

Serbian Free Access to Information Law, translation



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# **Legal bill For Free Access to Information**

**Second Working Version**

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# **An Act to make provision for free access to information**

## ***general decree***

### **Article 1**

This law regulates the right of free access to information which is controlled or administered by the holders of the government of the Republic of Serbia and their public authorities (herein referred to as 'The Executive')

The Executive are obliged to provide any person making a request for information (herein referred to as 'the applicant') with free access to information which they control or administer, with the exception of cases which are deemed to be excluded by this law.

## ***definitions***

### **Article 2**

Determined by this law:

- 1) "Free access to information" ("access") it is the right of everyone to request access to information which is controlled or administered by The Executive, and The Executive has an obligation to provide access to the requested information;
- 2) "Information" includes the contents of documents which are controlled or administered by The Executive of the Republic of Serbia, and any applicant is entitled to demand access to them;
- 3) "Documents" are defined as every material requisite (e.g. printed matter, magnetic cassette tapes, floppy discs, compact discs, micro film, video or audio recordings and similar) on which have been recorded, or stored, information that is controlled or administered by The Executive;
- 4) "The Executive" pertains to public authorities of the Republic of Serbia and bodies which are under their authority (e.g. state bodies, bodies of territorial autonomy and units of local self governance; inclusive of enterprises, institutions, other organizations and all other affairs that are legally entrusted to the performance of duties under public authorization, etc.) and are, in their capacity to act with the authority of government and public services, obliged to provide the requested information at the behest of the applicant;
- 5) "The applicant" refers to every private individual and/or registered company, as well as those subject to specific rights and duties (e.g. group of citizens, settlement and similar) that submit a formal request for information from The Executive.

## ***means of accomplishing access to information***

### **Article 3**

free access to information, which is contained within documents that The Executive is obliged to permit, can be accomplished by:

- 1) direct access to information for the applicant (e.g. immediate, by phone, fax, electronic mail and similar);
- 2) inspection of documents and making of copies of documents that contain the requested information;
- 3) delivering to the applicant copies of documents which contain the requested information (e.g. by mail, official courier and similar);
- 4) disclosing information that is deemed to be in the public interest, to the press (mass media) in order to introduce information to the public, by way of publishing such information;
- 5) publishing of official publications and announcing information which is contained within documents;
- 6) in other ways that fulfil the right of free access to information.

## ***requests and deadlines***

### **Article 4**

It is the responsibility and duty of The Executive to ensure that applicants are granted access to information requested, based on direct applications (e.g. verbally face-to-face, by telephone, fax, electronic mail and similar) on the same day or next day - as a rule - and at the latest within the period eight days from the date of receiving the request.

If an application for access to information is submitted indirectly (e.g. by mail) then The Executive is obliged to ensure the requested information is made available to the applicant within 15 days of receiving the initial request.

The applicant is not obliged to provide reasons for requesting access to information.

When making a request for information, the applicant may suggest to The Executive a way by which the information can be made accessible.

## ***referral of requests***

### **Article 5**

In the event that The Executive does not possess or administer the information requested, but is aware of the persons or departments controlling such information, then it is obliged to refer the request accordingly within eight days of receiving the initial request, and to immediately inform the applicant that their request has been redirected.

In this case, deadlines for the granting of access to information are calculated from the time when forwarded requests are received by the persons or departments responsible for the information that has been specifically requested.

## ***extension of deadlines***

### **Article 6**

The Deadlines for the granting of access to information determined by this law may be extended by a period of up to eight days if:

- 1) requested information must be externally located by The Executive;
- 2) a single application pertains to information which must be gleaned from several differing sources.

When deadlines are extended The Executive is obliged to immediately inform the applicant of the delay and provide an explanation for the deadline extension.

## ***denying requests***

### **Article 7**

In the event that The Executive denies an applicant's request, it is obliged to declare an official decision, detailing the reasons for denying the request.

The Executive is required to make a declaration denying the applicant's request for access to information:

- 1) When the information requested has already been published;
- 2) When he does not possess or administer the requested information and has no knowledge of the persons or departments responsible for such information.

When requested information is already in the public arena and is accessible, The Executive is obliged to immediately re-direct the applicant accordingly

## *exemptions to free access and duration of exemptions*

### **Article 8**

The Executive will deny the applicant's request for access to information and declare a decision accordingly, in the event that the information requested has been classified by this law as an official governmental or military secret.

The Executive will deny access to information and declare a decision accordingly, in the event that the publication of such information could:

- 1) cause **(unnecessary *MP*)** harm to particularly critical activities of the Executive or the interests of a third party, with the exception of cases when consent has been granted;
- 2) endanger or expose measures undertaken in order to detect or prevent criminal activities, commercial violations and investigations of the perpetrators of such offences;
- 3) interfere with the smooth and impartial administration of the judicial process;
- 4) cause serious harm to general health or the environment;
- 5) breach the right to privacy of intellectual assets, with the exception of cases when the owner or author has consented;
- 6) interfere with the activities of monitoring agencies or those responsible for administrative supervision;
- 7) endanger or interfere with the administration of commercial and/or monetary policy;
- 8) infringe on rights to privacy, or **(unnecessarily and slanderously, *MP*)** harm the reputations of any individual/organization, as well as infringing on other personal rights which are specified in the law governing personal data protection.

Should the applicant make a request for limited access, The Executive is obliged to grant access to any sections of the requested information that are deemed fit for public exposure due to the nature of their content.

Information which is protected, and to which free access may be denied for reasons stipulated in Article 8 - paragraphs 1 & 2, points 2, 3, 4, 6, 7, 8 - shall be made available to the public when it ceases to be classified as applicable under this section of the law.

Information which is protected, and to which free access may be denied for reasons stipulated in Article 8 - paragraph 2, points 1 & 5 - shall only be made available to the public with the permission of the person to whom publication of the information could cause **(unnecessary *mp*)** harm. However, this period of restriction to information must not exceed 20 years from the day The Executive gained possession of such information.

## *amendment of information*

### **Article 9**

If the applicant possesses relevant evidence suggesting that the information is incorrect or incomplete, then they are entitled to request its rectification.

If The Executive refuses to amend the information contained in the requested documents then it is obliged to declare an official decision accordingly.

## *Judicial appeals and administrative action*

## **Article 10**

The applicant is entitled to present an appeal to the appropriate division of the judiciary, against The Executive's rejection of their request for rectification, within eight days of receiving the initial decision, in accordance with specifications of the law governing general administrative procedure.

The appeal board's ruling (second-instance resolution) must be promptly declared, no later than 15 days from the day of the appeal's submission.

The applicant is entitled to pursue administrative judicial action at a higher level in the event of a rejection of their request at both the initial, executive level and the second-instance, judicial level, in accordance with specifications of the law governing administrative judicial action. The procedure before the court is to be deemed as 'urgent'.

### ***exceptional judicial protection***

## **Article 11**

An applicant may request exceptional judicial protection from the appropriate division of the judiciary within 60 days of the deadline for declaration of the decision if:

- 1) after 15 days from presentation of the request, The Executive has neither granted access to the information nor declared a decision denying access (Article 7, paragraph 1);
- 2) after 15 days from presentation of the request, The Executive has neither granted access to the information nor declared a decision denying access, in cases regarding information which has already been published (Article 7, paragraph 2, point 1);
- 3) after 15 days from presentation of the request, The Executive has neither granted access to the information nor declared a decision denying access, in cases regarding information that it does not possess or administer, or if it has no knowledge of the persons or departments responsible for such information. (Article 7, paragraph 2, point 2);
- 4) after 15 days from presentation of the request, The Executive has neither granted access to the information nor declared a decision denying access, in cases regarding information which has been classified by this law as an official governmental or military secret. (Article 8, paragraph 1);
- 5) after 15 days from presentation of the request, The Executive has neither granted access to the information nor declared a decision denying access, in cases applicable to Article 8, paragraph 2, points 1-8;
- 6) after 15 days from presentation of a request for rectification, The Executive has not declared a decision denying the request (Article 9, paragraph 2).

## **Article 12**

The procedural process for exceptional judicial protection requires the appropriate division of the judiciary to demand from The Executive an explanation of why the applicant's request was not processed or a decision denying access was not declared.

The Executive is obliged to immediately provide the court with an explanation, no later than seven days from the issuing of the demand. If an explanation is not forthcoming, or the explanation given is deemed by the court to be insufficient grounds for denying access to information, then the court shall declare a decision ordering The Executive to carry out the applicant's initial request.

The Executive is obliged to immediately comply with the decision of the court by fulfilling the applicant's request.

The judiciary will notify the appropriate agency responsible for administrative supervision and may recommend that disciplinary action or criminal charges be brought against The Executive or other responsible persons.

In the event that the applicant has sustained physical, mental or other damages as a result of this situation, the judiciary will provide appropriate compensation at the behest of the applicant and by way of an official declaration.

## **Article 13**

In the event that the court accepts that there are sufficient grounds for denying the applicant access to information, for reasons stipulated by this law (Article 7; Article 8, paragraphs 1&2; Article 9, paragraph 2) then the court will issue a court order directing The Executive to immediately - within seven days of the court's decision - declare a decision to the applicant rejecting access to information.

The applicant is entitled to submit an appeal against the decision of The Executive that has been declared under the direction of a court order. The appeal should be submitted to a higher division of the judiciary or take the form of administrative judicial action, in accordance with Article 10, paragraphs 1 & 3.

If The Executive fails to declare a decision under the direction of a court order, then the court will undertake urgent proceedings resulting in the issuing of a decision rejecting the request of the applicant, which will supersede the decision of The Executive in every respect.

The applicant is entitled to appeal against the decision of the court that supersedes the decision of The Executive. The appeal should be submitted to a higher division of the judiciary or take the form of administrative judicial action, in accordance with Article 10, paragraphs 1 & 3.

### ***constitutional appeal***

#### **Article 14**

In order to protect the right of free access to information, the applicant is entitled to appeal, or initiate other procedural undertakings for the protection of constitutionality and legality, in accordance with the law regulating the procedures of the constitutional court.

### ***referrals to the People's advocate***

#### **Article 15**

In accordance with the law, the applicant may refer to the People's advocate (ombudsman) for assistance when the applicant believes that the right of free access to information has been breached by a decision or act of The Executive.

The applicant may make a separate referral to the People's advocate in the event that obstructive or unjustified concealment of information has occurred, in cases when the request was rejected in accordance with Article 8 of this law.

### ***official records***

#### **Article 16**

The Executive is obliged to administer an official record of all requests, decisions and other procedures regarding the right of free access to information. Records must detail the method of conduct by which the executive operated, in accordance with official regulations.

### ***tax and charges***

#### **Article 17**

Whilst submitting an application for access to information, the applicant is obliged to pay a minimum tax, which will be regulated by, and is at the discretion of, The Executive.

The Executive may determine a minimal charge for copies of documents.

With regard to the charges detailed in this section, the criteria for determining the level of taxation will be determined by the Government of the Republic of Serbia.

### ***delivering information***

## **Article 18**

Instead of directly accessing information, the applicant may ask that a copy of the requested document/s be delivered by mail or other methods.

The regulations operating in this case correspond to those of the article pertaining to tax and charges.

### ***informing the mass media***

## **Article 19**

The Executive is obliged to make provision for press and other media representation at all sessions and meetings which are not closed to the public, in order to ensure an honest and prompt transfer of information to the public. This particularly applies to sessions or meetings which concern issues of general, social significance.

The executive must provide all necessary materials for accredited journalists and other representatives of the mass media, and provide the necessary technical equipment and other essential provisions for their work.

Matters deliberated at sessions or meetings may be delivered to the public by way of press releases.

### ***official publications and websites***

## **Article 20**

Apart from responding to individual requests for access to information, The Executive is obliged to appropriately (official publication or website) announce or publish:

- 1) their decisions and measures which affect the lives and occupations of the citizens, as well as reasons for such action;
- 2) information pertaining to their activities, inclusive of information regarding their aims, standards, activities, organizational structures, expenses and sources of financing;
- 3) information concerning submitted requests, petitions, proposals, in addition to other activities undertaken by private citizens and registered companies, regarding the executive.

### ***public access to The Executive's activities***

## **Article 21**

In order to provide the public with access to their activities, The Executive is obliged to constitute public conditions that ensure the public's access, particularly with regard to the representation of citizens at their sessions or meetings.

The Executive is required to promptly inform the public regarding:

- 1) the daily agenda of each session or meeting and when they are to be held; relevant procedures and the potentiality of providing direct access to their activities;
- 2) the necessary procedures for attending sessions or meetings and the means by which the activities of The Executive may be directly inspected;
- 3) the amount of citizens who may attend sessions or meetings, as well as the amount who may directly inspect the activities of The Executive, in consideration of the order of application.

Citizens permitted to attend sessions or meetings may be ordered to leave if they do not comply with the rules of order. Any such order would be declared by the chairperson of the meeting or session.

As stipulated by this law, The Executive is not obliged to provide direct public access to their activities when confidential issues are being deliberated.

### ***information officer***

## **Article 22**

In order to make provisions for free access to information, The Executive is obliged to appoint a responsible person with the authority to process applicants' requests and provide information (information officer).

The Executive is required to provide the public with the information officer's details, such as: name, function and the procedural method by which the officer communicates with interested parties.

The information officer:

- 1) provides relevant details regarding the activities of The Executive;
- 2) enhances the method by which information relating to the activities of The Executive is processed, classified, stored and rendered;
- 3) provides necessary assistance to applicants, regarding the fulfilment of rights stipulated by this law.

The information officer is obliged to compile and administer a directory of information that The Executive controls or administers.

The directory defined above must contain a standardized overview of information, with a description of the information's purpose and content, as well as the procedure and time when such information can be made accessible.

## ***Exemptions of accountability***

### **Article 23**

Any official who reveals details of information beyond their authority (whistle blower), but does so earnestly and in the name of prompt, honest and comprehensive transference of information to the public, cannot be held accountable if such information is not protected in accordance with limitations specified in article 8 of this law.

## ***Application of regulations for administrative procedures***

### **Article 24**

The procedural conduct and declaring of decisions regarding requests for free access to information will operate in accordance with the law regulating administrative procedure, unless otherwise stipulated by this law.

## ***Supervision of implementation of this law***

### **Article 25**

The Government of the Republic of Serbia's agency for administrative inspection shall be responsible for supervising the implementation of this law.

## ***transitional and completion provisions***

### **Article 26**

Within 90 days of the introduction of this law, The Executive must ensure that the necessary personnel, organizational conditions, material, financial, technical and technological equipment are available for the law's implementation.

### **Article 27**

This law shall enter into force on the eighth day of its publication in the "*Official Gazette of the republic of Serbia*".