

With the current amendments to the Law on Freedom of Access to Information:

### **The media needs public information in a simple way without time constraints**

*Media workers agree that the new Law on Freedom of Access to Information must provide timely and detailed answers to their inquiries to institutions.*

The new Law on Freedom of Access to Information **must not be a stumbling block for media workers in BiH**, conclude the journalists we spoke to on this topic. It must enable more transparent work of institutions when it comes to access to information and it must provide timely and detailed answers to media inquiries of institutions.

### **Shorten deadlines for journalists**

Instead, **the first draft of the Law on Freedom of Access to Information**, which was published by the BiH Ministry of Justice in February, makes it even more difficult for media workers to access information. In some parts, this preliminary draft endangers the acquired rights and achievements from the existing law, **so the Association of Journalists of BiH and other civil society organizations asked the Ministry to withdraw it for revision**. Of particular concern is the long list of exceptions or possible restrictions on access to information held by public authorities, but also the possibility of extending the current 15-day deadline for dealing with requests for access to information to another 15 days more.

Civil society organizations sent proposals and comments on the draft law through an online e-consultation platform. **The Association of Journalists also sent a new additional proposal to amend Article 25 of the preliminary draft** regarding the deadlines that must be shortened if the journalists request information.

"In order to respect democratic principles, as well as regular and objective media coverage, journalists should have access to information from the competent institutions upon request immediately or within three days at the latest", BH journalists emphasize.

The preliminary draft of the new Law on Freedom of Access to Information, among other things, states that the second instance body in the procedures for exercising the right to access information of the Human Rights Ombudsman of BiH is performed by the Appeals Council et the Council of Ministers of BiH.

**"The institution of the Human Rights Ombudsman has been completely left out of the preliminary draft**, although it's the only independent institution that has so far monitored the implementation of the Law on Freedom of Access to Information ", said BH journalists.

The Institution of the Human Rights Ombudsman of BiH, by the way, out of the total number of complaints per year, has 10 percent of complaints related to freedom of access to information and the largest number of issued recommendations of the Ombudsman refers to FOIA.

**Džana Brkanić**, BIRN's BiH deputy editor, said it would be a huge pity for journalists and the public if the change outlined in the preliminary draft law were adopted.

"Only the extension of such a huge deadline for waiting for a response and waiting for a response to complaints, if we have previously been rejected or urgency, will mean that we

will never get some information and will lead to unproductive media in revealing many important topics of public interest, and further restrict investigative journalism. It is also necessary to reduce and speed up the response procedures. We still come across institutions or representatives who don't even use e-mail (or at least not actively), which is another aggravating circumstance that journalists face in their work", says Brkanić.

*Last year, Birn BiH, referring to the Law on Freedom of Access to Information, sent over a hundred requests to various institutions in the country, and many of them were rejected, some of which were never answered.*

"We have complained about some when it comes to judicial institutions in particular, but the appeals have been rejected, but certain information that we obtained through the Law on Freedom of Access to Information is an important part of our analysis and research", Brkanić added.

**One of the comments left by BIRN and other organizations in the e-consultation was Article 16, paragraph 11, which reads:** (11) The BiH Council of Ministers, at the proposal of the BiH Ministry of Justice, will adopt a Guide to access to information, which regulates in detail the manner of exercising the right of citizens to access information held by BiH institutions with accompanying forms, which ensures that the right to access information is exercised as quickly and easily as possible, and which is published on the website of BiH institutions, within 90 days from the day this Law enters into force.

"We reacted with a comment that the current law and the previous application have already introduced the practice of information officers and in a large number of institutions there are already information officers, **so the deadline of 90 days for appointing information officers seems superfluous and in any case unreasonably long.** The law only needs to stipulate that each institution must appoint an information officer or other specially designated official who, on the basis of his/her duties and tasks provided for in the systematization is competent to conduct procedures for exercising the right to access information. The law should also take into account the real situation and that some institutions don't have a person envisaged by the systematization as an information officer, but it can be another person whose jobs are similar to this job", explains Brkanić.

**They suggested that the special paragraph of this article stipulates that the information officer is obliged to provide the necessary assistance to persons who are applicants** for exercising the right to access information in accordance with this Law, as follows:" The information officer is obliged to provide the necessary assistance to users in the procedure of exercising the right to access information initiated in the basis of this Law".

Brkanić states that they "reacted to the articles related to the public interest test", underlining that it is particularly important to emphasize that the burden of proof in examining the public interest lies with the public authorities. "We also advocated media freedom through a series of activities, protection of journalists and a more transparent relationship between institutions".

**Nejra Hasečić**, a journalist from the Media Center, emphasizes that the introduction of the new Law on Freedom of Access to Information should enable more comprehensive access to information, which was not foreseen in the last proposed preliminary draft.

"Every new law should, in theory, be better than the previous one and that should be the first reason why the previous one is changing. However, like the previous preliminary drafts, the

latter does not lead in that direction. Although this law isn't intended only for journalists-journalists are the ones who most often use it in their work, especially investigative journalists who, in relation to their colleagues from daily newsrooms, have the opportunity to respond to the Law on Freedom of Access to Information, wait longer than the current law, because they work on a story for several months. I state this because due to the stated facts, the current deadline for sending answers should be shorter than 15 days, and not longer as foreseen in the preliminary draft", claims Hasečić.

In addition, public institutions often invoke the public interest, citing the reason why they are unable to provide the requested information, and this is also not clearly defined in the last preliminary draft.

"As a result, we have examples of journalists filing lawsuits and winning verdicts against institutions, and although this is a positive, they were still not provided with the information they needed for the story, or were subsequently provided, when the story "failed" somehow. These are just some of the examples that make it difficult to access information, and thus journalistic work. That should change, but not in the way envisaged in the last preliminary draft. **I think that new law should provide for a special article that refers to work in crisis situations**, because the practice during the coronavirus pandemic showed that in that period the work of journalists in that sense was even more difficult", Hasečić added.

**Amina Čorbo Zećo**, editor of the Patria news agency, believes that "a categorization should have been made, because it's not the same to ask for information as a journalist or a citizen".

"Waiting for 30 days is inadmissible, considering that rarely any institution adheres to the previous legal deadline of 15 days' ", she stressed.

In her work so far, she has had the most negative experience with the Agency for Identification Documents (IDDEEA), where they asked her for "printed forms that had to be sent by mail".

**"Without adequate access to information, we cannot talk about a democratic society**, and I am not sure that the heads of institutions are ready for transparent work", added Amina Čorbo Zećo.

**Faruk Durmišević**, a journalist from the Istinomjer.b portal, states that the most common problem is that "when referring to the FOIA, this information will not be available, although it should be".

**"Even the answers they provide are scanty, incomplete, and don't contain the essence.**

My opinion is that, as in other countries, we should have a commissioner for information of public importance. That would greatly help and improve the current situation", says Durmišević.

When it comes to the mentioned Law, journalists deal with public administration, states **Milica Milojević**, a long term journalist and activist.

"It is an administrative procedure. When we "send questions" to certain state or judicial bodies, that is, their spokespersons, we usually do not refer to the Law on Freedom of Access to Information, and with good reason. In that way, we 'avoid' conducting an administrative procedure, which has its own rules and deadlines. And those deadlines are extremely inappropriate to the needs of the public to receive current information", explains Milivojević.

The Law on Freedom of Access to Information is implemented in accordance with the Law on General Administrative Procedure (Entity or BiH).

"The general deadline for making a decision in an administrative procedure is 15 days, with the proviso that the body that should issue the decision can always find a reason to extend that deadline, with the explanation that for some reason additional, with the explanation that some reason additional time is needed to "carry out the procedure". When they finally "carry out the procedure", the authorities - holders of information, use additional "tools" for delay. For example, the decision on access to information is sent by regular mail, even if that body and the newsroom requesting the information are located on the same street. All this is being done in order to exhaust journalists and make the information meaningless, which becomes out of date", believes Milojević.

It is a special problem, she claims, if according to the decisions on access to information sends a general and inadequate answer. The only "remedy" for this is the use of a legal remedy, and filing an appeal against the decision. That means - a new procedure and a new delay with another uncertain outcome.

"The problem can also be if the body from which we ask or information is declared incompetent, without specifying the body that is competent according to them, because in that case we can only request the initiation of a new procedure for resolving the so called conflict of jurisdiction". Complicated? Well, yes, that complication is a stunt", states Milojević.

At the same time, referring to Law on Freedom of Access to Information is often the only way, if a journalist dedicates himself to a serious research topic, which doesn't lose its relevance over time. In that case, one should plan the steps in advance, arm oneself with patience and embark on a fight "with the state" in the long run.

In a view of the above, she added, questions arise: **is it possible to shorten these deadlines for administrative disputes**, and is it possible for the Law on Freedom of Access to Information to require from administrative bodies and courts to publish their decisions, acts, public records, minutes of sessions, etc. on their official websites (except those defined as secret as exceptions, but in that case with a clear and public explanation why those acts are secrets).

Milivojević stated, for example, that on one occasion she asked the City Administration in Banja Luka to provide her with information on plans to build an underground tunnel with a road, under the main street in the city center. That plan was never realized, but there was a study for the construction of that tunnel and the road.

According to the established practice, I sent questions to the spokespersons of the City Administration, but they told me in a telephone conversation to refer on the Law on Freedom of Access to Information. He believed that by doing so, he would discourage me and make me give up on the story. But I didn't. I sent the request, according to all the clerical rules (and this must be known, so that your request would not be rejected as incomplete or unsettled). And in 15 days they replied that the procedure was over and that I would receive a solution- by mail. But even then they did not send me the requested document. I could appeal for a solution. But I didn't, because that would still be a little too long, says Milivojević at the end of the conversation.

### **All documents are in principle public**

That the new Law on Freedom of Access to Information must enable much more transparent work of institutions when it comes to access to information was concluded at the March online debate "What needs to be changed within the Law on Freedom of Access to

Information", which was held within the IMEP program with the participation of journalists and editors of BH media.

Let us also recall the preamble of the Council of Europe Convention on Access to Official Documents, which states that all **"documents are in principle public and may be denied only in the case of protection of other rights and legitimate interests"**. Article 9 of this Convention stipulates that states should educate public institutions about their obligation regarding access to information. This is another shortcoming of the preliminary draft of the new Law, which in no part envisages the education of officials and institutions. The essence of the new law must be that the institutions act more proactively when it comes to the information they have, and that the information that the public is interested in, must be shared and published regardless of whether someone has requested it.