



Making government transparent and accountable: Enabling access to information

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Executive summary

The statement that “The mere existence of freedom of information laws does not ensure their appropriate implementation and functioning.”¹ 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.”

While similar researches 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, BiH citizens 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.

The research identifies the needs of public bodies and recommends changes within the free information access policies, so that they meet current good practice standards in accordance to international principles. It also presents positive examples of international good practices with special emphasis on the FoI law implementation in Turkey as one of good examples of efficient and effective implementation of the FoI law in accordance with the underlying primary principles as well as identified good practices in BiH, in order to suggest their incorporation into institutional free information policies.

¹ “Access to information by the media in the OSCE region: Trends and recommendations: Summary of results of the survey”, Organization for Security and Co-operation in Europe, Office for the Representative on Freedom of the Media, Vienna, 2007

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INTRODUCTION

Democracy directly relies on transparency, accountability and good governance. As transparency and an informed citizenry are vital to democracy, ensuring public accountability, guaranteeing the right to access to information held by the government ensures greater transparency and accountability of government activities and leads to the strengthening of democratic institutions. In practice, good governance is a result of transparent and accountable work of the government and their role to serve citizens.

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.² Once again, this is relevant at all levels of governance, from the national to the provincial and local. In addition, access to information held by public bodies has also been widely promoted as an essential foundation of equitable and sustainable development. Puddephatt³ lists five key reasons⁴ why the access to information is important, stating that, among other reasons, it is crucial to holding governments accountable.

Sweden passed the first Freedom of Information (Fol) law in 1766.⁵ The principal sponsor of this law, clergyman and Congressman Andres Chydenius, had been inspired by Chinese practice. This scholar-politician admired the Chinese institution of the Imperial Censorate, which was "an institution founded in humanist Confucian philosophy [whose] main roles were to scrutinize the government and its officials and to expose misgovernance, bureaucratic inefficiencies and official corruption."⁶ He was particularly impressed by the fact that Chinese emperors were expected to "admit their own imperfection as a proof for their love of the truth and in fear of ignorance and darkness."⁷ The origins of government accountability are not in the West, but in the East at the high point of the Ch'ing Dynasty.⁸

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.⁹ Recent signing of the "World's First Treaty on Access to Information - the Council of Europe Convention on Access to Official Documents"¹⁰ setting a low minimum standard on the right of access to information among 12 European countries just shows that the trend of changes related to the rights to information continues. A positive feature of the treaty is that it establishes a right to request "official documents", which are broadly defined as all information held by public authorities, in any form. The right can be exercised by all persons with no need to demonstrate a particular interest in the information requested and at no charge for filing requests and viewing documents.

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."¹¹ 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."¹²

² Mendel, Toby, "Freedom of Information: A Comparative Legal Survey", New Delhi: UNESCO, 2003, iv.

³ A. Puddephatt, Preface in R. Calland and A. Tilley, "The Right to Know, the Right to Live: Access to Information and Socio-Economic Justice", Cape Town: ODAC, 2002, xi-xii.

⁴ Other four key reasons include: it is necessary for informed political debate, secrecy leads to a culture of rumor and conspiracy; secrecy leads to corruption and it is a key tool in combating ignorance (for example in the area of health) which undermines development.

⁵ John M. Ackerman, Irma E. Sandoval-Ballesteros, "The Global Explosion of Freedom of Information Laws", 58 Admin. L. Rev. 85 (2006)

⁶ Chydenius Anders, "Berattelse Om Chinesiska Skrif-Friheten, Ofversatt Af Danskan (A Report on the Freedom of the Press in China) (1766), reprinted in Stephan Lambelle, *Freedom of Information, A Finnish Clergyman's Gift to Democracy*, 97 Freedom Info. Rev. 2, 3 (2002).

⁷ *Id.*

⁸ *Id.*

⁹ see "Freedom of Information or right to information is defined as the universal right to access information held by public bodies" (available at http://portal.unesco.org/ci/en/ev.php-URL_ID=26064&URL_DO=DO_TOPIC&URL_SECTION=201.html).

¹⁰ see "12 States Sign World's First Treaty on Access to Information"- the Council of Europe Convention on Access to Official Documents - signed at a meeting of Ministers of Justice held in Tromsø, Norway on 18 June 2009. Countries that signed the treaty are Belgium, Estonia, Finland, Georgia, Hungary, Lithuania, Macedonia, Montenegro, Norway, Serbia, Slovenia, and Sweden. (available at <http://foiadvocates.net/en/news/43-news/199-council-of-europe>).

¹¹ Bansiar, David, "Freedom of Information Around the World 2006: The Global Survey of Access to Government Information Laws", Privacy International, 2006.

¹² Lidberg, Johan, "The International Freedom of Information Index: A Watchdog of Transparency in Practice", Nordicom Review 30 (2009) 1, pp. 167-182

The key problem addressed in the research is the gross negligence of most public bodies in BiH to the citizens when it comes to providing information people are looking for. Given the daily contact with citizens, I noticed that they are frustrated with the attitude of most public bodies when it comes to their right to receive requested information. Citizens often complain that in many cases they do not receive a response to the information request addressed to the public body via e-mail or verbally. If the request for information is based on the FoI law, the reply time often exceeds the provided 15-day deadline. According to the law, public bodies are obliged to respond to citizens and parties on their inquiries. They are obliged, even when they are not responsible for certain issues, to inform the requester about the correct address for their request or to forward the request to the appropriate address. However, most public bodies in BiH have little or no communication with citizens or other parties and most inquiries are never answered. This attitude of public bodies to the requesters creates a negative opinion about the public body and its employees, adversely reflecting on the reputation of the institution from which the information was requested and creates a sense of inferiority and feeling of helplessness with the members of the public. According to experience of Federation BiH ombudsmen,¹³ the largest number of complaints against public bodies were filed by members of the public, students, NGOs, businessmen, lawyers, while in a ten-year period of the FoI law existence, only one case of complaint was handled by the BiH judiciary.¹⁴ According to the latest general research findings presented by the Transparency International BiH (TI) in relation to freedom of access to information, 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."¹⁵ As the following section of the document shows, the situation with replies on information requests made by members of the public is even worse. While similar researches measure the reply rate to professionally and in accordance to the FoI law formulated and structured questions submitted in the prescribed written form and usually in accordance with the index of available information published by the public body, BiH citizens usually do not quote the FoI law in submitting written request or they place their requests verbally or by e-mail. This often results in a mute response by public body.

According to the FoI law, request for information can be made only in writing (and according to guide for information access which is also prescribed by the law, the written request is to be submitted directly at the premises of the public body or via postal service) with a 15-day deadline for a public body to reply. However, according to pooling¹⁶ carried out with a sample of 390 citizens, 27 NGO's and 8 journalists, only 29.6% of the surveyed were aware of the law provision that information request can be submitted in writing only, while 64% replied that the information request can be submitted in any of the three ways - verbally, via the Internet or in writing.

While many researches cover the issue of implementation of the FoI law in BiH¹⁷ in a narrow sense,¹⁸ none of the researches actually cover the issues of public bodies' adherence to 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.¹⁹

The first principle of maximum disclosure is guided by the presumption that all information held by public bodies should be subject to disclosure and that this presumption may be set aside only where there is an overriding risk of harm to a legitimate public or private interest. The second principle of proactive and routine obligation to publish puts obligation on public bodies to publish key information to "as far as possible, make available information on the matters or activities for which they are responsible". The long-term goal of this principle is to make information available proactively, so as to minimize the need for individuals to have to resort to requests to access it. According to the prin-

¹³ "Right to Information Access - basic human right", Transparency International workshop held on 11.03.2010 (see <http://parco.gov.ba/latn/?page=21&kat=1&vije=6139>)

¹⁴ Ibid.

¹⁵ "International Day of Free Access to Information - the situation in BiH devastating" - (see <http://www.ti-bih.org/Articles.aspx?ArticleID=391C2204-9FBC-4F5A-9A85-B2EE5EC9A594>)

¹⁶ "Full implementation of the Freedom of Information Act (FOIA) in BiH", the Centre for Free Access to Information, Sarajevo, 2006.

¹⁷ Most of periodic researches was led by Transparency International BiH, while the substantive research was conducted by Mediacentar Sarajevo with financial support of Open Society Fund BiH: "Monitoring of democratic development in BiH: Transparency index of public institutions, organizations and agencies", MEDIACENTAR Sarajevo, 2006. The study (or project report) that indirectly touches upon adherence to key principles is the one published by the Centre for Free Access to Information "Full implementation of Freedom of Information Act (FOIA) in BiH", Sarajevo, 2006.

¹⁸ The focus of existing studies is measuring the reply rate to professionally and in accordance to the law formulated and structured questions submitted in the prescribed written form and usually in accordance with index of available information published by the public body.

¹⁹ "The Public's Right To Know: Principles on Freedom of Information Legislation" (the ARTICLE 19 Principles), London, ARTICLE 19, 1999 (see <http://www.article19.org/pdfs/standards/righttoknow.pdf>). Besides four listed "The ARTICLE 19 Principles" also include additional five: limited scope of exceptions, costs, open meetings, disclosure takes precedence and protection of whistle blowers.



principle of open government, public bodies must actively promote open government and implement range of promotional measures needed to address the culture of secrecy and to ensure that the public are aware of the right to information and its implications for them. Finally, the principle of facilitated access to information provides that requests for information should be processed rapidly and fairly and an independent review of any refusals should be available. This, in turn, requires that clear procedures be established according to which the public bodies process requests for information.

The listed four primary principles are part of set of nine principles²⁰ comprised and published by ARTICLE 19,²¹ setting out framework of best practice standards that should underpin right to information legislation. These principles are based on international and regional laws and standards,²² evolving (inter)national practice (as reflected, *inter alia*, in national laws and judgments of national courts) and the general principles of law recognized by the community of nations. The analysis was performed on the basis of data collected during the research. The first variable used in the research is willingness of public bodies to communicate with members of the public and

This policy study presents a comprehensive analysis of gaps in establishing a functional system for free flow of information in line with the four main principles of freedom of information legislation. The analysis clearly points that continuation of current policies prevents full application of Fol law in BiH in line with the four main principles of freedom of information legislation resulting in limited access to information and recommends taking decisive actions aimed at establishing functional system for free flow of information that will serve BiH citizens.

provide requested information. The second variable is related to existence and quality of the by-laws used to regulate free access to information and establish mechanism to facilitate access to information in possession of the surveyed public bodies. Indicators or data collected in order to meaningfully measure variables are data related to reply rate on e-mails sent during the research requesting easily accessible information from the public bodies, data on the existence of a guide for information access and index of available information. It is important to note here that data on quality or "user oriented" content of a guide and index was used as one of the most important indicators. Data on existence and content of annual report put together by the public bodies was also collected as the Fol law prescribes the obligation on the part of the public bodies to prepare annual report describing "competencies, policies, activities, organization structure and financial affairs of the public body".

The study was structured in the following way. The following (second) section provides quantitative and qualitative analysis of data collected from 60 public bodies at Federation BiH entity level during the research which relate to reply rate on information requests sent by e-mail, existence, quality and public accessibility of the by-laws used to stipulate free access to information and existence, content and public accessibility of annual reports. The section also provides the international practices in facilitated access to information requests using verbal communication, electronic mail or web-based forms, with special emphasis on the Fol law implementation in Turkey as one of good examples of efficient and effective implementation of the Fol law in accordance with the underlying primary principles.

The third section features the two policy options: (i) keep the current Fol policies unchanged and amend the Fol law to allow of "informal" communication requesting information using verbal requests, electronic mail or web-based forms; and (ii) significantly improve implementation of user oriented policies and adjust policies and corresponding Fol by-laws to oblige public bodies to communicate with members of the public, increase transparency and facilitate access to information in possession of a public body. The final section provides conclusions and recommendations.

²⁰ "The Public's Right To Know: Principles on Freedom of Information Legislation" (the ARTICLE 19 Principles), London, ARTICLE 19, 1999 (see <http://www.article19.org/pdfs/standards/righttoknow.pdf>)

²¹ ARTICLE 19, London-based human rights organization with a specific mandate and focus on the defense and promotion of freedom of expression and freedom of information worldwide. The organization takes its name from Article 19 of the Universal Declaration of Human Rights, which states: "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers."

²² A number of the international standards and statements provide valuable insight into the precise content of the right to information, over and above these general principles. In his 2000 Annual Report, the UN Special Rapporteur on Freedom of Opinion and Expression set out in detail the standards to which right to information legislation should conform (UN Standards). The 2002 Recommendation of the Committee of Ministers of the Council of Europe (COE Recommendation) is even more detailed, providing, for example, a list of the legitimate aims which might justify exceptions to the right of access. Other useful standard-setting documents include the Joint Declaration adopted by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression in 2004 (Joint Declaration), the principles adopted by the Commonwealth Law Ministers (Commonwealth Principles), the Declaration of Principles on Freedom of Expression in Africa (African Declaration), the Inter-American Declaration of Principles on Freedom of Expression (Inter-American Declaration), the Aarhus Convention and the September 2006 decision by the Inter-American Court of Human Rights affirming a right to information.

CRITICAL ASSESSMENT OF THE IMPACT OF FOI LAW IN THE FEDERATION OF BiH - Are public bodies willing to communicate?

Federation BiH public bodies

In accordance to of Article 3 of the Fol law (Official Gazette of Federation BiH #32/01) and Article 3 of the Instructions for implementing the Fol law in the Federation of BiH (Official Gazette of Federation BiH #57/01), public bodies are broadly defined in and they include:

Organ of legislative power: The Parliament of the Federation of Bosnia and Herzegovina, the legislative bodies of cantons, cities and municipal councils;

The executive branch: the president and vice president of the Federation, the Federation, the Cantonal Government, the Mayor and City;

Organ of the judiciary: the courts of the Federation, cantonal and municipal courts;

Organ of the government: Federation BiH and cantonal ministries, Federation BiH and cantonal authorities and institutions (bodies and institutes), and city and municipal administrative departments;

Legal entity with public authority which was established in accordance with the law: the companies or enterprises, institutions and other legal entities which are entrusted with public authority in terms of art. 27 to 31 of the Law on Administration of the Federation of Bosnia and Herzegovina ("Official Gazette of Federation BiH", No. 28/97);

Legal entity that is owned or controlled by the Federation, canton, city or municipality or whose operations are supervised by the public body: a) public enterprises and public institutions, b) agencies and other legal entities financed in whole or partially from the Budget of the Federation, cantons, cities or municipalities, as well as companies in whose equity is mostly owned by the Federation, canton, city or municipality and c) companies, institutions and other legal entities whose work the public body is overseeing pursuant to Article 15 Paragraph 2 of the Law on Administration of the Federation of Bosnia and Herzegovina.

Given available timeframe and resources, the research focused on 60 public bodies financed from the Federation BiH budget²³.

²³ "Budget Framework Document 2010-2012", Federal Ministry of Finance - Sector for budget, Sarajevo, September 2009.

Willingness to communicate

Public bodies willingness to communicate is one of the key conditions for successful implementation of the Fol law and its underlying principles. Without open communication and transparency in the government work, free flow information between government and general public is impossible.

Most of the existing researches usually focus on the reply rate to professionally formulated and structured questions submitted in the prescribed written form under the guidelines derived from the Fol law. However, BiH citizens usually seek for the information verbally or by e-mail without citing the law. This often results in a mute response by a public body. This is why the effort was made to measure the public bodies' willingness to communicate with citizens.

In attempt to measure willingness to communicate research was conducted measuring availability of public body contact details, ability to use electronic means of communication (e-mail and web based forms) and reply rate to information requests.



In order to facilitate communication with public body and prevent excuses that requested information is not in possession of the public body or that requested information requires a separate or special work, research, assessment or analysis, easily accessible information were requested. Actually, the documents that were requested should be available to public since public bodies are obliged by the FoI law to produce them and make them public. In essence, e-mail was sent to public bodies at Federation BiH entity level citing the FoI law and requesting delivery of annual report, guide for information access and index of available information. The following table outlines the research findings and results:

TABLE 1. Availability of contact details and “responsiveness” of Federation BiH public bodies.

	Yes	No	Total	% of total
Contact details available on the Internet	51	9	60	85%
Information request sent by e-mail or by web-based form	47	13	60	78%
Reply from public body received	13	34	47	28%
Public bodies reached by e-mail or by web based form	13	47	60	21.6%

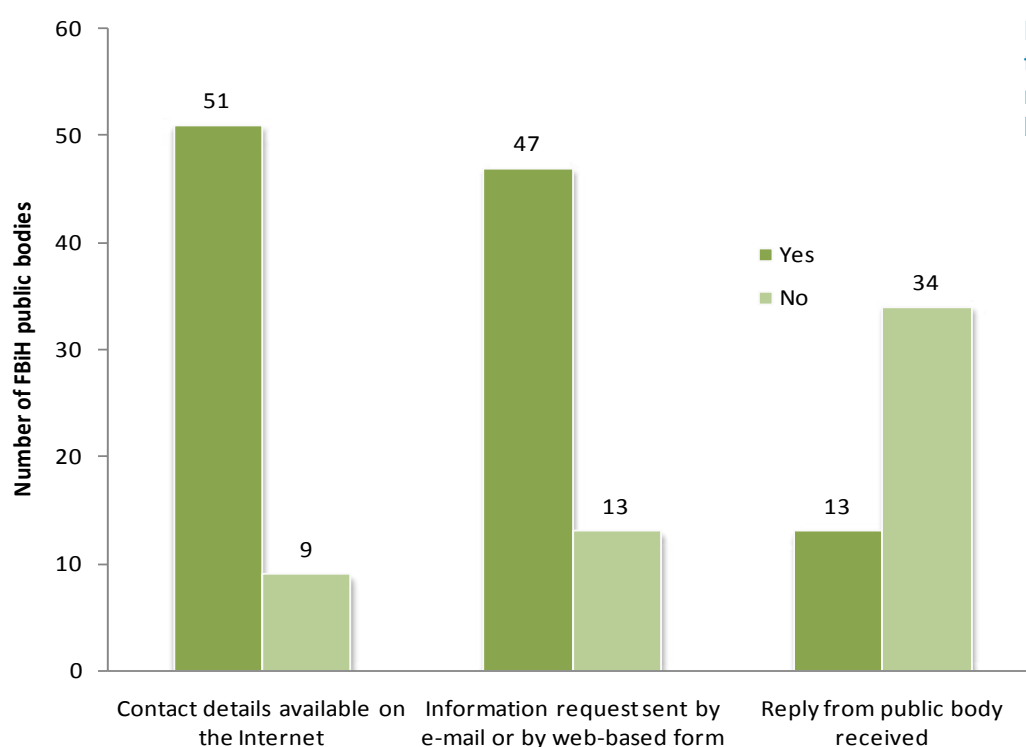


FIGURE 1. Availability of contact details and “responsiveness” of Federation BiH public bodies

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 reply was received from 13 public bodies on 28% of inquiries made. When compared to total number of public bodies at the Federation BiH level, researcher managed to make contact and communicate with only 21.6% or one of five public bodies.

This clearly shows that majority of public bodies demonstrate bureaucratic arrogance and still keep barriers to prevent free access to information and refuse to adhere to principle of facilitated access to information.

What about transparency?

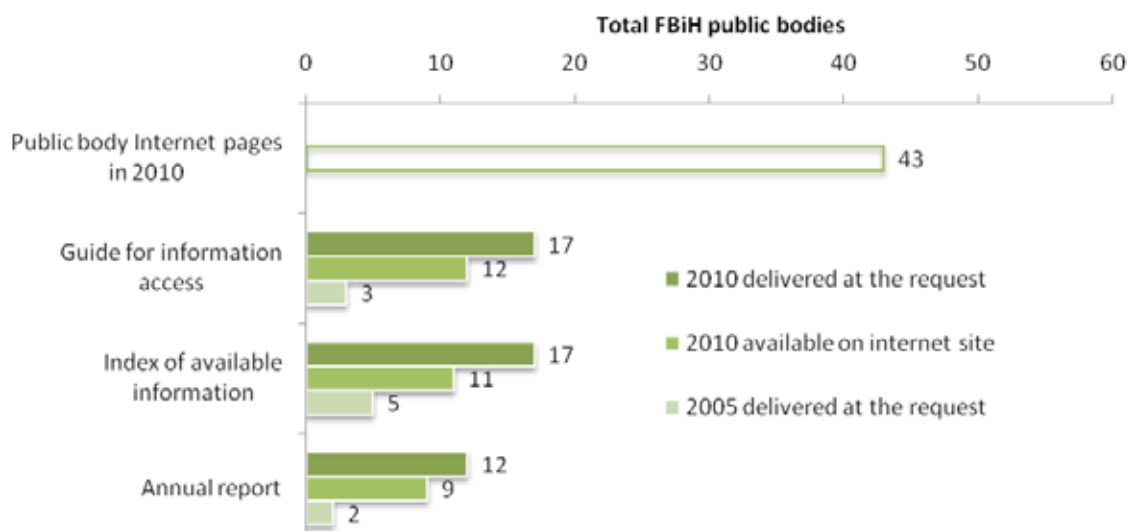
Besides direct contacts with the public bodies, second source of information was through publicly available documents and records. That is why transparency of public body work is vital and crucial precondition for efficient and effective disclosure of information to public.

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 and publicly available under the FoI law. The following table provides findings and research results related to public availability of mentioned documents:

TABLE 2. Transparency and public availability of the FoI law related documents

	2010 available on internet site	% of total 60 FBiH public bodies	2010 delivered at the request	% of total 60 FBiH public bodies	2005 delivered at the request
Public body Internet sites in 2010	43	72%			
Guide for information access	12	20%	17	28%	3
Index of available information	11	18%	17	28%	5
Annual report	9	15%	12	20%	2

FIGURE 2. Transparency and public availability of the FoI law related documents





As the above table shows, 72% of public bodies have the Internet presence. Contrary to high number of public body Internet sites, only 20% public bodies use their Internet site to publish guide for information access, 18% publish their index of available information and only 15% to publish 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 28% and annual reports to 20%.

Interestingly, in 2005 (five years after the adoption of the Fol law) researches managed to collect only five indexes, three guides and two annual reports from the FBiH public bodies²⁴. 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 sites to publish information) and continue with the practice of "secrecy" and noncompliance to principle of maximum disclosure.

²⁴ "Full implementation of the Freedom of Information Act (FOIA) in BiH", the Centre for Free Access to Information, Sarajevo, 2006

When compared to international practices, example of good practice of increasing transparency and making the Fol law related documents publicly available can be found in Turkey. This will be discussed in this chapter's section titled Freedom of information in Turkey.

Quality of the Fol law related documents

Importance of the Fol law related documents is evident from the fact that even the content of the documents is prescribed by the law. According to the Fol law, index of available information should provide information related to competencies of public body, type of information in their possession, data on how information can be accessed and form in which information can be found. Guide for information access should contain information needed to address to public body, elements of requested procedure, example of application in writing, information on exceptions categories, procedure for information access, costs of copying and information on legal remedies. Annual report of public body should contain chapters on competencies, functions and policies, activities and organizational structure and financial affairs.

The following table depicts findings and research results related to quality of collected indexes of available information, guides for information access and annual reports:

TABLE 3. Content of the FoI law prescribed index, guide and annual report

		Index of available information	Index of available Information in accordance with competences	Provides types of information available	Data on how information can be accessed	Form in which information can be found	Guide for information access	Information needed to address to public body	Elements of required procedure	Example of application in writing	Information on exceptions categories	Procedure for information access	Costs of copying	Information on legal remedies	Annual report	Competencies, Functions and policies	Activities and organizational structure	Financial affairs
1	Federation BiH Ministry of Finance	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No			
2	Ministry for Issues of Veterans and Disabled Veterans of the Defensive-Liberation War	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3	Ministry Labor and Social Policy	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
4	Federation BiH Police	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No			
5	Ministry of Health	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6	Common Affairs Service for Organs and Bodies of the Federation of BiH	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
7	Federation BiH Ministry of Interior	Yes	Yes	Yes	Yes	Yes	No			Yes					No			
8	Ministry of Development, Entrepreneurship and Crafts	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No			
9	Ministry of Culture and Sports	No					Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No			
10	Federation BiH Administration for Inspection Affairs	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
11	Ministry of Education and Science	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No			
12	Supreme Court of the Federation of BiH	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No
13	Federation BiH Ministry of Spatial Planning	No					No								Yes	No	Yes	Yes
14	Federation BiH Hydrometeorological Institute	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
15	Federation BiH Ministry of Justice	No					Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No			
16	Audit Office for the Institutions of the Federation of BiH	No					No								Yes	Yes	Yes	Yes
17	Civil Service Agency of the Federation of BiH	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No			
18	Public institution Centre for Judicial and Prosecutorial Training of the Federation of BiH	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
19	Federation BiH Prosecutor's Office	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No			
20	The Constitutional Court of the Federation of BiH	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
21	Gender Center of the Federation of BiH	No					No								Yes	Yes	Yes	Yes
22	Public Relations Office of Government of the Federation of BiH	Yes	Yes	Yes	No	No	No								No			
	Yes	17	17	17	7	8	17	17	17	16	17	17	17	17	12	8	12	11
	% of total number of FBiH public bodies	28%	28%	28%	12%	13%	28%	28%	28%	27%	28%	28%	28%	28%	20%	13%	20%	18%



Out of 60 public bodies, 17 (or 28%) indexes of available information, 17 (or 28%) guides for information access and 12 (or 20%) annual reports were collected. In regards to content, indexes of available information are in line with the provisions of the FoI law, with the some exceptions of data on how information can be accessed and form in which information can be found. With regards to guides for information access, they are fully in line with the FoI law. In regards to annual reports, exceptions are mainly related to absence of description of competencies, functions, policies and financial affairs.

Good practices: Who are the champions?

Out of 13 replies on information request, nine were provided delivering all three requested document: index of available information, guide for information access and annual report. Four public bodies replied with incomplete requested documentation.²⁵

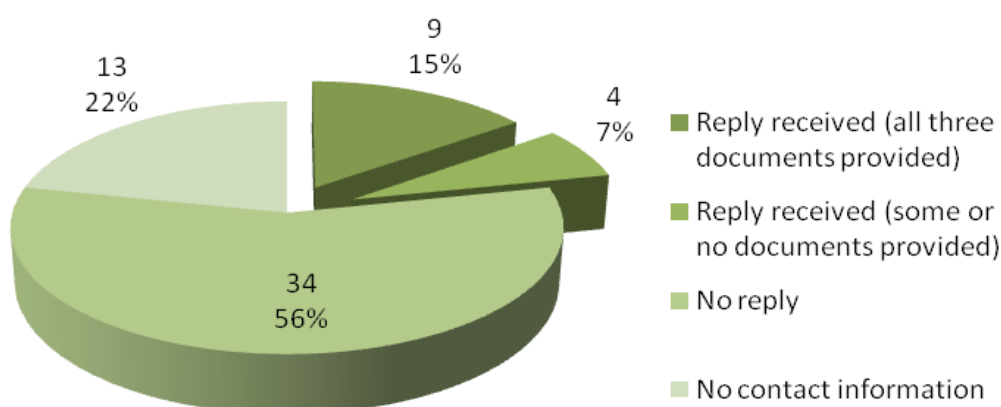


FIGURE 3. Number of replies on information request and number of provided documents

The nine public bodies that provided all three requested documents in the reply are:

- Public institution Centre for Judicial and Prosecutorial Training of the Federation of BiH
- Federation BiH Administration for Inspection Affairs
- Ministry for Issues of Veterans and Disabled Veterans of the Defensive-Liberation War
- Ministry Labor and Social Policy
- Ministry of Health
- Common Affairs Service for Organs and Bodies of the Federation of BiH
- Supreme Court of the Federation of BiH
- Federation BiH Hydro-meteorological Institute
- The Constitutional Court of the Federation of BiH

It needs to be noted that guides for information access of Public institution Centre for Judicial and Prosecutorial Training of the Federation of BiH and Federation BiH Administration for Inspection Affairs contain provision for informal communication that is in compliance with the principle of facilitated access to information:²⁶

“Before you file a formal FoI 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 FoI law.”

²⁵ House of Peoples of the Federation of BiH provided answer with no documentation. The delivery of the documents was conditioned by personal identification in the office of the contact person.

²⁶ The principle of facilitated access to information provides that requests for information should be processed rapidly and fairly and an independent review of any refusals should be available. This, in turn, requires that clear procedures be established according to which the public bodies process requests for information.

Similar provisions can be found in guides for information access of Ministry of Development, Entrepreneurship and Crafts and Federation BiH Prosecutor’s Office which both also replied on the information request but with incomplete documentation. Surprisingly, Federation BiH Ministry of Finance, Ministry of Culture and Sports and Civil Service Agency of the Federation of BiH also have similar provisions but they failed to reply to informal information request.

Adherence to the Fol law key principles

To ensure better understanding of FBiH public bodies compliance with the four Fol 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, indicators produced as results of the research were put side by side with the four key Fol principles.

TABLE 4.
Fol primary principles and corresponding indicators

Principle	Indicator (% of total FBiH public bodies)
The first principle of maximum disclosure is guided by the presumption that all information held by public bodies should be subject to disclosure and that this presumption may be set aside only where there is an overriding risk of harm to a legitimate public or private interest.	Contact information available: (86%) Willing to communicate, contact made: (21.6%), Annual report exists: (20%) Quality of index, obligatory content: (12-28%)
The second principle of proactive and routine obligation to publish puts obligation on public bodies to publish key information to “as far as possible, make available information on the matters or activities for which they are responsible”. The long-term goal of this principle is to make information available proactively, so as to minimize the need for individuals to have to resort to requests to access it.	Annual report publicly available: (15%)
According to the principle of open government, public bodies must actively promote open government and implement range of promotional measures needed to address the culture of secrecy and to ensure that the public are aware of the right to information and its implications for them.	Contact information available: (86%) Internet page exists: (72%) Guide publicly available: (20%) Index publicly available: (18%) Annual report publicly available: (15%)
The principle of facilitated access to information provides that requests for information should be processed rapidly and fairly and an independent review of any refusals should be available. This, in turn, requires that clear procedures be established according to which the public bodies process requests for information.	Willing to communicate, contact made: (21.6%) Index complies to competencies: (28%) Clear information access guide: (28%) Provisions for informal contact: (11.6%)

As the above table clearly shows, compliance of the FBiH public bodies with the primary principles of the Fol law is at the unacceptably low level. Except for contact information and number of Internet sites, all other indicators are below 50% of total FBiH public bodies.



International practices²⁷

Requestors are now increasingly able to request information using verbal communication, electronic mail or web-based forms and requests must generate an immediate response if possible. There are usually provisions for additional time if the request is lengthy or complex or must be transferred to another body that holds or has control over the information. In addition, recent research has found that government departments are less likely to delay when there is a shorter deadline than a longer deadline because they prioritize the request.

Typically, FoI laws require that government bodies must respond to a request as soon as possible, on average setting a maximum time of between two and four weeks. In smaller countries and in those who have had a law for a number of years, the general practice is that the body must immediately respond (usually within 24 hours) to the application and provide the information as soon as possible.

The following table presents practices of countries in relation to principle of facilitated access to information allowing verbal or electronic means of communication (e-mail or web based form).

²⁷ Bansiar, David, *Freedom of Information Around the World 2006: The Global Survey of Access to Government Information Laws*, Privacy International, 2006

TABLE 5. International practice allowing informal verbal communication or communication via electronic means (e-mail or web based form)

AUSTRIA	The 1987 Auskunftspflichtgesetz (Federal Law on the Duty to Furnish Information) obliges federal authorities to provide information regarding their areas of responsibility within eight weeks. The requests can be written or verbal and no justification is required. It applies to national departments, the municipalities, the municipality federations and the self-governing bodies.
ARMENIA	The Law on Freedom of Information went into force in November 2003. The law allows any citizen to demand information from state and local bodies, state offices, organizations financed by the state budget, private organizations of public importance and state officials. The bodies must normally provide the information within five days. Verbal requests are required to be responded to immediately.
AZERBAIJAN	The Law on the Right to Obtain Information came into force in 2005. The Law gives any person the right to obtain information held in any form by state authorities and municipalities, legal entities and individuals performing public functions including education and health care, state-owned or subsidized organizations, and legal entities that are dominant or natural monopolies. Responses must be within seven days unless the need is urgent in which case they must respond within 24 hours. Requests can be written or verbal.
CROATIA	Any person has the right to information from bodies of public authorities, including state bodies, local and regional governments, and legal and other persons vested with public powers. Requests can be either verbal or written. Public authorities are required to respond within 15 days.
CZECH REPUBLIC	The law allows any natural or legal person to access information held by State authorities, communal bodies and private institutions managing public funds. Requests can be made in writing or verbally. The public bodies are required to respond to requests within 15 days.
HUNGARY	The Act guarantees that all persons should have access to information of public interest which is broadly defined as any information being processed by government authorities except for personal information. Requests can be written, verbal or electronic. Agencies must respond in 15 days to requests.
ITALY	Requests can be written or verbal. Public bodies must respond within 30 days but they can delay release if this would "prevent or severely impede the performance of administrative action."
LATVIA	Any person can request information in any technically feasible form without having to indicate a reason. Requests can be verbal or written. The public bodies are required to respond within 15 days.
MACEDONIA	The law allows any individual or legal entity to obtain information from state and municipal bodies and natural and legal persons who are performing public functions. The requests can be verbal, written or electronic. Requests must be responded to in 10 days.
MEXICO	In Mexico, all requests are entered into the ICT system even if made verbally or in writing which allows for easy automated monitoring of the processing of requests.
NETHERLANDS	Freedom of information legislation was first adopted in 1978. The request can either be written or verbal. The authority has two weeks to respond. Recommendations of advisory committees must be made public within four weeks.
POLAND	The Act allows anyone to demand access to public information, public data and public assets held by public bodies, private bodies that exercise public tasks, trade unions and political parties. The requests can be verbal or written. The bodies must respond within 14 days.
ROMANIA	According to the Agency for Government Strategies, there were over 710,000 requests (mostly verbal) in 2005. Two percent of the requests were denied which resulted in 1,846 administrative appeals (down from 6,154 in 2004). 55% of the appeals resulted in the decision being overturned, 33% were rejected and 11% were settled. There were 424 (up from 394) court cases.
SLOVENIA	The Access to Public Information Act (ZDIJZ) was adopted in February 2003. It provides that "everyone" has a right to information of public nature held by state bodies, local government agencies, public agencies, public contractors and other entities of public law. Requests can be verbal or written. The bodies must respond in 20 working days.
SERBIA	The request should be in writing but if it is made verbally, the public authority should record it and treat it in the same way as a written request.
UKRAINE	The law allows citizens and legal entities to request access to official documents. The request can be verbal or written.



Freedom of information in Turkey²⁸

As indicated in the previous chapter regarding the international practices, requestors are now increasingly able to request information using verbal communication, electronic mail or web-based forms and requests must generate an immediate response if possible. In that regard, 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.

The Fol law in Turkey came into force in April 2004, three years after the Fol law was adopted in Bosnia and Herzegovina. Prior to adoption of the Fol law in 2004, 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, as set out in the *Turkish National Program for the Adoption of the European Union Acquis* of 24 March, 2001. Several international conventions relating to the political criteria have been signed or ratified, including the Additional Protocol No. 6 to the ECHR Concerning the Abolishing of the Death Penalty, the UN Convention on the Elimination of All Forms of Racial Discrimination, the UN Covenant on Civil and Political Rights, the UN Covenant on Economic, Social and Cultural Rights, the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labour (No. 182), and the UN Convention on Prevention of All Types of Discrimination Against Women and its Optional Protocol. Moreover, the Human Rights Advisory Board, which serves as 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. The 1982 Turkish Constitution through article 26 provided a right of free expression including the right to receive information but this did not include a right to seek information from public authorities. There was a serious attempt at legislation in period between 1998 and 2001. A draft bill titled *Idari Usul ve Bilgi Edinme Hakkı Kanunu* (Administrative Procedural and Right to Information Law) was developed by the Prime Ministry but this never reached the Parliament.

Subsequently, the 58th Government Plan of 2003 (Ak Party - 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 welcomed 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 law and to provide its citizens with a right to receive information from public institutions. The Turkish Parliament enacted the Right to Information Act 2003, *Bilgi Edinme Hakkı Kanunu* (No: 4982). The Right to Information Act 2003 came into force six months after the date of its publication in the Official Gazette on 24 April, 2004.

Public authorities were required to be ready for law implementation within three months. The Turkish Fol law required an implementation plan to 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 2003 Act within a month after the publication of these regulations. It was also required that all public bodies with no websites would develop and launch their websites within two months of the publication of the regulations. Finally, it was required that the newly established Right to

²⁸ Yaman Akdeniz, Dr., *Freedom of Information in Turkey: A Critical Assessment of the Implementation and Application of the Turkish Right to Information Act*, BilgiEdinme-Hakki.Org, May 2008

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 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.

Additionally, the Prime Ministry launched the BIMER service in 2006 which acts as a central process centre for contacting central and local government institutions as well as members of the Parliament. BIMER is also used for lodging right to information requests and the Prime Ministry ensures that the relevant public authority receives the right to information application lodged through this system. Additionally the applicant can monitor status of their application through BIMER. Major Turkish ministries have been very active in using BIMER to make information available, including encouraging users to submit requests and obtain status updates about their requests online.

POLICY OPTIONS TO IMPROVE COMPLIANCE OF THE FOI LAW TO FUNDAMENTAL FREEDOM OF INFORMATION PRINCIPLES

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 main objective of the existing FBiH Fol law is to ensure compliance of FBiH public bodies with the four Fol 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.

The current policy is not meeting any of the above objectives. Majority of FBiH public bodies are unwilling to provide requested information or even communicate unless rigid and bureaucratic procedure for information request submission is followed. It also appears that the extent of this issue is getting even greater since public bodies are even abandoning good practices on quarterly reporting the number of information requests they have regardless of the fact that they are obliged by the Fol law to produce them. Also, if the current policy is kept in place the number of public bodies unwilling to communicate and provide requested information to BiH citizens will continue to grow thus making the failure in making government accountable even larger.

The Fol law amend policy: keep the current Fol polices unchanged and amend the Fol law

This policy option appears as a good 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. This policy option was implemented by number of countries. However, with the rigid BiH government structures which do not comply with the existing Fol law, it is very unlikely that new amendment provisions would change the situation.



The user oriented policy: significantly improve implementation of user oriented policies

This policy option focuses on changing the free information policy. Current free information policy is not aligned with meeting intended purpose. This is evident from the fact that the public bodies are inefficient in providing requested information and are even unwilling to communicate with information requester, yet their behavior towards BiH citizens goes almost unnoticed for the past decade. Even if the inefficiency in providing requested information timely manner is put aside, the unwillingness to communicate is intolerable.

Comparison of the policy options

Current free information policy is clearly unacceptable because many public bodies are unwilling to communicate and provide requested information and this problem is likely to worsen over time.

The option of simply amending the Fol law within the current free information policy would theoretically improve transparency and access to information, but the overall impact on the willingness of public bodies to communicate and make their work transparent would be almost none. As recognized by the international practice “the mere existence of freedom of information laws do not ensure their appropriate implementation and functioning.”²⁹, the option to just amend the Fol law without overhaul of the existing free information policies is also unacceptable.

Thus, by improving implementation of user oriented policies in accordance to Article 18 of the Fol law “the public bodies will, within their 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 initiatives in public administration.

The following table summarizes main features of the policy options discussed above.

²⁹ “Access to information by the media in the OSCE region: Trends and recommendations: Summary of results of the survey”, Organization for Security and Co-operation in Europe, Office for the Representative on Freedom of the Media, Vienna, 2007

TABLE 6. Comparison of policy options

	Policy option 1: Amend the Fol law	Policy option 2: Improve implementation of user oriented policies
Ability to communicate and reply to informal and formal information requests	The objective partially achieved	The objective fully achieved
Impact on transparency (publishing annual reports)	No significant change	Significantly improved
Cost	No additional costs	Low cost, up to 1 -2 million KM annually
Human resources	No additional costs	A moderate number of new information officers and staff engaged in producing annual reports.
Timeframe for implementation	6 months, full implementation not feasible	1 year for full implementation
Acceptance from FBiH public bodies	High resistance	High resistance
Acceptance from FBiH MoJ	Moderate resistance	High resistance because of improved performance and new duties for MoJ and FBiH public bodies



CONCLUSIONS AND RECOMMENDATIONS

This study provides clear evidence that the current free information policy is grossly inadequate. 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:

- According to international practice, requestors are now increasingly able to be able to request information verbally or using electronic mail or web based forms.
- It is expected that all FBiH public bodies make one person in charge of communicating with public. It is also required that all public bodies with no websites would develop and launch their websites within two months of the publication of the policy. Finally, it is required 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 under which public bodies may turn down the requests for any information or document that require a separate or special work, research, assessment or analysis, public bodies will periodically analyze types of information requested and, if possible, adjust their records and information systems in order to provide requested information.
- 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 BiH³⁰ 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.

30 Original instruction published in 2001 ("Official Gazette of Federation BiH", No. 57/01)

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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.