

Freedom of Information in the
Western Balkans in 2022:

CALLS NOT ANSWERED

Monitoring Institutional
Transparency and Proactivity -
Third Year

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Table of Contents

INTRODUCTION	3
FREEDOM OF INFORMATION SUMMARY	6
ANALYSIS OF SUBMITTED REQUESTS	9
FREEDOM OF INFORMATION COMMISSIONERS AND OMBUDSPERSONS	28
OPEN GOVERNMENT PARTNERSHIP	40
CONCLUSION	46
RECOMMENDATIONS	52

Introduction

The Balkan Investigative Reporting Network has been closely monitoring freedom of information in Western Balkan countries over the past year. This report is based on an analysis of requests submitted by BIRN journalists in the six Western Balkan countries, current legislation and interviews conducted with relevant stakeholders. The report represents a summary of BIRN's journalists' experiences of the freedom of information (FOI) sphere in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia.

This report covers BIRN's findings for 2022 and analyses a selection of institutions from the region, from those which freely provided information to BIRN journalists to those that did not. It also compares the past three years (2020-2022) and highlights general trends in the freedom of information sphere in the Balkans.

From January to December 2022, BIRN journalists submitted 376 FOI requests. Only 134 were fully answered; 15 were partially answered, and 14 were rejected. More than half of the requests, 213, were not answered at all (what is known as 'administrative silence'), reflecting public institutions' lack of transparency and proactivity. It is important to note is that this is not the total number of FOI requests submitted by BIRN journalists in the six countries in 2022; the requests analysed in this report were sent as part of BIRN's project 'A Paper Trail to Better Governance', which aims to foster institutional transparency, proactivity and accountability in the region.

Some institutions in Western Balkan countries have continued to be understaffed for several years already. This means that, for example, if the relevant official at the institution that deals with FOI requests tests positive for COVID-19, there is no one to prioritise these requests and ensure that legal deadlines are respected. In addition, in Serbia, the Ministry of Construction, Transport, and Infrastructure said that it couldn't process a FOI request on the Sava Bridge project because the person in charge had tested positive for COVID-19, and despite many follow-ups

and resubmissions, for almost two months, the ministry only released partial documentations, without giving any reasons for the missed material. Similarly, when the Kosovo Assembly was asked for the number of positive COVID-19 cases, it did not respond, showing disregard for public concern about this health issue.

In 2020, every country's institutions were forced to work under COVID-19 restrictions (working from home or hybrid working). Almost all countries were not properly equipped technically, as not many records were digitised, and therefore did not expedite FOI requests (according to BIRN's report for 2020, only 48% of our FOI requests were approved, and 45% not answered at all). The situation did not change much in 2021, as only half of BIRN's FOI requests were fully answered, and 37% were not answered at all.

In 2022, many public institutions in the Western Balkans continued to not respond and ignore FOI requests. Even after several attempts and complaints, few requests were fully answered.

Freedom of Information Laws in the Western Balkans are more than a decade old, and even though in almost all countries monitored have laws that are considered to be well-written, their value is often only on paper. Institutions that were monitored in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia continue to struggle with the implementation of the FOI laws, and continue to fail to become more transparent and accountable to their citizens.

According to international organisations and media watchdogs, the situation in the region worsened again in 2022, with most of the countries regressing on transparency, accountability, freedom of information and democracy in general.¹

Furthermore, the European Commission's progress reports for Western Balkan states for 2022 noted that the situation with regards to freedom of expression and access to public records and documents continues to be restricted or limited, and that no progress was made on the issue over the year.²

1 Freedom House Countries and Territories, European Commission Strategy and Reports

2 European Commission Progress Reports for the Western Balkans for 2022

BIRN's research and regional and international reports about FOI also showed that no progress was made during 2022 on freedom of expression in the Western Balkans. Many institutions did not prioritise access to information when receiving requests from the public, several legal changes were discussed behind closed doors, meaning that the public, civil society organisations, journalists and media representatives were unable to participate in the discussions. Some journalists were unable to finish their investigative stories because access to crucial documents was not granted on time, or they received partial responses after several months of follow-ups, which included decisions issued by information commissioners' offices telling public institutions to provide the requested information.

The European Commission's progress reports for Western Balkan states for 2022³ also argued that legal provisions on data protection and access to information are still being interpreted in a way that protects private rather than public interests. The right to access public information granted by legislation is not being fully implemented in practice. Information classified by public institutions and withheld from the public remains an issue, as this effectively restricts civil society and the public's access to key policy decisions. There is also a lack of effective institutional mechanisms to supervise the implementation of laws or sanction violations.

3 European Commission Progress Report for the Western Balkans 2022

Freedom of Information

Summary

FOI laws in the Western Balkans are well written, but many experts argue that they need to be updated and/or changed, as the legislative framework's implementation remains a major issue. When it comes to properly implementing the laws and granting access to public records, particularly to journalists, public institutions prefer not to respond, or to answer partially, not always granting full access to the requested information. In general, a lack of political will to fully implement Freedom of Information (FOI) laws mean that they are being interpreted by officials in public institutions in various different ways.

According to the experience of BIRN journalists, 2022 has been much worse than 2021 and 2020 in terms of obtaining information of public interest through FOI. Public institutions in the region did not respond to FOI requests more often than they answered them promptly, or did not fully provide the public records that were requested.

Freedom of information and the right to access public documents is protected by the constitutions and laws of all democratic societies, including Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia. All six countries guarantee the public's right to access official documents. However, BIRN discovered that in practice, the legislative framework's implementation remains a major issue.

Even though in **2022** many public authorities did fully answer **FOI** requests submitted by BIRN journalists in **Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia** and **Serbia**, some did also not provide full access to requested documents, nor did they provide any reasoning for their decision. More than half the requests received no response at all. Only **36%** of

BIRN's FOI requests were **FULLY ANSWERED**. Some were **PARTIALLY ANSWERED** (4%), a few were **REJECTED** (3%), while 57% were **NOT ANSWERED** at all, even after several follow-ups from BIRN journalists.

Number of requests SUBMITTED	376
Number of requests APPROVED	134
Number of requests PARTIALLY APPROVED	15
Number of requests REJECTED	14
Number of requests NOT ANSWERED	213

From January to December of 2022, BIRN journalists submitted 376 FOI requests in the six countries in the Balkans. The information received via the requests was used to produce in-depth pieces published on BIRN's flagship website Balkan Insight. Based on the relevant institutions' responsiveness, BIRN was able to measure their transparency level and compliance with FOI laws.

To better understand the challenging circumstances of accessing public documents in the Western Balkans, in 2022, BIRN, among other things, also analysed the work of regional Commissioners' or Ombudspersons' offices, as well as their work within the Open Government Partnership initiative.

Based on BIRN's experience, and after closely monitoring public institutions and their level of transparency and accountability, there were **three** institutions with which BIRN was able to cooperate smoothly, and **three** institutions with whom BIRN encountered issues.

Other than their responsiveness when BIRN journalists made FOI requests in 2022, the time the institutions took to review or respond to the requests, the answers provided and the time BIRN journalists spent on following up on the requests in order to obtain full access have also been taken into consideration:

1.	Parliament of Albania
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2.	Ministry of Foreign Affairs, Montenegro
3.	Government of Kosovo

Institutions with which BIRN had smooth cooperation in 2022

1.	Government of Albania
2.	Ministry of Defence, Montenegro
3.	Customs Administration, North Macedonia

Institutions with which BIRN did not have smooth cooperation in 2022

The first three institutions were very cooperative, responded to FOI requests on time and provided all the requested documents, such as minutes of meetings of parliamentary commissions, data on citizens' frozen assets, recruiting for high-level positions, legal records or court documents, expense receipts, issued fines and signed tender or service contracts.

The three institutions in the second table did not respond well to BIRN's FOI requests. They rejected FOI requests even when the issues in question were clearly in the public interest. These issues were a decision by the government of Albania on maritime demarcation with Greece, Montenegrin military assistance to Ukraine, and the total amount of cannabis imported to North Macedonia in 2021. Even though the documents requested were of high public importance, none of them were provided in full, and some were also marked 'classified' without any proper legal justification for the classification.

Analysis of Submitted Requests

In 2022, BIRN journalists submitted requests to various institutions in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia for access to public records. The list below ranks the 20 institutions according to their level of cooperation and performance.

Their responsiveness is assessed based on the type of answers received - for example, full answers, partial (only technical details), no answers or rejection.

INSTITUTION:		ANSWER:
1	PARLIAMENT OF ALBANIA	Full
2	COURT OF BOSNIA AND HERZEGOVINA	Full
3	GOVERNMENT OF KOSOVO	Full
4	MINISTRY OF FOREIGN AFFAIRS, MONTENEGRO	Full
5	FEDERAL AGRICULTURE MINISTRY, BOSNIA AND HERZEGOVINA	Partial
6	MINISTRY OF FINANCE, LABOR AND TRANSFERS, KOSOVO	Partial
7	MINISTRY OF LABOUR, SERBIA	Partial
8	MINISTRY OF INTERNAL AFFAIRS, SERBIA	Partial
9	MINISTRY OF TRADE, SERBIA	No answer
10	ASSEMBLY OF KOSOVO	No answer
11	PARLIAMENTARY ASSEMBLY OF BOSNIA & HERZEGOVINA	No answer

12	MINISTRY OF FINANCE, MONTENEGRO	No answer
13	SECRETARY-GENERAL OF THE GOVERNMENT, NORTH MACEDONIA	No answer
14	GOVERNMENT OF SERBIA	No answer
15	MINISTRY OF FINANCE, LABOUR AND TRANSFERS, KOSOVO	No answer
16	MINISTRY OF FINANCE AND ECONOMY, ALBANIA	No answer
17	MINISTRY OF HEALTH, NORTH MACEDONIA	No answer
18	GOVERNMENT OF ALBANIA	Rejected
19	CUSTOMS ADMINISTRATION, NORTH MACEDONIA	Rejected
20	MINISTRY OF DEFENCE, MONTENEGRO	Rejected

Institutional responsiveness to FOI requests sent by BIRN journalists in 2022

The table above ranks institutions according to their performance when asked to release public documents, the time it took to respond (in compliance with the legal deadline), and whether they released all the requested documents or not. Excellent cooperation was recorded with the Albanian parliament, the Ministry of Foreign Affairs in Montenegro, and the government of Kosovo.

All the FOI requests BIRN journalists submitted to parliament in Albania were answered within the legal deadline, and the requested information was provided in full (meeting minutes of the parliamentary inquiry commission for urban waste treatment plants and case documentation on books that were being sold and the purchase of private companies).

The second-ranked institution is the Court of Bosnia and Herzegovina. A FOI request sent by BIRN journalists to the court of Bosnia and Herzegovina was also answered within the legal deadline, and the requested information was fully disclosed (a copy of trial video/recordings). However, the Municipal Court of Sarajevo rejected a FOI request (for verdicts) and did not provide any legal justification for its decision. A BIRN journalist addressed a complaint to the

president of the court, but no answer was received.

The government of Kosovo is ranked third as it also provided the requested documents in full, which included copies of CVs of candidates for members and heads of the Public Procurement Review Body, and the evaluations of candidate members and heads of the Public Procurement Review Body.

The Ministry of Foreign Affairs in Montenegro is also ranked among most cooperative institutions for FOI requests. This represents a change, because in previous years, it did not respond to any FOI requests from BIRN. In 2022, it provided full data on Russian citizens' sequestered properties in Montenegro (in line with EU sanctions on Russia), as well as ministerial reports on implementing EU sanctions. Its response was submitted within the legal deadline via electronic communication.

The second category (Partial) lists institutions that partially answered BIRN's FOI requests. Often, these institutions only released technical details – or provided a copy of a document that was not requested but somehow did cover the topic/ area or problem of interest, although not necessarily corresponding to the specified time frame/dates of interest.

The Ministry of Finance, Labour and Transfers in Kosovo only provided partial details from the requested lists of the gross salaries of employees who receive salaries from the state budget. It only released details that were already published (on its website) and that were not requested or mentioned in the FOI request.

Similarly, in Serbia, the Ministry of Labour, when asked to provide data, reports and evaluation documents on the number of irregularities discovered by inspectors at the Belgrade Waterfront project construction site, only provided partial details. These partial documents were provided more than two months after receiving the request and after many follow-up reminders from BIRN.

The Serbian Interior Ministry is listed in the same category. Out of three FOI requests from BIRN, it fully answered only one. When asked for information on a fugitive war criminal, the ministry responded, but only after a delay. However, when the same ministry was sent the same request in 2020, it rejected the

request. But after BIRN complained to Serbia's Information Commissioner, who ordered the Interior Ministry to release the documents, the ministry responded positively responding to the order and provided the information to BIRN in full. However, the ministry is listed in the Partial category because it only partially answered two other requests from BIRN about alleged smugglers in the country (to one of the request, it responded that the matter was under investigation and no information could be released, and for the other it only provided a police report (signed) that was never requested).

The third category (No answer) includes institutions that ignored FOI requests and did not answer at all. In 2021 there were many institutions in the region that did not answer such requests from BIRN's journalists (31%). However, during 2022 the number of institutions that did not respond almost doubled, and more than half of BIRN's FOI requests ended up with no answer (57%).

The Ministry of Trade in Serbia, the Kosovo Assembly and the Parliamentary Assembly of Bosnia and Herzegovina did not respond to FOI requests (about Serbia's arms exports to Ukraine and to the US, fuel expenses of members of parliament in Kosovo, and details of cyberattacks on the Bosnian parliament).

The Ministries of Finance in Montenegro, Kosovo and Albania also did not respond to FOI requests (about Annual Performance Report of Concessions/ Public Private Partnership for 2021 in Albania, lists of gross salaries of employees receiving salaries from Kosovo's budget, and reports on the implementation of EU sanctions in Montenegro). Also included in this category are the government of Serbia and the City of Belgrade (Sava Bridge project documentation).

Also in 2022, BIRN journalists' requests to the Health Ministry in Bosnia and Herzegovina, the Health Ministry in North Macedonia, the Finance, Labour and Transfers Ministry in Kosovo for details about certain COVID-19 regulations, statistics, vaccine tenders and economic recovery packages, they did not respond, even though the topic was of a high public importance. Only the Public Health Institute of the Federation of Bosnia and Herzegovina fully disclosed COVID-19 vaccine statistics. Meanwhile the Public Institute of

Republika Srpska only partially responded to the same request by releasing only a few lists or reports related to vaccinations, which were not included in the original request.

In the final category are the government of Albania, the Ministry of Defence in Montenegro and the Customs Administration in North Macedonia. Some simply rejected the requests without giving any justification, while the others, such as the Montenegrin Ministry of Defence, said that data was confidential.

The government of Albania was asked to provide information about a decision on maritime demarcation between Albania and Greece. In Montenegro, the Ministry of Defence was asked for technical details on military assistance to Ukraine. In North Macedonia, the Customs Administration was asked to release data on the total amount of cannabis imported to the country during 2021. All the cases were of public interest and were intended to inform the public about government activities.

The Albanian government, when asked to release the decision regarding the country's sea borders with neighbouring Greece, simply rejected the request by saying that it was classified, without any proper legal justification for which parts of the decision should remain classified. BIRN also reported the case to the Freedom of Information and Data Protection Commissioner's office in Albania, with the argument that the government did not provide any legal justification for its decision, and that the issue was of high public importance. The Commissioner's office did not respond to BIRN's request for it to urge the government to provide proper justification for the rejection.

The Customs Administration in North Macedonia did not consider BIRN's request for information about the total amount of cannabis imported to the country in 2021 as information of public interest. It rejected the request without proper legal justification to say which part of the request referred to classified information and why. Its reasoning for the rejection was not in accordance with FOI laws and procedures in the country.

ALBANIA

In **Albania**, the FOI law might be the oldest in the region, and the country's Freedom of Information and Data Protection Commissioner remains the most active in monitoring and criticising the authorities, but public institutions are still not being transparent.

Last year in Albania, BIRN submitted **34** FOI requests and only **58%** were fully answered. **Six per cent** were rejected and **15%** were partially answered (the institution responded to the request but did not necessarily provide any of the requested data/documents). The remaining **21%** were not answered at all (institutions ignored the FOI requests).

The worst-rated institution was the Albanian government. When asked to disclose a decision on the conclusion of a contract between the government and a consulting company for the drafting of an agreement to be concluded between Albania and Greece, referring to the delimitation of maritime areas at the International Court of Justice, it rejected the request, saying it was **classified** information. The same request, about the maritime areas between Albania and neighbouring Greece was also addressed to the Ministry of Foreign Affairs. The ministry also said the requested material was classified information.

When BIRN back the government of Albania about the legal basis and reasons for the classification of the document, it never responded. The case was also addressed to the Commissioner's Office in Albania, with the argument that the documents were of public interest and the authorities did not give any legal reasoning for their decision. The Commissioner also did not respond.

The table below shows the institutions that were addressed by BIRN's journalists with FOI requests, the requested items, the number of requests and whether answers were received or not:

INSTITUTION:		REQUESTED DOCUMENT:	ANSWER:
1	Parliament of Albania	Minutes of the meetings of the Parliamentary Inquiry Commission	Full Answer
2	Ministry of Culture	Decision of the Council of Ministers	Full Answer
3	State Police	Lists of explosive attacks in the last five years; Indoor cannabis cultivation/ procedures followed for extradition cases	Partial Answer/ No Answer
4	Government of Albania	Decision on maritime areas between Albania and Greece	Rejection
5	Ministry of Finance and Economy	Inventory of documents on real estate and strategic investments	No Answer
6	Interior Ministry	Lists of drones from Turkey and proof of any existing contracts; Protocol procedures followed for an extradition case	No answer

Experience with institutions in Albania based on FOI responsiveness

In Albania, the problems with the FOI Law are systematic, and are not related to the law per se, but to the lack of rule of law in general. The country's public administration is highly unprofessional and politicised. Several ministries fail to understand the difference between the role of the coordinator appointed for handling FOI requests and their public relations staff. Often, they treat FOI as a political matter and their answer depends not on legal grounds, but on what they think will be the impact for their chief of handing over the document. As far as BIRN's journalists are aware, in Albania no single FOI coordinator is well trained or fully understands and respects the FOI law. As the majority of public positions are politically appointed, no one wants to be fully implementing the laws on paper.

The process of dealing with denied requests is costly, cumbersome and inefficient. The Commissioner who should oversee the implementation of the law often drags out the process. Fines are rarely issued for officials and often not enforced. Court proceedings for such cases take years. Freedom of information in Albania remains a very well written law on paper!

Gjergj Erebara, BIRN journalist, Albania

In **Bosnia and Herzegovina**, BIRN submitted **11** requests in 2022. Despite the fact that more than half of the requests were answered, only courts and the Public Health Institute of the Federation fully answered. The State Investigation and Protection Agency (SIPA) rejected a request (with no clear legal grounds) by saying that an investigation was still ongoing and the Parliamentary Assembly did not answer at all.

Almost half of the submitted FOI requests were fully answered (**45%; or 5 out of 11**); **9%** were partially answered; **18%** were rejected, and the remaining **28%** were partially fulfilled.

BIRN requested access to details about the number of administered, expired, destroyed and remaining reserves of COVID-19 vaccines to the Public Health Institute of the Federation of Bosnia and Herzegovina, and received full answers. However, the same request submitted to the Public Health Institute of Republika Srpska was only partially answered. The table below lists the institutions that were addressed with FOI requests, the requested items, the number of requests and whether answers were received or not:

INSTITUTION:		REQUESTED DOCUMENT:	ANSWER:
1	Court of Bosnia and Herzegovina	Copy of a trial video	Full answer
2	Public Health Institute of the Federation of Bosnia and Herzegovina	Details (numbers) of administered, expired, destroyed and remaining reserves of COVID-19 vaccines	Full answer
3	Parliamentary Assembly of Bosnia and Herzegovina	Details of a cyberattack on parliament	No answer
4	State Investigation and Protection Agency	Details of a cyberattack on parliament	Rejection
5	Federal Agriculture Ministry, Bosnia and Herzegovina	Information about illegal logging	Partial Answer

Experience with institutions in **Bosnia and Herzegovina** based on FOI responsiveness

In general, the situation in Bosnia and Herzegovina remains challenging, as the majority of public institutions do not respond. Only some state-level institutions promptly respond to BIRN's FOI requests (and also meet the legal deadlines).

Azem Kurtic, BIRN journalist in Bosnia and Herzegovina

In **Kosovo** in 2022, BIRN submitted **254** FOI requests for access to public records. Almost three-quarters of the requests were not answered at all. In comparison, in 2021, half of the submitted requests were fully answered with full disclosure of the requested documents.

The majority of the requests in 2022 were completely ignored (**70%**). A total of **28%** were fully answered, while **2%** of the responses contained only part of the requested information. None were rejected. The requested documents included recruitment procedures for high-level public officials, records of criminal charges, lists of foreign citizens, public officials' financial benefits, public contracts, receipts for official expenses and COVID-19 vaccination records.

The table below lists the institutions approached, the types of documents requested, the number of submitted requests, and the answer received, if any:

INSTITUTION:		REQUESTED DOCUMENT:	ANSWER:
1	Ministry of Finance, Labour and Transfers	Recruitment procedures for high-level officials; lists of local teachers not added to the monthly salary list; an update on the economy recovery package; criteria and updates on the budget allocated for managing the COVID-19 crisis; lists of gross salaries of employees receiving salaries from the state budget	No answer/ Partial/ Full

2	Anti-Corruption Agency	Records of political figures with criminal charges for not declaring their assets (wealth); evaluation of suspicious cases for corruption	No answer
3	Ministry of Internal Affairs	Lists of foreign (Russians) citizens not allowed to enter the country; imported/registered vehicles; recruitment process records	No answer
4	Kosovo Assembly	Financial benefits of Assembly councils; lists of members voting on the civil code; Receipts for fuel expenses for members of parliament	No answer
5	Ministry of Culture, Youth and Sports	Public contract copies; list of candidates for the National Ballet director's position; contracts and expenses for Kosovo's National Theatre (2017-2021); public call records for the election of Kosovo's Football Federation	No answer
6	Kosovo Police	Decision on cancellation of the certification of police officers; mass arrests during a festival; data and statistics on the confiscation of narcotics, contraband and drug laboratories	No answer
7	Kosovo Government	Evaluation of candidate members and head of the Public Procurement Review Body; government action plan for the missing persons programme	Full answer

8	Office of the Prime Minister	Prime minister's expenses during official state visits (abroad); Sign Language Programme Agenda and Plan.	Full answer
9	Ministry of Health	Vaccination app tender documents; health public procurement tender documents; public contracts/lists of vaccination process in border points; number of positive cases with new COVID variants	Full answer/ No answer
10	Kosovo Customs	List of imports to Kosovo in 2022 (cars, wheat, flower, oil)	No answer

Experience with institutions in Kosovo based on FOI responsiveness

Last year, institutions in **Montenegro** finally started responding to BIRN's FOI requests. During 2022, BIRN journalists submitted **four** FOI requests to public institutions in Montenegro.

Only **one** of the FOI requests was fully answered, and the requested document was released or disclosed (**1 out of 4**). Only **one** was rejected, and **two** were not answered at all.

The table below lists the institutions in Montenegro according to their responsiveness to FOI requests in 2022:

INSTITUTION:		REQUESTED DOCUMENT:	ANSWER:
1	Ministry of Foreign Affairs	List of Russian citizens' sequestered property in Montenegro according to EU restrictions on Russia	Full answer
2	Ministry of Foreign Affairs	Arbitration processes before international courts	No answer
3	Ministry of Finance	Reports on the implementation of EU sanctions	No answer
4	Ministry of Defense	Technical details on military assistance given to Ukraine	Rejected

Experience with institutions in Montenegro based on FOI responsiveness

Despite the change of administration in Montenegro over the last two years, there has not been much improvement regarding access to public information. Even the government doesn't have a uniform policy on FOI requests, as some ministries give information within the deadline while others ignore requests. According to my experience, state institutions are usually misuse the law and do not answer FOI requests. Samir Kajosevic, BIRN journalist in Montenegro

Samir Kajosevic, BIRN journalist in Montenegro

During the last year, the Ministry of Finance ignored BIRN's FOI requests twice and didn't respond at all (whether they were rejected or not). On top of that, the Ministry of Defence, when asked to give details of Montenegrin military donations to Ukraine, claimed that the data is confidential, but after a new minister of defence was appointed, the same data was granted to other media. In short, the new authorities are more open to FOI requests, but are still not cooperating with the media and NGOs as had been expected.

Samir Kajosevic, BIRN journalist in Montenegro

In **North Macedonia** last year, BIRN submitted **58** requests to various state agencies, offices, courts, customs authorities and ministries.

Most of the FOI requests submitted were fully answered (**55%**); **15%** were rejected and the remaining requests were not answered at all (**30%**). The rejected requests concerned imports of cannabis to the country. Both the Ministry of Agriculture, Forestry and Water and the Customs Administration did not provide any legal justification for not disclosing the information.

The table below shows the institutions that were addressed, the number of requests submitted, the requested documents and the official answers received:

INSTITUTION:		REQUESTED DOCUMENT:	ANSWER:
1	Courts	Verdicts, final decisions on imposing measures, copies of public agreements	Full answer
2	State anti-corruption commission	Inspections of property documents	Full answer

3	Public defender's office	Data on the total number of cases (last three years) that were withdrawn due to non-appearance of a representative; copies of contracts / Copies of invoices for contracted services	Full answer / Rejected
4	Secretary-General of the Government	Print media reports on the use of funds received for 2020; annual report on disciplinary measures and the financial responsibilities of administrative officials for 2021	No answer/ Full answer
5	Agency for Management of Confiscated Property	Annual reports	No answer
6	Ministry of Agriculture, Forestry and Water / Customs Administration	Total amount of cannabis imported to North Macedonia in 2021	Rejected
7	Political Party (VMRO-DPMNE)	Receipts for paid property tax from 2016-2021	Rejected

Experience of institutions in North Macedonia based on FOI responsiveness

In **Serbia** in 2022, BIRN submitted **15** FOI requests to various institutions, including the government, various ministries, the Transportation Institute and local public agencies.

Only **33%** of submitted FOI requests were answered. Of those, only **13%** were fully answered, and the remaining **20%** were partially answered. None were rejected. A total of **67%** were not answered at all.

The situation in Serbia as regards FOI requests was worse than in previous years. More institutions do not respond to FOI requests, and only very few have

acted upon the Commissioner for Information of Public Importance and Personal Data Protection's decisions to release requested documents (including a few that released partial information).

In 2022, the Ministry of Trade was the most problematic public institution when it came to requesting public documents. All three requests that it received from BIRN in 2022 (about arms exports) were ignored.

When the Interior Ministry was asked for documentation about smugglers, it only answered partially. At first it told BIRN that due to an ongoing investigation it could not release any information about the case. After BIRN's second request, it sent a signed police report that was never requested or mentioned in the request.

However, there was a slight improvement in the way Serbia's Interior Ministry handled requests about fugitives. In 2020, the ministry rejected BIRN's requests about the whereabouts of a convicted war criminal and answered only after Serbia's Information Commissioner told it to do so, but in 2022 it responded to a request about the same case, albeit with a slight delay.

While the public, particularly residents of Belgrade, were eager to find out more about the new Sava Bridge project, the government and the City of Belgrade did not respond to FOI requests for documentation about it. The Transportation Institute and the Ministry of Construction, Transport, and Infrastructure partially responded to requests, but their answers did not contain any part of the requested documentation. The Institute gave a brief response, saying that the Law on Public Information does not apply to it and so it is not required to provide BIRN with any information. However, it did suggest referring the same request to the City of Belgrade.

The Ministry of Construction, Transport, and Infrastructure said that the person managing the FOI requests had tested positive for COVID-19, and until their return, no one else could answer. BIRN addressed the same request to the minister's office directly, but multiple attempts to reach the FOI official email and the minister's office did not achieve any response. However, after some time, BIRN heard back from the FOI official who said that they are waiting for clearance

from the Cabinet of Ministers and do not have anything to release yet without getting an answer from a higher level. After a complaint to the Information Commissioner’s office, and almost two months after submitting the original request, BIRN did obtain full documentation from the Ministry of Construction, Transport and Infrastructure.

Similarly, the Ministry of Labour only answered partially, by simply releasing a response which contained no parts of the requested documentation (irregularities discovered by labour inspectors at the Belgrade Waterfront project construction site, and only sent its response several months after receiving BIRN’s request.

The table below lists the institutions addressed, the number of requests submitted, the requested documents and the official answers received:

INSTITUTION:		REQUESTED DOCUMENT:	ANSWER:
1	Interior Ministry	Numbers of smugglers arrested in Serbia	Partial answer
2	Ministry of Trade	Serbian arms exports to Ukraine in 2022; arms exports to the United States and arms exports to the private company Beatronic Supply	No answer
3	Government Office for IT	Personal data protection and mechanism for the protection of citizens’ personal data	No answer
4	City of Belgrade	Documents for the Sava Bridge project.	No answer
5	Government of Serbia	Documents for the Sava Bridge project.	No answer

6	Transportation Institute	Documents for the Sava Bridge project.	Partial answer
7	Ministry of Construction, Transport and Infrastructure	Documents for the Sava Bridge project.	Partial answer
8	Ministry of Labour	Reports and irregularities discovered by labour inspectors at the Belgrade Waterfront construction site, including Belgrade Tower	Partial answer
9	Ministry of Mining and Energetics	A list of companies granted lithium exploration permits	Full answer
10	Ministry of Public Administration and Local Self-Government	Personal data protection and mechanisms for the protection of citizens' personal data	Full answer

Experience of institutions in **Serbia** based on FOI responsiveness

Nothing much changed in 2022. But when we compare the last three years, I have to say that 2021 and 2022 were definitely much better than 2020. Back in 2020 in Serbia, we had a state of emergency, some of the institutions were not operating, and those that were used COVID-19 as an excuse quite a lot. Also, in 2020, the vast majority of our FOI requests were about COVID-19, and that topic was pretty much non-transparent as institutions were hiding things from the public.

The biggest challenge that I've faced in these three years on a daily basis is the fact that our institutions have this policy of non-transparency. For example, if I am working on a story about certain criminal offences, I can only get useful information if that specific case has reached the court. If that is not the case, if the prosecution is still investigating it, then I will get nothing from them. Of course, there are things they cannot give me as that might endanger their investigation; but there are always parts they could disclose to the public - if they wanted to. There are also some cases that have been under investigation for the past 20 years, and when you ask them for the information, they say 'the investigation is ongoing'. I think they use it as an excuse when they do not want to disclose any information.

Milica Stojanovic, BIRN journalist in Serbia

Freedom of Information

Commissioners and

Ombudspersons

In the Western Balkans, Freedom of Information laws are monitored and an overseen by specially-created institutions as well as domestic and international civil society organisations that independently monitor freedom of information issues and measure institutional accountability.

Under Freedom of Information Laws, Information Commissioners' and Ombudspersons' offices are established as independent entities to closely monitor the implementation of the legislation, react to violations, issue legal charges for violations and, most importantly, hold public institutions accountable if they do not have current data publicly available online on their websites.

To better understand the challenges faced in 2022, BIRN conducted online interviews with the Commissioners and representatives of their offices in Albania, Kosovo, North Macedonia, and with the Ombudsperson in Bosnia and Herzegovina. The relevant officials in Montenegro and Serbia did not respond to our interview requests despite several phone calls and previous good cooperation over FOI requests.

In general, Commissioners continue to face complaints from journalists about their lack of responses to requests and about the incorrect labelling of documents as 'classified'. Many institutions try to execute decisions or recommendations from Commissioners' offices, but do not always do so in full. In several instances, even after a Commissioner's decision to fully release the documents requested by BIRN, public institutions only provided partial documentation (these included the Interior Ministry in Serbia and the Ministry

of Political System and Inter-Community Relations in North Macedonia). Only in Albania did institutions fully provide the requested documents after the Commissioner's intervention (State Inspectorate of Labour and Social Services, Regional Environmental Agency).

As in 2020 and 2021, the Commissioners' offices continued to operate with very limited capacities and resources (financial, human and technological), and often took longer to effectively monitor and safeguard the freedom of information law. For example, in Albania, the Commissioner noted that all public institutions have appointed their Coordinators for FOI but did not have the capacities to train them all. In Kosovo, the newly appointed Commissioner said that their very small staff has often been working after working hours to ensure that responses are processed promptly and that public institutions are held accountable. However, in North Macedonia, the Agency for Protection of the Right to Free Access to Public Information is still waiting for a software program (funded by a project donation) to be installed and implemented. Bosnia and Herzegovina does not have a Commissioner and instead the Ombudsperson is the guardian of FOI, operating with very limited resources.

ALBANIA

In 2022, the Commissioner's Office for Information and Data Protection in Albania continued to monitor the authorities according to its transparency programmes (state administration and local) by strengthening the right to information coordinator role, updating its registers with request and responses, reviewing complaints, carrying out administrative inquiries, holding hearings and making recommendations and decisions, amongst other activities.

However, in its annual report for 2021, the Commissioner's Office stated that "there is still a long way to go to achieve the standards required to guarantee fundamental constitutional rights and freedoms, and that public servants should be improving their performance in providing quality services".⁴

4 The Commissioner in Albania 2021 Report

The European Commission's progress report for Albania noted that "the law on the right to information foresees administrative accountability of public officials who fail to comply with its obligations, sanctioned by fines and the possibility for the Commissioner to take disciplinary actions against the person responsible".⁵

In 2021, the Commissioner's Office received 992 complaints about public authorities over "access to information or disclosure of official documents". A total of 44 complaints were carried over from 2020, and so a total of 1,036 complaints were under review during 2021.

But for 2022, the Commissioner's Office was working on the statistics for the year when this report was compiled.

Many public institutions have adopted a transparency programme that was created by their country's Information Commissioner's office and have published the programme on their website. In 2020, 239 public authorities published their transparency programmes. In 2021, of 374 public institutions that were monitored, 300 authorities had published their transparency programme. In 2022, 374 out of 374 authorities had appointed coordinators to deal with FOI requests.

Under the transparency programmes, the Commissioner's office constantly monitors the progress of each public authority to make sure that the information published on the websites of public authorities meets the set criteria and is adequate and up-to-date.

The Commissioner's Office told BIRN that of all the complaints filed during 2021, 49 were carried forward for review in 2022.

Based on its monitoring last year, the Commissioner's Office issued 50 recommendations to public authorities that had not been following the transparency programme. In 2022, the Commissioner's Office conducted 50 investigations. Their goal was not to only issue administrative sanctions (fines) to officials who did not grant full access but also to work towards increasing awareness about how they could be more transparent and proactive.

5 European Commission Progress Report Albania 2022

In 2022 the situation monitored by the Commissioner's Office seemed slightly improved (more transparency programmes were available online, more coordinators were appointed and Response and Requests Registers were published to enable citizens and stakeholders to have more direct access to public information. But there is still a lot of work to be done, said Elona Hoxhaj, the general director for the right to information.

The Commissioner's Office told BIRN that it is working towards proposing some changes to current legislation and will continue to raise awareness among public servants about the importance of freedom of information and continue to support the authorities to become more transparent and open to the public.

BOSNIA AND HERZEGOVINA

The Human Rights Ombudsman of Bosnia and Herzegovina is an independent institution established to promote good governance and the rule of law and has the authority to safeguard the implementation of the Law on Access to Information.

The law on access to information obliges public authorities to reply to freedom of information requests in the way and in the form laid out in the legislation.

When an individual submits a complaint, the Ombudsman registers the case and conducts appropriate procedures if there is a violation, and then issues an appropriate recommendation to the public institution involved.

When the Institution of the Ombudsman conducts investigation procedures, both parties are requested to provide statements about the case indicated in the complaint. The decision that is made by the Ombudsman depends on the response provided, as well as on the comments provided by both parties and the actions taken, or not, by the public institution involved.

The Ombudsman's office will publish a detailed overview of the situation in its 2022 Annual Report, which has not yet been finalised.

In 2022, the Ombudsman registered a total of 308 complaints about violations of the right to access information - the largest number of complaints ever received. A total of 304 complaints were received in 2021, while in 2020, the number of complaints received was only 231.

Out of the total number of complaints received during 2022, recommendations were issued to public authorities in 76 cases.⁶

The Ombudsman told BIRN that when issuing recommendations to public authorities, it does not have the mandate nor the authority to amend or revoke any decision taken, nor to prevent it being enforced. It cannot instruct any authority to provide information requested under FOI legislation and can only recommend that this is done.

The complaints it received from January to December 2022 were about public authorities on all government levels in Bosnia and Herzegovina. The Ombudsman said that the main reasons mentioned in the complaints were because of failure to issue decisions, *failure to ensure legal remedies, inefficient responses from inspection bodies, and failure of competent bodies to act within statutory deadlines when deciding on applicants' requests.*

The Ombudsman has expressed the same concerns, since 2020⁷, that even though all public authorities are obliged to publish a Guide to Access to Information and have an Index of Information Register, they have not published new material on their websites in order to make it available to the public and have not updated existing information on their sites. In general, public authorities in Bosnia and Herzegovina do not regularly publish information that they are supposed to make public according to the law. They do not regularly publish an information register index, updates of competency changes, actions or other circumstances affecting the list of information that should be regularly published so it is available for the public. Most public authorities do not submit statistical data about requests for access to information to legislative bodies and the Institution of the Ombudsman as legally required.

6 BIRN received the preliminary data directly from the Institution of the Ombudsman

7 2020 Annual Report of The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina

The European Commission said in its progress report for 2022⁸ that “the enjoyment of the right to access public information remains contradictory, referring to differences between what is written in legislation and how it is implemented. Legal provisions on data protection and on access to information are still interpreted in a way that protects private rather than public interests, the legislative framework still lacks effective institutional mechanisms to supervise the implementation of laws or sanction violations, and legislation needs to be aligned with international and European standards, said the European Commission.

KOSOVO

In June 2021, Kosovo finally appointed a Commissioner for Information. The Agency for Protection of Data and Access to Information also became operational and started receiving complaints about public access to information.

After the Law on Access to Public Documents⁹ was ratified, the Agency for Protection of Data and Access to Information was granted the authority to ensure the implementation of the Law on Access to Public Documents and the Law on Protection of Personal Data in order to protect people’s fundamental rights and freedoms in relation to the processing of personal data, as well as guaranteeing access to public documents.

The Commissioner for Information is responsible for ensuring implementation of the laws on Protection of Personal Data and Access to Public Documents as regulating the procedures for administrative complaints.

Previously, the Ombudsperson assisted the public in realising their right to access to public documents under the constitution.¹⁰ In 2021, the Ombudsperson received 44 complaints regarding access to public documents. A total of 62 were received in 2020.

8 European Commission Progress Report Bosnia & Herzegovina 2022

9 LAW_NO_06_L-081_ON_ACCESS_TO_PUBLIC_DOCUMENTS.pdf (rks-gov.net)

10 Law no. 05 L-019 on Ombudsperson – Ombudsperson Institution (oik-rks.org)

All complaints received by the Ombudsperson were about non-responsiveness to requests by public authorities or rejections of requests.

In 2021 and 2022, the commissioner of the Information and Privacy Agency received a lot more complaints about access to public documents than were previously received by the Ombudsman.

The Agency told BIRN that it received the following numbers of complaints from June to December 2021:

Complaints received	146
Open/under review	25
Closed	121

Table 12: Complaints received by the Commissioner in 2021

Since the Commissioner was appointed in June 2021 to the end of the year, no fines were issued. As the table above shows, out of **146** complaints received, **121** cases were closed and full access was granted to the requested documents. Only **25** cases remain open and are under review by the Commissioner. BIRN will continue to monitor the Commissioner's progress on access to public documents from various institutions in Kosovo.

In 2022 the number of complaints drastically increased (by 196%). By the end of November 2022, a total of **383** complaints were received from NGOs, media representatives and individuals. Of the total complaints, **87** were still under review, and the remaining **296** were closed (with a decision). **Four** fines were issued.

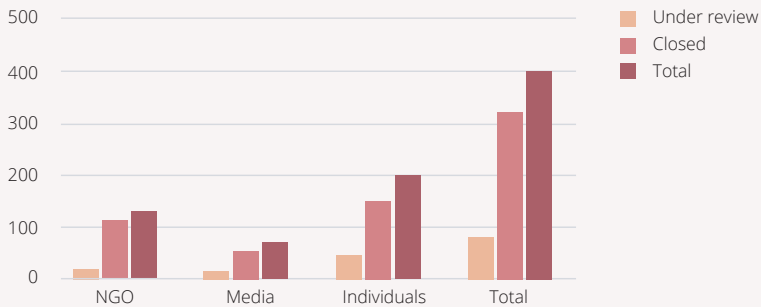


Table 13: Complaints received by the Commissioner (Jan-Dec 2022)

The Commissioner told BIRN that in 80% of the cases, public institutions do allow full access to public documents, and usually do not provide proper legal reasoning for their rejection or lack of answer. The Commissioner also suggested that the current law should be amended, and the legal timeframe for issuing a decision should be shortened. The Commissioner argued that public information should be available online but that political will is needed to make this happen.

The European Commission noted in its progress report on Kosovo that despite the limited human resources “the Agency [for Protection of Data and Access to Information] continues processing complaints on access to public documents and on data protection in an independent and efficient manner”.¹¹

MONTENEGRO

The Agency for Personal Data Protection and Free Access to Information is the overseer of the Law on Access to Public Information in Montenegro. The agency has the role of a supervisory authority as envisaged in the Personal Data Protection Law and is autonomous and independent. It has the status of a legal

11 European Commission Progress Report, Kosovo 2022

person.¹²

According to the European Commission's progress report for 2022, "classified information by public institutions and withholdings from the public remains an issue" in Montenegro.¹³

According to the same report, amendments to the Law on Free Access to Information, which are intended to increase transparency in the work of public bodies and grant Montenegrin citizens easier access to information, have yet to be adopted by parliament. In October 2021, legal changes were adopted enabling fines to be imposed if access to information is not granted properly. But the law has not been fully implemented since then to issue fines when access is not granted properly.

In December 2021, draft amendments to the Law on Access to Information were proposed by the government but await parliamentary adoption. A working group to produce guidelines for the proactive publishing of information on public institutions' websites has been set up. These steps should pave the way for the increased transparency and accountability of public bodies to Montenegrin citizens. In 2021, 5,285 complaints on free access to information were filed (in 2020, the figure was 4,328) and 351 complaints (8.57%) were rejected by the Agency for Personal Data Protection as unfounded, while 4,095 complaints were reviewed.

BIRN tried to contact the Agency for Personal Data Protection several times but did not get a response about the number of complaints received during 2022. Its website has not been updated and does not include any annual report or current data.

NORTH MACEDONIA

The Agency for Protection of the Right to Free Access to Public Information is the

12 Agency for Personal Data Protection and Free Access to Information (azlp.me)

13 European Commission Progress Report, Montenegro 2022

guardian of the Law on Free Access to Public Information in North Macedonia. In 2022, the Agency unexpectedly received only **343** complaints - a third fewer than in the previous two years, and the majority were about **incorrect responses to requests** (210); some were about **lack of responses to requests** (some 92), and around 41 were about **the rejection of requests**.¹⁴

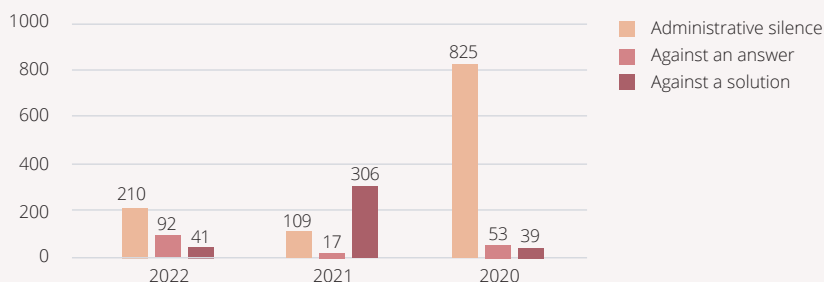


Table 14: Complaints received by the Commissioner in North Macedonia

Based on the preliminary data that BIRN received from the Commissioner, most of the complaints were submitted by legal entities, for example by citizens' associations and foundations (195), and 148 complaints were submitted by individuals.

However, in 2021 the number of complaints was much higher, and even higher the previous year (2020). The Agency for the Protection of Free Access to Public Information received 798 complaints in 2021, of which 608 were predominantly from civil society organisations, while 190 complaints were filed by individuals.

Of a total of 343 complaints received during 2022, 210 complaints (or 61%) were filed because a lack of response to requests, which remains a major challenge and needs to be actively addressed as it is not permissible under the country's laws or constitution.

As regards the public authorities against which complaints were received, the Agency noted that most of the complaints (16) were filed against the Ministry of Health. Of the municipalities, the municipality of Ohrid attracted the most

¹⁴ Preliminary data received by BIRN from the Commissioner

complaints. The Agency has not yet acted upon 25 decisions because a second appeal was filed by the plaintiffs. Misdemeanour proceedings are initiated against officials who do not act according to the Agency's decisions. The Agency's upcoming annual report for 2022 will reveal more specific details about the institutions that have been the subject of complaints.

In 2022, there were no legal changes to the Law on Free Access to Public Information.

SERBIA

In Serbia, the guardian of the Law on Free Access to Information of Public Importance, is the Commissioner for Information of Public Importance and Personal Data Protection. Of all six countries in the Western Balkans, Serbia was the only one to amend its Law on Free Access to Information of Public Importance in the past year. However, the changes do not 'force' public institutions to become more transparent.

The changes, which are intended to better regulate free access to information of public importance, should enable easier, faster and more efficient exercise of this right while also hindering any abuse of this right.¹⁵

The competencies of the Commissioner for Information of Public Importance and Personal Data Protection are divided into two areas: the protection of the right to freedom of access to information of public importance, in accordance with the law, and personal data protection and supervision of the implementation of the Law on Personal Data Protection.¹⁶

The changes to the law also considerably expanded the powers of the Commissioner, giving them the ability to submit requests to initiate misdemeanour proceedings and issue a misdemeanour order for violations of the law. The number of authorities that are subject to legal obligations has also

15 Commissioner's Annual Report for 2021

16 Commissioner's Annual Report for 2020

been increased; the procedure for requesting classified information has been regulated in more detail, and new content for mandatory bulletins about the work of government bodies has been decided upon. The effects of these changes should start being reflected, hopefully during this year.

However, it continues to be common practice in Serbia that in many cases, public authorities only act on an information request and provide the information after the applicant has submitted a complaint to the Commissioner, and after the Commissioner submits it to the authority for a statement. This leads to the suspension of the grievance procedure but at the same time it leads to unnecessary follow-ups by those seeking information and the unnecessary use of public resources and staff time in the Commissioner's office to deal with complaints. The practice of giving information only after learning about a complaint indicates that there were no specific reasons for not acting on the requests that were submitted, and that the prolongation of the process could have been avoided.

According to the Commissioner's annual report for 2021, the Commissioner received a total of 7,244 cases related to free access to information of public importance (compared to 5,201 cases in 2020), 3,366 cases related to personal data protection (compared to 2,952 in 2020), and a total of 1,611 cases relating to both areas (compared to 1,065) in 2020). A total of 12,221 cases were received, 3,003 cases more than in 2020. Meanwhile a total of 12,210 cases were resolved in 2021, 2,713 cases more than in 2020.

For **2022**, BIRN could not obtain any preliminary data from the Commissioner's office, as it did not respond to calls, and its annual report for 2022 is yet to be published.

Open Government

Partnership

The Open Government Partnership, a US-based multilateral initiative that promotes open government, has repeatedly said that political will is the key to making laws on freedom of information in the Western Balkans.

To evaluate government openness in Albania, Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia and their alignment with the OGP, BIRN analysed their action plans and self-assessment reports on the issue.

The OGP aims to secure concrete commitments from national and subnational governments to promote open government, empower citizens, fight corruption and harness new technologies to strengthen governance.

Through the OGP, governments should work together with civil society to co-create two-year action plans with concrete steps and commitments, across a wide range of issues. Then, as part of their action plan, they should decide on reforms that could deliver real outcomes. More importantly, before an action plan comes to an end, the OGP has an Independent Reporting Mechanism, IRM, which monitors all the action plans through their two-year cycles in order to measure the progress on the set commitments.

For the 2020-2022 reporting cycle, only Albania, North Macedonia and Serbia have published their national action plans. Bosnia and Herzegovina has not published its end-of-term self-assessment report for the latest national action plan (for 2018-2021). Only Montenegro has so far published its end-of-cycle self-assessment report (in January 2022).

Kosovo is the only country from the region that has not joined the initiative

yet, although there is hope that the country will join. The Open Government Partnership Kosovo Initiative website says that in June 2021 the government of Kosovo once again took a decision to begin the initiative for membership of the OGP¹⁷. In October 2021, Kosovo inaugurated a National Coordinating Committee to lead the membership process to join the OGP¹⁸. Kosovo's Ministry of Local Government Administration has been appointed to coordinate and foster the national initiative.

Albania's 2020-2022 national action plan is the country's fifth OGP action plan. It contains nine commitments, which seek to develop integrity plans, a beneficial ownership register, improve and digitise public service delivery, publish open data, expand measures ensuring access to justice, and implement budget transparency and transparency of state assets and revenue.

According to the OGP, Albania's 2020-2022 action plan development process saw the continued absence of a forum or space for government and civil society to jointly oversee the development process, set priorities and choose final commitments.¹⁹

Albania named several areas on which it based its commitments under its fifth national action plan (2020-2022):²⁰ **Anti-Corruption** (Ministry of Justice and Ministry of Finance and Economy); **Digital Governance** (National Agency for Information Society, Agency for the Delivery of Integrated Services Albania); **Access to Justice** (Ministry of Justice) and **Fiscal Transparency** (Ministry of Finance and Economy). It has not yet published its sixth national action plan.

However, according to the OGP's Independent Reporting Mechanism (IRM), in its IRM Action Plan Review, "the commitments in the 2020-2022 action plan, are largely replicated from pre-existing government initiatives and strategies, rather than stemming from priorities identified through engagement with civil society and citizens. Furthermore, since the commitments continue pre-planned or

17 Home - Open Government Partnership Kosovo Initiative

18 Inauguration of the National Coordinating Committee as part of the Open Government Partnership – Kosovo Ministry of Local Governance

19 Albania Action Plan Review 2020-2022

20 Albania National Action Plan 2020-2022

ongoing reforms, some milestones were already implemented before the action plan consultation began.”

According to the IRM’s review, it remains unclear if Albania’s set commitments are aimed at continuing ongoing practices in line with existing legislation, requirements or policies. By the end of 2022, the government of Albania was also supposed to submit to the OGP a self-evaluation of the commitments met and how they were assessed. So far, this has not been done.

Bosnia and Herzegovina’s complex institutional set-up and political system has affected its engagement with the OGP since 2014. It has finally developed its second action plan for the period 2022-2024.

The new action plan includes principles of transparency, combatting corruption, empowering citizens and taking advantage of new technologies to enable all public authorities to become more efficient and responsible, and to create the prerequisites for more efficient and innovative management of public resources.²¹

Although the action plan commits Bosnia to improve transparency and the accessibility of procurement data, measures are needed to strengthen monitoring and sanctions to prevent and tackle public procurement corruption.

Bosnia did eventually its first self-evaluation report (2019-2021). Based on the report, public institutions did partially fulfill some of the commitments, albeit with many technical difficulties. The evaluation noted however that challenges remain in terms of strengthening institutional integrity, more efficient public resource management, improving public services through the application of open data, increasing transparency of institutions, and improving co-operation and greater involvement of civil society in policy-making.

According to the IRM report, the Council of Ministers of Bosnia and Herzegovina continues to express its readiness to support and promote measures that will lead to a more proactive disclosure of information on institutions’ websites and to meeting the standards of proactive transparency, open data in the field of

21 Bosnia Action Plan 2022-2024, Open Government Partnership

statistics and public procurement, building a web platform for drafting Bosnia and Herzegovina's institutional integrity plans, making the budget available to the public by publishing it online, and establishing effective mechanisms of cooperation with civil society.²²

In January 2023, Bosnia and Herzegovina published its second national action plan (2022-2024) and listed ten commitments. These commitments are on **Open Data** (Ecosystem Development, Availability and Use of Statistical Data), Anti-Corruption and Integrity (Proactive Transparency, Open Data on Public Procurement; Establishment of an **Anti-Corruption e-Platform**; Digitalisation of Integrity Plans and Risk Registers), and **Fiscal Openness** (Improving Budgetary Transparency), **Civic Space** (Transparency of Media) and **Gender** (Transparency of Gender Equality Information)²³.

Montenegro has just published its new national action plan for 2023-2024, and has set 20 new commitments in the areas of public participation, open data, access to information, whistleblower protection, fiscal transparency and open government on a local level.²⁴

However, the Independent Reporting Mechanism's interim report on the progress of Montenegro for the period from 2018-2021 it indicated that the country only had limited success in implementing the obligations it assumed. There was limited implementation of five obligations, and another had not been started upon.

Although the country's second Action Plan (2018-2021) included activities related to online public participation, access to information, and budget transparency that had the potential to make an impact, their limited implementation prevented them from achieving noticeable results or changes in open government practices.²⁵

According to the IRM's report for the 2018-2021 action plan, this second action

22 Bosnia and Herzegovina Evaluation Action Plan 2019-2021

23 Action Plan Bosnia and Herzegovina 2022-2024

24 National Action Plan Montenegro 2023-2024

25 Montenegro's National Action Plan for 2023-2024

plan ended a prolonged period of OGP inactivity in the country. The plan addressed budget transparency, public participation and electronic services. The majority of the commitments derived from the country's ongoing Public Administration Reform and the EU accession process. Moving forward, Montenegro should use the OGP process to advance long-term strategic goals and strengthen transparency in public spending, access to information, and public participation tools, said the IRM.²⁶

North Macedonia's new national action plan (2021-2023) contains 40 commitments.²⁷ The fifth action plan contains a very broad spectrum of commitments related to anti-corruption, access to justice, public service delivery, open justice, open parliament, public procurement, beneficial ownership, access to information, open data, environment and climate change.

According to the IRM's review report for the fourth action plan (2018-2020), out of the 23 commitments, 12 had "substantial" implementation, whereas four were noted as "complete". In comparison, in the third action plan (2016-2018), of a total of 33 commitments, five were fully completed and 13 were substantially completed.²⁸

Due to the large scope of the fifth action plan (2021-2023) close collaboration between public institutions and civil society is needed in order to achieve good results, the IRM's review report said.²⁹

However, the IRM did recommend specifying more concrete steps that should be taken and that more specific outcomes from the implementation process. To fully implement the set commitments, civil society groups noted in the IRM report that additional human and financial resources may be needed in public institutions (the action plan's five themes are: focusing on transparency, anti-corruption, public-service delivery, access to justice, and environment and climate action).

North Macedonia has not yet published its self-assessment report.

26 Independent Reporting Mechanism, Montenegro 2018-2020

27 National Action Plan North Macedonia 2021-2023

28 Independent Reporting Mechanism North Macedonia 2018-2020

29 Independent Reporting Mechanism North Macedonia 2021-2023

Serbia's fourth national action plan (2020–2022) addressed diverse policy areas (capacity-building, public participation, natural resources, public service delivery, anti-corruption and integrity, and e-government), and its commitments seek to better inform and engage the public on pressing national issues.³⁰ The action plan (2020-2022) contained 12 commitments focusing on enabling better monitoring and public participation in policymaking and improving access to information and public accountability.

However, the OGP said it is concerned that the overall ambition of the action plan is low, on a par with previous plans. The IRM recommended strengthening future action plans by incorporating more thorough milestones that effectively leverage each other to achieve the stated goals. It also recommended more suitably integrating higher-level public servants throughout the country's OGP process so that the selected priorities become better integrated with government priorities and are addressed in greater depth.

In addition, the IRM review report noted that “overall, the action plan includes no new policy areas and carries over five themes from the previous action plan, including access to information, civic participation, environment and climate, public procurement, and public service delivery”.³¹

In general, all five countries are struggling to fully implement their set commitments. They continue to set high commitments, with not so clear implementation tasks or action points. To achieve the commitments, each country should appoint smaller teams (multi-functional from no more than two state-level institutions) and ensure timely submission of country's evaluations and next action plans. Western Balkan states, Bosnia and Herzegovina in particular, are known to respond late.

30 Serbia Action Plan Review 2020-2022

31 Independent Reporting Mechanism Serbia Action Plan Review 2020-2022

Conclusion

Freedom of Information laws in the Western Balkans tend to be backsliding in terms of transparency. Planned legal reforms on FOI laws seem to be designed in such a way that it would be impossible for journalists to hold the authorities to account.

When it comes to the implementation of FOI legislation, all Western Balkan countries have fallen behind significantly. They continue to be criticised by international media organisations and experts for the lack of political will when it comes implementing FOI laws and the disclosure of public documents.

Based on the annual recommendations from the European Commission's progress reports and FOI experts, FOI laws have been amended several times, and it was hoped that the new amendments would make institutions more transparent. However, in Bosnia and Herzegovina, new amendments to legislation were discussed 'behind closed doors' and turned out to be protecting private interests rather than the public interest. The amendments reduced the legal deadline for receiving an official response from public institutions after an FOI request is submitted from 15 to eight working days.

The amendments to the law in Bosnia and Herzegovina also favoured rejections of FOI requests rather than being pro-transparency. Bosnian journalists and media experts warn that the amendments to the law might actually turn back the clock on Freedom of Information in the country. The positive side of the new law is that it calls for the creation of a unique database to serve as a public information register and requires each state-level institution to have a communications officer responsible exclusively for FOIs.

In Serbia, the new amendments did strengthen the role of the Commissioner by enabling the imposition of fines for non-responses to FOI requests. Until now, many public institutions in Serbia preferred not to respond to FOI requests, and would only respond if they received a note from the Commissioner, although

often only partially. However, it is not clear whether or not the new fines will improve the responsiveness of public institutions.

In general, the established monitoring mechanisms, Commissioners and Ombudspersons' offices, continue to deal with large numbers of complaints and continue to chase public authorities for responses and to increase their awareness of their legal obligations in terms of freedom of information. However, journalists and media representatives face deadlines and cannot wait for long periods for institutions to fulfil their legal duties and allow full access to their public records.

According to the experience of BIRN journalists, 2022 has been much worse than 2021 and 2020 in terms of obtaining information of public interest through FOI. In 2020, 40% of BIRN's requests were fully answered, which increased to 57% in 2021. However, in 2022 the number of fully answered requests fell to its lowest point - 36%. This is matched by the statistics for FOI requests which were not answered: 45% in 2020 and 31% in 2021, to 57% in 2022.

All public institutions that received an FOI request from BIRN in 2022, were monitored based on the response provided, the time they needed to respond (if they met the legal deadline) and if the communication was electronic (more prompt) or it required sending a hard copy by post (or a handwritten signature from the person requesting the information).

Some institutions did provide full access to several requests, but the same institutions did not respond at all to others. For example, when BIRN asked the Ministry of Finance, Labour and Transfers in Kosovo for complete lists of the official equipment that a former cabinet minister and former deputy minister did not return, as well as a full distribution list for the 100-euro stimulus payments given out by the government of Kosovo, all the requests received full responses. However, the same ministry, when asked to provide details of the gross salaries of employees who receive a salary from the state budget, only responded with partial details. When the requests were of high public importance, like details of salaries of teachers who are not on the official payroll or details of the COVID-19 economic recovery package, or the budget allocated for COVID-19 management,

the ministry did not provide any answer at all.

Similarly, the Ministry of Health in Kosovo did provide full answers to few requests (list of unreturned official equipment by a former cabinet minister; a vaccine contract; invoices from a minister's team for official travel) and but did not respond to other requests (vaccine-related processes at border points, cases of new COVID-19 variant Omicron, and the number of doctors reassigned to the Municipal Medical Centre).

In Serbia, the Interior Ministry in Serbia only responded partially (to two out of three requests). When BIRN requested records about smugglers from Serbia and their arrests, it simply released a signed document that was not requested, and said that due to an ongoing investigation it couldn't answer when it received the request. However, one slight improvement was noted: BIRN did receive full information about a wanted war criminal from the Interior Ministry. Back in 2020, it rejected BIRN's request on several occasions, and only responded after the Commissioner ordered it to do so. Hopefully, this will mean that the Interior Ministry no longer cites privacy concerns or confidentiality as reasons not to disclose information about alleged or convicted war criminals.

The situation with FOI requests is similar in North Macedonia. The secretary-general of the North Macedonia's government, when asked by BIRN to provide a list of people who had contractual agreements with the government for 2022, it provided full and timely answers. But when the same office was asked to provide information about the allocation of funds received in 2020 and annual reports on disciplinary measures and the financial responsibilities of administrative officials for 2021, it did not answer.

When trying to understand the trends behind public institutions' responses to FOI requests in the Western Balkans, it is clear that when there is political will at the top, institutions do grant full disclosure of requested documents. But when there is no political will, and even if the assigned FOI Coordinators are trained and should fully comply with the law on FOI requests, institutions do not respond or provide any information. When not sure if the information might damage the reputation of the head of the institution, they might mark it as 'classified' without

any proper legal process and procedure for the classification of documents. In many cases, BIRN journalists have had to follow up several times with the same institution to get one single document, a process that can take weeks or months. Complaints to Commissioners' offices do not always ensure that access is fully guaranteed, or in a timely manner.

It was notable that in 2022, many public institutions preferred to keep public records 'secret', and not contribute to helping the public better understand important events or governmental actions. This was a continuation of what happened in previous years. In 2020 and in 2021, many institutions also simply ignored BIRN's FOI requests. Even when there was an intervention from the Commissioner, full access to requested documents was not always provided, only partial access. In general, public institutions continue to put requests, not always complying with the legislation on FOIs.

Only when there was a change of government or political atmosphere was there compliance with FOI requests. For example, in Kosovo, the president's office only started to fully comply with BIRN's FOI requests in 2020, under the current president's acting mandate. Previously, for many years, no request to the president's office had been fulfilled.

When there is no political will, there is little compliance. The government of Serbia did not answer BIRN's FOI requests in 2020 or in 2022.

On the other hand, the Ministry of Finance in Kosovo went from full disclosure in 2020 (expense receipts, decisions) to partial or no answer at all in 2022 (requested lists of gross salaries of employees who receive salaries from the state budget). In 2021, it also did not respond, not providing any answer (implementation of the COVID-19 economic recovery package and economic revival package).

The Ministry of Trade in Serbia continues to be ranked lowest for FOI transparency. In 2020, it only answered partially (arms exports). However, in 2021 (exports of Zastava arms to Africa) and in 2022 (arms exports to Ukraine and the United States), the ministry provided no answer at all.

Significantly, when there is a major crisis, institutions also prefer not to respond. In 2022, when the authorities in Kosovo (Assembly and Ministry of Finance, Labour and Transfers), North Macedonia (Ministry of Health), and Bosnia and Herzegovina (Ministry of Health) were asked by BIRN to provide details on current COVID-19 regulations, infection statistics, vaccine tender documents or economic packages, they did not respond at all, even though the issues were of high public interest.

Similarly, in 2021, when BIRN asked public authorities in North Macedonia and Serbia (Ministries of Health) to disclose certain COVID-19 vaccination regulations and software applications used to contact citizens, they did not respond at all. Even worse, when the Federation Government in Bosnia and Herzegovina and the Institute for Public Health in Bosnia and Herzegovina, were asked by BIRN in 2021 to release COVID-19 vaccine procurement contracts, they simply rejected the requests. Their only response was that the documents were “confidential”, without citing any proper legal justification.

In 2020, the situation was no different. The government of Serbia and Kosovo’s Ministry of Health, when asked by BIRN to disclose certain COVID-19 regulations or statistical updates, did not respond at all. Only the Institute for Public Health in Serbia answered partially when asked to release COVID-19-related data.

In all six countries in the Western Balkans, the same issues continue to recur. Even though laws are being amended, the everyday challenges faced by BIRN journalists, media experts and international organisations indicate that increasing numbers of ‘restrictions’ are emerging.

More precisely, institutions are trying to amend the law ‘as they see fit’ to give themselves the possibility to not respond to FOI requests and to minimise the full disclosure of public records.

State-level institutions are pushing for problematic new FOI laws that will not be pro-transparency and proactivity. In Bosnia and Herzegovina, journalists claim that a draft FOI law will significantly expand limitations on the information that

can be released to the public.³² In Albania, planned reforms of the FOI law seem to be designed to make it impossible for journalists to hold power to account.³³ And last but not least, in Kosovo, media experts have been raising concerns that political pressure, smear campaigns and a lack of transparency is undermining Kosovo's progress in improving the media environment.³⁴

32 Transparency Concerns in Bosnia over New FOI Laws

33 Albania's Push to Block 'Abusive' FOI Requests Criticized

34 Media Freedom in Kosovo 'Undermined by Political Pressure'

Recommendations

- All public institutions should be trained in Freedom of Information laws and be taught what is a classified document and how it can still be released with as minimal redactions as possible. They should make data available online and publish it regularly.
- All public institutions should establish and regularly maintain an electronic database for faster and more accurate access to requests.
- All public institutions should be legally obliged to have open data regularly posted on their websites.
- The Law on Access to Information to grant more power to the Commissioners, and strengthen their resources (human, financial) so they can continue to raise awareness, monitor wrongdoings, apply sanctions (fines) and ensure that public servants are properly trained to deal with FOI laws and regulations.
- No FOI request should be submitted in a hard copy format (by post). All public institutions should use more digitised practices for documents and methods of submission of FOI requests.
- Legal deadlines for responding to FOI requests should be reduced, and institutions should be encouraged to communicate via electronic channels.
- Each public institution should have an appointed and trained Officer for Freedom of Information, and their supervisors should be better trained in FOI laws.

