious limitations on the right to request information, which have a negative impact on the ability of civic actors to fulfill their role as public watchdogs.²⁸

One problem with the Law on Free Access to Information is the newly added Article 1, which contains a series of exclusions that are not in line with international standards, or with the country's constitution.²⁹

Montenegro's Law on Free Access to Information – Article 1

Right to access and reuse information held by public authority bodies shall be exercised in a manner and in accordance with a procedure specified by this Law.

The provisions of this law shall not apply to:

- parties in judicial, administrative and other procedures prescribed by the law, to whom access to information from these proceedings is prescribed by regulation;
- information that must be kept secret, in accordance with the law regulating the field of classified information;
- information representing classified information held by international organisations or other states, as well as classified information by the authorities which originate or are exchanged in cooperation with international organisations or other states.

In the first paragraph, Article 1 of the law simply establishes the right of access and reuse under this law. But it then contradicts itself, saying that certain information does not fall under the scope of the law, and deferring to other norms.

28 Montenegrin Network for Affirmation of NGO sector <http://www.mans.co.me/wp-content/uploads/2018/06/AIE-MANSanalysis.pdf>

29 Law on Free Access to Information, Montenegro 2012 - 2017 <http://www.katalogpropisa.me/wp-content/uploads/2016/11/Zakon-o-slobodnom-pristupu-informacijama-1.pdf>

Another concern in the 2017 version of the Law on Free Access to Information is the introduction of exclusions related to business secrets and intellectual property. Under international standards, protection of commercial and business interests is a legitimate concern, but must be subject to a harm and public interest test. Tracking the activities of public bodies and their relationships (financial and other) with private bodies is clearly in the public interest. Also, intellectual property is not per se a ground for refusing access, even if it may limit the use/reuse of certain information.

In addition, the legal deadline for authorities to issue a response or give the reasons for why the request may be rejected has been extended from eight to 15 days.

In Montenegro BIRN was unable to submit any requests during the reporting period owing to the complicated follow-up to a previous request from 2016, submitted to the Montenegrin Customs.

Serbia

Serbia's constitution, in Article 51, recognises access to public information as a basic human right. It also forms part of the right to freedom of opinion and expression established in Article 46.³⁰

Serbia adopted a Law on Free Access to Information of Public Importance in 2004,³¹ which allows citizens and journalists to obtain information of public importance. The presumption of the law is that all

30 Constitution of the Republic of Serbia: <https://www.ilo.org/dyn/natlex/docs/ELECTRON-IC/74694/119555/F838981147/SRB74694%20Eng.pdf>

31 Serbian Law on Free Access to Information: https://www.paragraf.rs/propisi/zakon_o_slobodnom_pristupu_informacijama_od_javnog_znacaja.html

information possessed by public institutions should be available to the public, and that the right to request information is guaranteed to everyone, including foreigners. The requestor does not have to declare why he or she needs the information, and public institutions need to respond to access to information requests within 15 working days. In practice, authorities frequently obstruct requests.

The law established an independent body, the Commissioner for Information of Public Importance and Data Protection, in charge of free access to information, as a stand-alone public authority, independent in its exercise of its powers and with the main tasks of protecting that right.

But the Commissioner, in deciding on appeals, whenever the right has been denied, has no power to rule on denials by the highest institutions of state. He or she also does not possess any powers to enforce his or her decisions. Also, while the law contains punitive provisions for misdemeanors, the Commissioner is not empowered to initiate misdemeanor proceedings.

Finally, the fines are so low that even paying the fine may pay off in the mind of public bodies not wanting to reveal certain information. In practice, fines are also paid by the public budget of the institution in charge, so public officials do not worry much about the fines, and in some cases prefer to pay it, and not release the information. As Fabrizio Scrollini claims in his report, *Advancing Democracy: Improving horizontal accountability and transparency in Serbia*, “the Commissioner’s powers to fine authorities have been enhanced, and in this way it can fine institutions not fulfilling their legal obligations under the transparency law or

the private protection law. It should be noted that fines are paid from the organisation's budget and not from the officers in charge of them."³² According to the annual report of the Commissioner's office,³³ the right to free access to information of public importance in Serbia is widely exercised, but is difficult to realise without the Commissioner's intervention. This is demonstrated by the large number of complaints and petitions filed by citizens – 4,842. At the same time, the number of cases in which information was denied even after a complaint was lodged and after the Commissioner made a binding decision, has increased.

The report states that in 2018 alone, the Commissioner handled a total number of 17,700 cases, including 4,109 pending cases carried forward from the previous period. Of that number, around 77%, or 13,591 cases, were received by the Commissioner in 2018 (4,842 – free access, 7,550 – personal data protection and 1,199 – for both areas of the Commissioner's scope).

It is worth mentioning that Serbia has committed itself voluntarily to the Open Government Partnership, OGP, which says that requests, especially from state to state, should be more inclusive, accountable, and transparent. Serbia's action plan on Implementation of the OGP Initiative³⁴ says the government's obligations are to improve proactive transparency, meaning that all state bodies are obliged to have Information book-

32 'Advancing Democracy: Improving horizontal accountability and transparency in Serbia' <https://www.poverenik.rs/en/publications/studies/1388-advancing-democracy-improving-horizontal-accountability-and-transparency-in-serbia.html>

33 2018 Annual Report - Commissioner's office: <https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2018/Report2018.pdf>

34 Serbia's OGP Action plan 2018-2020: https://www.opengovpartnership.org/wp-content/uploads/2019/01/Serbia_Action-Plan_2018-2020_EN.pdf

lets for each year, and the Commissioner should have a subpage on its website with all these Information booklets collected and published in one place.³⁵

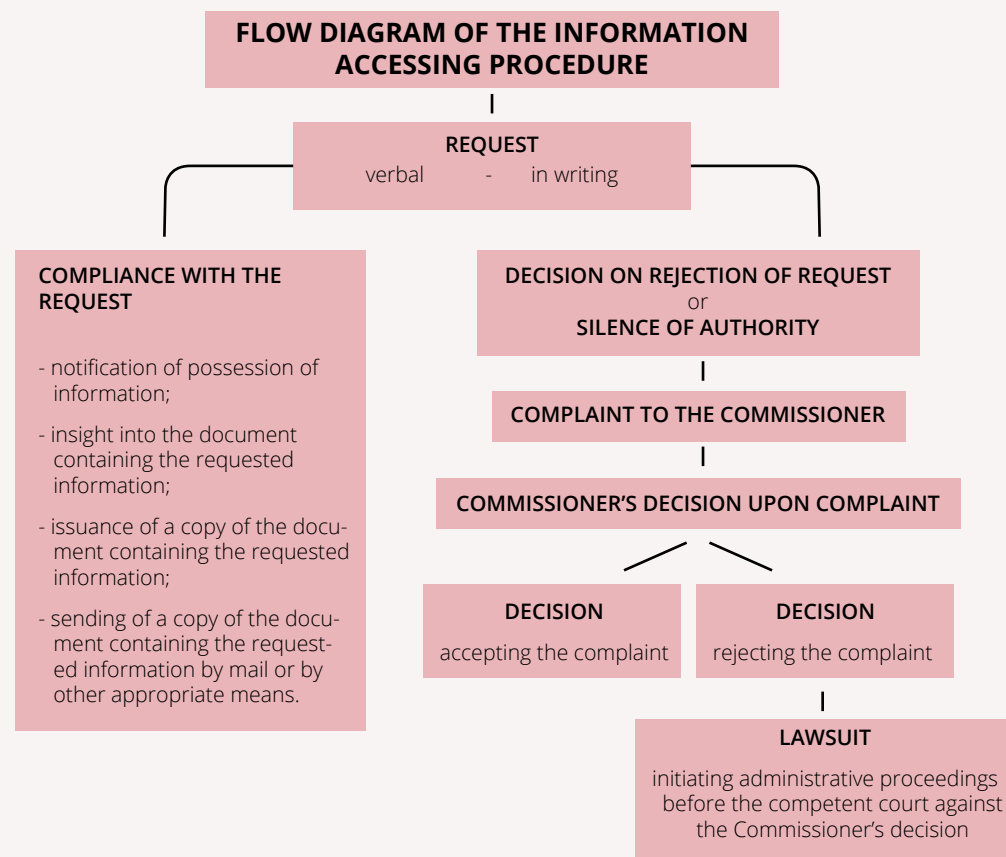


Table 1. Diagram of the Information Accessing Procedure³⁶

35 Commissioner's Open Data Portal page available only in Serbian language: <http://data.poverenik.rs>

36 Commissioner's office, Diagram of the information accessing procedure: <https://www.poverenik.rs/en/access-to-information/procedure-in-brief.html>

Importantly, the European Commission has often criticised Serbia's implementation of the Law on Free Access to Information, as well as the enforcement of decisions taken by the Commissioner for free access to information of public importance. In 2018, the European Commission said the increasing practice of declaring requested documents classified in order to restrict access to information remained a concern. Its report urged "public institutions to improve implementation of the law and comply promptly with access to information requests, especially in areas where there is a risk of corruption".³⁷

In short, it says, the authorities keep classifying documentation as "restricted", making it almost impossible for journalists and the public to obtain access to it. The function and authority of the Commissioner should be further strengthened, and stricter regulations imposed to ensure payment of fines for refusing access to public documents.

During the second phase of the project, in Serbia BIRN submitted 95 requests for access to public records. Only 13 were fully answered while 25 were partially answered; 20 were rejected or no answer was received. Another 37 requests are still pending (awaiting an answer).

37 European Commission's 2018 Progress Report, Serbia: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-montenegro-report.pdf>

Rankings of submitted Requests

Over the past three years, BIRN journalists from the six Balkan countries submitted requests to different institutions for access to public records in order to measure the transparency of their local and national governments. The lists below represent the institutions from good (top) to worst (bottom) performance in Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia.

To better understand the daily challenges BIRN journalists faced when dealing with Freedom of Information requests, in the boxes below some of them also tell us about their worst experiences over the past three years, and with which institutions.

Albania

In Albania, the best institution performing most transparently and in accordance with the Law on Access to Public documents was the Central Bank. The Civil Aviation Authority had the lowest performance ranking. One complaint was submitted to the Information and Data Protection Commissioner for the General Directory of Customs, which, after the ruling, released the requested documents.

	INSTITUTION	Requested Documents	ANSWER
1	General Directory of Prisons	Data on prisoners and status and court files	Partial answers
2	Ministry of Defence	Agreements, declaration of wealth;	Full answers
3	Ministry of Health	Concession contacts in health sector	Partial answers
4	Civil Aviation Authority	Agreements and foreign transactions	Partial answers
5	General Directory of Customs	Trade data & transactions	Partial/Full answers
6	Central Bank	Data on money transfer transactions	Full answers
7	High Council of Justice	Audio recordings of all meetings held	Denied

Bosnia and Herzegovina

The only institutions in Bosnia that answered BIRN's requests for information, on which investigative articles were then produced, were the Ministry of Foreign Trade, the Tax Authority, and the Central Bank. Based on analysis of the submitted requests in Bosnia, the table below highlights the answers received from the institutions:

BIRN Bosnia requested access to and received full answers from the Central Bank on payments of local companies to foreign accounts. It received partial answers on ammunition and cigarette exports from the Ministry of Trade and Economic Relations; and on several businesses/individuals from the Tax Authority. The remaining institutions in the table below provided no information, even after many attempts and reminders.

	INSTITUTION	Requested Documents	ANSWER
1	Central Bank of Bosnia and Herzegovina	Payments of companies to foreign accounts	Full answers received within the legal timeframe
2	Ministry of Foreign Trade and Economic Relations	Data on ammunition and cigarette exports	Full answers/partial
3	Indirect Taxation Authority	Data on several business/individual;	Full answers/partial
4	Federal Directorate for the Dedicated Industry	Signed contracts;	No information
5	Ministry of Security	Signed contracts; data on ammunition	No information
6	Ministry of Defence	Signed contracts; data on ammunition	No information
7	Federal Ministry of Energy, Mining and Industry	Signed contracts; tender supporting documents	No information

The worst Experience in Bosnia and Herzegovina:

Trying to get information from government institutions in Bosnia and Herzegovina is almost impossible. Despite the legal obligations of Bosnia's Freedom of Information Law, institutions still do not obey it (much).

The worst experience I had was with the Ministry of Foreign Trade. It did provide some partial answers, but only after dozens of requests to release the information.

It took them months to respond and then more months to decide what technical answer to release. In the end, they never released all the requested documents, only some partially, less important, documents, since they claimed it was a security question and was sensitive information.

I only got some partial information, which we combined with other information that we got from other institutions. In general, we were not able to get what we sought from them.

On the other hand, the ministry had not been on our radar at all. It was only after submitting requests for the same information to other five institutions that they all at once responded that we needed only to request the information from the ministry; the Ministry of Foreign Trade was the institution to provide us with the data on ammunition. We requested data on how much ammunition Bosnia was exporting, and to whom and for what price and other important details.

All the other institutions did not even try to answer; some never replied at all.

Kosovo

Over the past three years, BIRN Kosovo almost daily submitted more than 300 FOI requests to different government bodies, local institutions and courts.

The table ranks the responsiveness and transparency of the institutions, the requested document type and the official answer we received.

	INSTITUTION	Requested Document	ANSWER
1	Kosovo Privatisation Agency	Company/ownership data	Full answers
2	Parliament	Decisions; policy drafts	Full answers
3	Procurement Review Body	Public Tender documents	Full answers
4	Municipality of Prishtina	Expense receipts, decisions	Full/partial answers
5	Tax Administration	Records, signed contracts	Rejected
6	Judicial Council	Decisions	Partial answers

7	Court of Appeals	Decisions, hearing sessions	Full answers/partial
8	Prosecutorial Council	Decisions	Rejected/no answer
9	Office of the Prime Minister	Expense receipts	Rejected/no answer
10	Post and Telecom Company	Contracts with media agencies	Rejected

The worst experience in Kosovo:

One of the worst experiences we have had was with the **Post of Kosovo**, from which we requested media marketing contracts. The Post refused to provide the documents. Even after a complaint and the response of the Ombudsman, the documents were still not released.

Some requests and submissions were exchanged with the Post, but we could not get the documents. The Post also declined to provide a list of employees with all their employment contracts and the form of their selection.

We don't have any rejection or response from the Post on whether access will be allowed or not, which has prevented us from completing reports on the continued employment of political party militants in the Post office.

The Law on Access to Public Documents has meanwhile been amended this year, removing the Ombudsman's power to handle complaints in the event of refusal or refusal of access to public documents. The legal competence to handle such complaints has been transferred to the Information and Privacy Agency Commissioner. Unfortunately, Kosovo institutions have not selected a head for this institution, so we are waiting to file complaints about the lack of access to the Post's documents.

North Macedonia

In North Macedonia, from January 2017 until the end of June 2019, BIRN submitted 233 requests to ministries, municipalities, the parliament, the anti-corruption agency, the special prosecution, and the state

commission for the prevention of corruption and the courts. Three fully answered the requests: The State Commission for the Prevention of Corruption, the Public Prosecution Office for Prosecution of Organized Crime and Corruption; and the Council of Public Prosecutors.

	INSTITUTION	Requested document	ANSWER
1	Assembly of Macedonia	Financing of propaganda campaign for the 2018 referendum for the name change	Partially answered
2	State Commission for the Prevention of Corruption	Declarations of possible collision of interstate submitted by seven senior current officials	Full answers
3	Local Municipalities	Contracts between municipalities and media for media coverage, press releases, and news	Partially answered
4	Public Prosecutor's Office	Statistics and decisions on cases prosecuted over the last six years	No answer
5	Judicial Council	Statistics, data on some cases and decisions	Rejected
6	Public Prosecution Office for Prosecution of Organised Crime and Corruption	Information and statistics related to cases prosecuted by this institution in the last six years	Full answers
7	Council of Public Prosecutors	Information and statistical data on their work	Full answers
8	Ministry of Justice	Decisions and agreements	No answer

As the table above shows, the remaining institutions either did not answer the requests, or only answered them partially. In the requests submitted to local municipalities (11 in total), on contracts between the municipalities and the media for the purchase of press releases, reports

and news for the public to get acquainted with the work of the municipality, BIRN received full answers from only seven that also responded within the legal deadline. The remaining four did not respond. BIRN Macedonia addressed a complaint to the Commission for Protection of the Right to Free Access to Public Information, which decided in our favour over the four cases. After then receiving the information from the four municipalities, BIRN then complained again, as one municipality had not issued the information as requested.

Serbia

By law in Serbia (Section IV, Paragraph 22), no complaint can be filed to the Office of the Commissioner against the decisions of parliament, the government, the President, the Constitutional Court and the State Prosecutor's office.

The table below summaries institutional transparency on BIRN's requests during the project period. It is important to note that few state institutions responded to the requests. Ministries in particular either denied access or did not issue a response to the requests. In particular, the Ministry of Interior never responded to BIRN's requests. Even after a complaint was made to the Commissioner's office, it did not force the Ministry to either provide the requested access or officially reject the request. The Civil Aviation Directorate performed excellently, approving all requests, and provided full answers. On the other hand, the state company for the arms trade, Yugoimport ignored BIRN's requests. No request for information was answered, despite many attempts and reminders.

	INSTITUTION	Requested Document	ANSWER
1	Civil Aviation Directorate	Plane documents	Full answer
2	Courts	Court decisions, hearings	Full answer
3	Public Property Office	Plane documents	Rejected
4	Central Bank	Data on foreign transactions/exports	Partial information
5	Treasury	Payments to certain companies	Rejected
6	Ministry of Trade	Arms Exports Permits	Rejected
7	Customs Office	Plane documents	No answer
8	Office of the President	Visitors' log	No answer
9	Yugoimport, state-owned company for arms trade	Procurement documents	Rejected
10	Government of Serbia	Plane/aviation documents	Rejected/no access
11	Ministry of Interior	Criminal records of hooligans	No answer

The worst experience in Serbia:

In the previous years, I sent a number of FOI requests to the Ministry of Interior. Compared to other national institutions, it was by far the worst experience I've had. The problem in their approach towards FOI requests can be analysed in the next couple of points:

- **Late reply:** In my experience, it was almost a rule that they passed the deadline of 15 days to reply to a request. Serbia's FOI Law allows institutions to make a decision to reply with an additional 30 days (40 days from the moment request was received), but there are strict rules about when this can be applied. However, they usually replied after all those deadlines already passed, and made no decision whatsoever.

- **Communication department:** Even when you get confirmation that the FOI request has been received, when they are late, they usually find different excuses to keep you on hold, promising to send the information as soon as possible. This way, they buy additional time, and in some cases even reject the FOI request. The consequence is that journalists can wait for months for a reply and sometimes the information is no longer relevant or is outdated.
- **Silence:** In some cases, when I was asking for sensitive information, the ministry would just ignore my FOI request, even though they would notify me that they had received it.

Sensitive information: In the last couple of years it's become almost impossible to get sensitive information, such as criminal records, the ministry's internal control reports, police records on certain events, etc. However, similar information often ends up in tabloid media, or politicians share it publicly as a part of their political battles.
- **Ignoring Commissioner's rulings:** Since the Commissioner's office can no longer issue penalties to institutions that violate the law, the ministry has started ignoring their decisions.

Some of the information I tried to obtain from the Interior Ministry included:

- Criminal records of football hooligans and private security guards connected to various crimes
- Private security licence records issued by the Ministry of Interior.
- Information about the engagement of people connected to criminal groups in the Ministry

Conclusion

BIRN submitted 853 FOI requests to Institutions in Balkan countries over the 30 months of the project. Twenty-two complex and cross-regional investigations and features were produced using the information received from those requests. The majority of the documents are accessible online at BIRN's database birnsource.com

Although several institutions publish decisions and information on their websites, it was discovered that almost all of them lack updates, delay providing access to information, often reject requests or classify the information as "confidential", so that no access is granted to the journalist or the public.

It is clear that while Freedom of Information laws are well presented on paper in the countries concerned, implementation is not respected and has even become more difficult, and almost impossible, in some countries.

The law in all the covered countries imposes fines for not respecting the law and for denying access to public records. However, it is doubtful that any fines have actually been paid, even when institutions were found guilty of wrongly denying access to information.

Almost all the countries concerned lack the political will to fully implement their Freedom of Information laws. However, thanks to constant criticism of this situation from the European Union, organisations of civil

society, NGOs and media representatives, including journalists, there is still some cause for optimism about the state of transparency in the Balkans – although more work needs to be done to ensure that the public is properly informed about their governments and the work they do.

Recommendations

In light of the routine struggles faced by BIRN journalists to access public information, and make sure that their respective publics are kept better informed, the following recommendations would ensure better governmental transparency and implementation of laws on access to information:

- While almost all countries have a higher body overseeing implementation of laws on Freedom of Information and Access to Public Documents, they should be granted more power so that their decisions are fully implemented.
- The capacities of the Commissioner's/Freedom of Information Officers should be strengthened; they should insure that their institution fully respects the law and reviews every request properly, issuing an answer within the legal deadline, and follow-ups with the requester directly.
- All public Institutions should be trained on Freedom of Information Laws and be obliged to publish all of their decisions, records, spending and financial budgets online. They should make more and more data available online, and accessible for a broader audience.
- Financial fines imposed on officers rejecting requests without legal justification should be made payable by the individual officer, and not by the institution.

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