



Making government transparent and accountable through improved access to information

Amra Hodžić

Fol law is a tool to make governments accountable

Information is central to holding government accountable. Unless citizens are properly informed about what government is doing, how it is spending public funds and its own assessment of its successes and failures, they cannot ensure that it is acting for the general public good or in accordance with its public promises. The idea that public bodies keep information not for themselves but on behalf of the public is now widely recognized as a fundamental underpinning of democracy, accountability and good governance. In 1990, only 13 countries adopted national right to information laws, whereas there are currently more than 70 such laws adopted across the world, with further 20-30 laws under consideration in other countries.

Fol law in BiH - one of the best designed laws in the world is only used infrequently

Following this trend, backed by strong international influence and support, Fol laws were adopted at the entity and at the state level in BiH almost a decade ago. However, "...one of the best designed laws in the world is only used infrequently." (Privacy Int. 2006). This statement indicates general problem with the functionality of the Fol system and implementation of its underlying principles. Actually, "the functionality of the Fol system in a country is a potent indicator of how well political accountability and transparency work in practice." (Lindberg, 2009).

Bureaucratic arrogance - Unwillingness of public bodies to communicate with members of the public

While researches related to the Fol law implementation usually measure the reply rate to professionally formulated and structured questions submitted in the prescribed written form under the guidelines derived from the Freedom of Information Law, members of general public in BiH normally place their requests verbally or by

e-mail without citing the law. This often results in a mute response by a public body. Essentially, the survey results show that almost 80% of such informal contact attempts are fruitless. The total number of public bodies at the Federation BiH entity level that have contact details available on the Internet is 51 or 85% of the total. For 47 or 78% of total public bodies electronic way of communication was identified and e-mail information request was sent or submitted through the web-based form. The contact through e-mail or web-based form was made with only 13 public bodies or 21.6% of the total number of public at the Federation BiH level.

What about transparency?

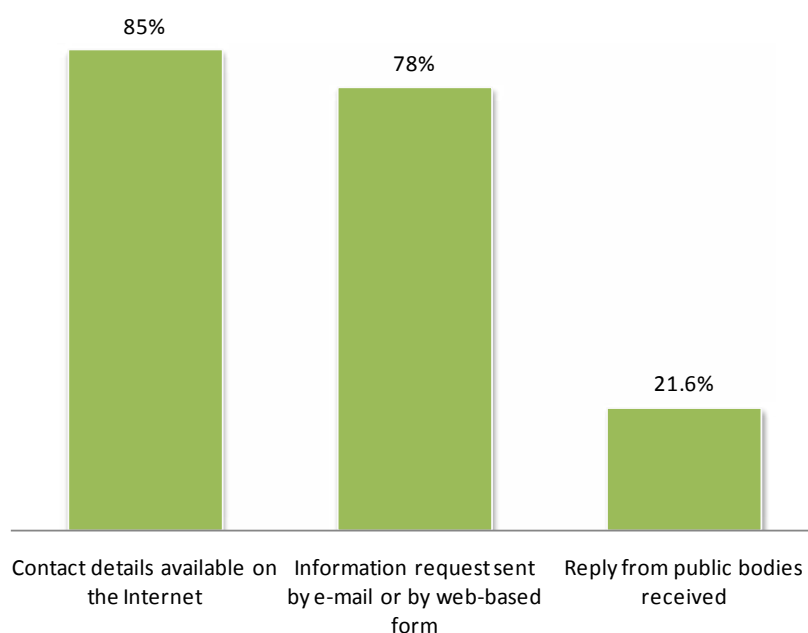
Besides direct contact with a public body, second source of information is through the publicly available documents and records. That is why transparency of public body work is vital and crucial precondition for efficient and effective disclosure of information to public.

Summary

The statement that "the mere existence of freedom of information laws does not ensure their appropriate implementation and functioning." (OSCE, 2009) is confirmed by the latest general research findings presented by the Transparency International BiH. When it comes to the freedom of access to information, the situation in BiH is devastating: "...the degree of implementation of the freedom of access to information remains low, less than 50% of requests resulted in a response within the statutory deadline and forms."

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Availability of contact details and "responsivness" of FBiH public bodies



general public in BiH usually place their requests verbally or by e-mail without citing the law. This often results in a mute response by a public body. The survey results of this research show that almost 80% of such informal contact attempts are fruitless.

The research was conducted around the adherence to four primary principles of (1) maximum disclosure, (2) proactive and routine obligation to publish, (3) promotion of open government and (4) principle of facilitated access to information covering 60 public bodies financed from the Federation BiH budget. The research results clearly point that the current information access policies do not ensure adherence to the four main principles of freedom of information legislation, resulting in limited access to information.

Essential documents fostering transparency and effective implementation of the FoI law are guide for information access, index of available information and annual report of public body and they are as such prescribed obligatory and publicly available by the FoI law. The following graph depicts findings and research results related to public availability of mentioned documents:

As the below chart shows, 43 (or 72% of total) public bodies are present on the Internet. Contrary to high number of public body Internet sites, only 12 (or 20%) public bodies use their Internet site to publish guide for information access, 11 (or 18%) to publish their index of available information and only 9 (or 15%) to publish

What causes the problem?

The mere existence of freedom of information laws do not ensure their appropriate implementation and functioning. An assessment of the current freedom of information policies clearly confirms this implication:

- Key FoI law underlying principles are not complied with due to "secrecy" culture of civil servants and their attitude that information kept by government is their property, and not property of citizens.
- Public bodies are unwilling to communicate verbally or through electronic means with members of general public.
- General lack of transparency is evident since majority of public bodies prefer policies of am-



their comprehensive annual report on their Internet site. Besides documents downloaded from the Internet sites of public bodies, additional five guides, six indexes and three annual reports were collected through direct contact with public bodies, increasing the level of publicly available guides and indexes to 17 (or 28%) and annual reports to 12 (or 20%).

Interestingly, in 2005 (five years after the adoption of the FoI law) researches managed to collect only five indexes, three guides and two annual reports from the FBiH public bodies¹. This slow progress in increasing transparency level clearly shows that majority of public bodies still prefer policies of ambiguity (even though they possess recourses like Internet pages to publish information) and continue with the practice of "secrecy" and noncompliance to principle of maximum disclosure.

ambiguity and continue with the practice of non-compliance to principle of maximum disclosure.

- Documents required by the FoI law (index, guide, annual report) are not available publicly in spite of the fact that most public bodies possess recourses like Internet sites to publish information.

Towards comprehensive FoI policy - good international and local practices

The "secrecy" culture of civil servants and their attitude towards citizens needs to be changed in order to eliminate causes of the problem and enable access to information to members of general public in BiH. In that regard, it is necessary to review good international and local practices of the FoI policies in order to come up with reasonable solutions for the issue of non compliance with the underlying principles of the FoI law.

¹ "Full implementation of the Freedom of Information Act (FOIA) in BiH", the Centre for Free Access to Information, Sarajevo, 2006



According to international practice, requestors are now increasingly able to request information verbally or using electronic mail or web based forms. One of the good examples of efficient and effective implementation of the Fol law in accordance with the underlying primary principles can be found in Turkey.

Prior to adoption of the Fol law, Turkey has completed comprehensive constitutional and legislative reforms that reinforce and safeguard fundamental rights and freedoms, democracy, the rule of law, and the protection of and respect for minorities. Several international conventions concerning appropriate political criteria have been signed or ratified and the Human Rights Advisory Board, which constitutes an effective platform for dialogue between state and civil society in the area of human rights, has become operational. Parallel to these significant developments, there were calls for the enactment of a Turkish freedom of information law for many years but without success. Subsequently, in 2003, Justice and Development Party announced that the government would legislate and provide its citizens with a right to information to ensure transparency, participation, and public accountability. This was a welcome announcement towards openness, and democratization. Turkey was not, for example, obliged by the European Union to adopt a freedom of information law with regards to its pending membership negotiations with the European Union. In fact, on the contrary, Turkey was quicker than Germany to adopt such a law and to provide its citizens with a right to receive information from public institutions.

The Fol law in Turkey came into force in April 2004, three years after the Fol law was adopted in Bosnia and Herzegovina. Public authorities were required to be ready for law implementation within three months. The Turkish Fol law required an implementation plan be prepared by the Ministry of Justice concerning the essentials for the application of this law. The provisional implementation plan required all public authorities to establish Right to Information Units to deal with the requirements of the Fol law within a month after the publication of these regulations and publish required Fol documentation on the Internet. It was also required that all public bodies with no websites develop and launch their websites within two months of the publication of the regulations. Finally, it was required that the newly established Right

to Information Units would be in a position to receive right to information requests via email or via web based forms within two months of the publication of the regulations while verbal requests were to be treated "with hospitality and kindness" and immediately reviewed and resolved if possible. The majority of central government agencies complied with the implementation plan requirements.

This swift implementation was certainly positive development in terms of transparency, openness and access to information and official documents in Turkey. High number of right to information applications between 2004-2006 (1,886,962 in total) suggest wider awareness of the existence of the law and the availability of a right to information and access to official documents in Turkey. Experiences and practices concerning to the implementation of the Fol law in Turkey can serve as excellent example for BiH since through swift implementation Turkey tackled all the issues BiH is currently facing. In regards to good local practices, it needs to be noted that nine FBiH public bodies were willing to communicate and provided three requested public documents (guide for information access, index of available information and annual report). Of these nine public bodies, only guides for information access of the Centre for Judicial and Prosecutorial Training of the Federation of BiH and Federal Administration for Inspection Affairs contain provision for informal communication that is in compliance with the principle of facilitated access to information:

"Before you file a formal Fol request, please contact our Information Officer. If the authority is not able or not willing to share information with you in an informal way, you can submit a formal request under the Fol law."

The principle of facilitated access to information provides that requests for information should be handled as rapidly and fairly as possible and an independent review of any refusals should be available. This, in turn, will require development of clear procedures based on which the public bodies will be able handle all requests for information.

What are the policy options?

There are two possible policy options:

1. the Fol law amend policy: keep the current Fol polices unchanged and amend the Fol law, and
2. the user oriented policy: significantly improve implementation of user oriented policies

While the first policy option appears as a good



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and logical choice, to amend the Fol law to allow "informal" communication with public bodies requesting information using verbal requests, electronic mail or web-based forms, in rigid BiH government structures who do not comply with the existing Fol law, it is very unlikely that new amendment provisions would change the situation.

Thus, improving implementation of user oriented policies in accordance to Article 18 of the Fol law "the public body shall, within its capabilities, take the necessary measures to provide assistance to individual or legal entity who seeks to exercise its right under the Law" and adjust policies to oblige public bodies to communicate with members of the public in written, verbal or electronic manner and increase transparency by obliging every public body to produce and publish their annual reports remains as the only viable policy option.

In addition, it is expected that developed policy recommendations, if implemented at the Federation BiH level, will be relevant and applicable for cantonal institutions in ten cantons as well, eventually producing significant positive multiplying effect. Although this policy option is clearly superior to alternatives it would face stiff resistance as any performance related change initiative in public administration.

Recommendations

A comprehensive Fol policy should be implemented to meet the following objectives:

- Level of responsiveness of public bodies significantly increased,
- Overall transparency of public bodies significantly increased, and consequently
- Accountability of public bodies improved.

A new policy should be developed based on the following principles:

- Maximum disclosure,
- Proactive and routine obligation to publish,
- Promotion of open government and
- Principle of facilitated access to information.

A new free information policy should recognize that:

for Public body

- It is expected that all FBiH public bodies make one person in charge of communicating with members of the public.
- It is expected that all public bodies with no websites would develop and launch their websites within two months of the publication of the policy.

- It is expected that the FBiH public bodies would be in a position to receive information requests verbally, via email or via web based forms within two months of the publication of the policy.

- Guide for information access should have provision: "Before you file a formal Fol request, please contact our Information Officer. If the authority is not able or not willing to share information with you in an informal way, you can submit a formal request under the Fol law."

- Verbal requests are to be treated "with hospitality and kindness" and immediately reviewed and resolved if possible.

- In accordance to the Fol law, comprehensive annual report, guide for information access and index of available information as well as contact information must be available publicly (at the Internet site of a public body).

- In order to prevent that the practice that public body may turn down the requests for any information or document that require a separate or special work, research, assessment or analysis, public body will periodically analyze types of information requested and, if possible, adjust their records and information systems in order to provide requested information.

for FBiH Ministry of Justice

- According to international practice, requestors are now increasingly able to be able to request information verbally or using electronic mail or web based forms.

- In line with the competencies stipulated in the Fol law, FBiH Ministry of Justice can issue new Instructions for implementing the Fol law in the Federation of BiH outlying the new free information policy to all FBiH public bodies.

- In order to ensure effective impact of the new free information policy, the FBiH Ministry of Justice may conduct or finance periodic independent assessment of the effectiveness of the new policy.

References

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A "Policy Development Fellowship Program" has been launched by the Open Society Fund BiH in early 2004 with the aim to improve BiH policy research and dialogue and to contribute to the development of a sound policy-making culture based on informative and empirically grounded policy options.

The program provides an opportunity for selected fellows to collaborate with the Open Society Fund in conducting policy research and writing a policy study with the support of mentors and trainers during the whole process. Seventy three fellowships have been granted in three cycles since the starting of the Program.

All policy studies are available at www.soros.org.ba