

THE FREEDOM OF INFORMATION ACT IN BOSNIA AND HERZEGOVINA

**Its advantages and disadvantages, an analysis of
proposed changes, and the (lack of) transparency of
public authorities**

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Introduction

Over the past two decades, Bosnia and Herzegovina (B&H) has established legislative framework that allows access to information under the control of the public authorities. That those seeking information have uncovered numerous misuses perpetrated by public authorities and office holders in the course of their activities testifies to the legislation's importance, as do the numerous initiatives for its further improvement. Critics have been keen to point out that the state-level Freedom of Information Act (FOIA) has not changed significantly since its inception, and have called for its alignment with international standards and closure of the gaps brought to light in its application. These gaps include deficiencies in the appeal process and the lack of a provision that ensures mandatory proactive disclosure of information; an effective public interest test; and protocols to reconcile it with other legislation that may restrict the right to information. In addition, institutions have not sufficiently strengthened their capacities, which has led to practices that jeopardize the right to information, and lead to uneven application of the Act. All of this makes it harder to gain access to information, whether through denial without grounds, or by administrative silence or delays in the internal appeal process. These roadblocks inevitably lead to the concealment of information that is in the public interest.

The B&H Ministry of Justice's proposed amendments to the Act to date have been judged insufficient. Critics see proposed changes as a step backward that will open the way for more abuses, which will place additional restrictions on the right to information and further misalign the FOIA with international standards. In February 2021, the Ministry submitted its proposed draft bill of the state-level FOIA for official public consultation. The draft bill contains a series of changes to the current legal framework, some of which (such as proactive disclosure of information and setting up of a central online FOIA platform) have been deemed positive. But the draft bill failed to address problematic issues, such as: the lack of an effective public interest test; the failure to independently monitor the Act's implementation; and liberalize requests submission. Further, the draft bill broadened the scope of exemptions to the right to information, and introduced longer response deadlines. Civil society organizations have warned repeatedly that the proposed changes are not in line with international transparency standards, and that in certain provisions they could reverse the rights and milestones achieved by the existing Act. They have therefore asked the Ministry of Justice of B&H to pull the draft, pending further consideration.

Amending the FOIA in B&H is necessary to bring it in line with international standards, close the gaps between its intention and application, and ensure its pertinence in the context of new technologies and means of communication. Right to information leads to the improved accountability of public authorities and office holders, and is a key weapon in the fight against corruption. It is therefore necessary that the new legal framework represents a step forward, in line with the highest international standards.

International Standards in Access to Information

In international documents that define basic human rights and freedoms, the right to information is enshrined within the right to freedom of expression:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Universal Declaration of Human Rights

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

International Covenant on Civil and Political Rights adopted by the United Nations

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The European Convention on Human Rights

B&H has incorporated The European Convention on Human Rights and Fundamental Freedoms and its amending protocols in its constitutional and legal framework, and in doing so has accepted the obligation to uphold the rights enshrined therein. According to the Convention, the ability to exercise these rights and freedoms may be subject to restrictions in the interests of national security, territorial integrity or public safety; the prevention of disorder or crime;

the protection of health or morals; the protection of the reputation or rights of others; the prevention of disclosure of information received in confidence; or the maintenance of the judiciary's authority and impartiality. The European Court's case law shows that these exemptions must be interpreted restrictively. "The Court has repeatedly stated that freedom of expression constitutes one of the essential foundations of a democratic society, and one of the basic conditions for its progress. The protection of freedom of expression is essential for the democratic political process and the development of every human being. States are compelled to justify any interference in any kind of expression."¹

International bodies (such as the United Nations, Council of Europe, African Union, and Organisation of American States) have recognized the importance of the right to information, and the necessity for effective legislation that ensures it in practice. London-based organization ARTICLE 19 set out nine principles with which to test national freedom of information legislation:

- right to information legislation should be guided by the principle of maximum disclosure;
- public bodies should be under an obligation to publish key information;
- public bodies must actively promote open government;
- exceptions to the right to access information should be clearly and narrowly drawn and subject to strict "harm" and "public interest" tests;
- requests for information should be processed rapidly and fairly, and an independent review of any refusals should be available;
- individuals should not be deterred from making requests for information by excessive costs;
- meetings of public bodies should be open to the public;
- laws which are inconsistent with the principle of maximum disclosure should be amended or repealed; and
- individuals who release information on wrongdoing must be protected.²

In 2012, B&H ratified the Council of Europe's Convention on Access to Official Documents. The Convention declares that everyone has a right to access official documents, and exemptions must be stated precisely in law with the aim of protecting:

- a. "national security, defence and international relations;
- b. public safety;
- c. the prevention, investigation and prosecution of criminal activities;

¹ Dominika Bychawska-Siniarska, Protecting the Right to Freedom of Expression Under the European Convention on Human Rights, Council of Europe, 2019. p. 13-14

² ARTICLE 19, International standards: Right to information, 2012.

- d. disciplinary investigations;
- e. inspection, control and supervision by public authorities;
- f. privacy and other legitimate private interests;
- g. commercial and other economic interests;
- h. the economic, monetary and exchange rate policies of the State;
- i. the equality of parties in court proceedings and the effective administration of justice;
- j. environment; or
- k. the deliberations within or between public authorities concerning the examination of a matter”.

A public authority may still grant access in these cases if there is an overriding public interest in disclosure. A public authority that refuses access to an official document cannot do so without giving a reason, and if a request is denied the requester shall have access to an expeditious and inexpensive review process before a court or other independent and impartial legal body.³

International agreements have set down the standards for right to information, and national authorities are obliged to enact the legislative framework through which this right will be accessed and protected. “Free access to information is one of the fundamental mechanisms of national and global anti-corruption policy, and improves transparency, participative democracy and public sector accountability. It is also an indicator of good governance”.⁴

Legislation in Bosnia and Herzegovina

The first Freedom of Information Act⁵ in the country was enacted at state level in 2000. A year later, the entities (the Federation of B&H and Republika Srpska) passed their own acts.⁶ Brčko District does not have its own legislation, but rather uses the state Act. The purpose of these acts is to establish that:

- information controlled by public authorities is a valuable asset to the people they serve;
- public access to information promotes transparency and accountability;

³ Convention of the Council of Europe on Access to Official Documents (CETS 205), 2009.

⁴ Transparency International B&H, Investigation Into the Implementation of Freedom of Information Acts in B&H, Transparency International B&H, Banja Luka, 2021.

⁵ Freedom of Information Act in Bosnia and Herzegovina, Bosnia and Herzegovina Official Gazette, No 28/00, 45/06, 102/09, 62/11 and 100/13

⁶ Freedom of Information Act in the Federation of Bosnia and Herzegovina, The Federation of Bosnia and Herzegovina Official Gazette, 32/01 and 48/11; Freedom of Information Act in Republika Srpska, Republika Srpska Official Gazette, 20/200

- this information is essential to the democratic process;
- every natural or legal person has a right to information to the greatest extent possible, in accordance with the public interest;
- public authorities have a corresponding obligation to disclose information, and to enable every natural person to request amendment or comment on his or her personal information held by a public authority.⁷

B&H was the first country in the region to codify the right to information in its legislation, and its legal framework was considered progressive at the time. Since then, the Acts' deficiencies have surfaced and the need to make it applicable in the context of emerging technologies and bring it in line with international standards has become apparent. The FOIA in B&H has been amended four times to date. The changes include increasing the number of pages that a public authority may provide free of charge, and introducing misdemeanour charges and supervised inspections.

Following these changes, the Ministry of Justice of B&H initiated several amendments and annexes to the Act. The first was in 2011, after the Personal Data Protection Agency in B&H⁸ identified the Act's deficiencies and affirmed the importance of privacy protections in the processing of private information. The Agency consequently recommended that the Council of Ministers amend the Act in line with the Council of Europe's Convention on Access to Official Documents. In the years immediately following, the Agency again pointed out the need to change the Act, and warned that the poor legal framework gave public authorities the power to cite privacy protection at will, and reject requests without due process.⁹ The Ministry of Justice drafted a series of amendments and annexes to the FOIA, of which journalists and international bodies and civil society organizations were sceptical. Critics noted that the proposed amendments may jeopardize the fundamental democratic principles of open government, and hamper investigative reporting and the fight against corruption. "Accepting the proposed changes to the Freedom of Information Act would be a grave step backward, and would open the way for major abuses that restrict the public's right to information."¹⁰ Following numerous complaints, the proposed changes to the Act have been repealed.

⁷ Freedom of Information Act in Bosnia and Herzegovina; Freedom of Information Act in the Federation of Bosnia and Herzegovina; Freedom of Information Act in Republika Srpska.

⁸ Personal Data Protection Agency in Bosnia and Herzegovina, Report on Protection of Personal Data in Bosnia and Herzegovina in 2011. Sarajevo, 2012.

⁹ Personal Data Protection Agency in Bosnia and Herzegovina, Report on Protection of Personal Data in Bosnia and Herzegovina in 2015, Sarajevo, 2016.

¹⁰ Mehmed Halilović, An Analysis of the Draft Bill on the Freedom of Information Act in B&H, Media.ba, Sarajevo, 2013. <https://media.ba/bs/magazin-medijska-politika-regulativa/analiza-nacrta-zakona-o-slobodi-pristupa-informacijama-bih>

In 2016, the Ministry of Justice began the drafting process anew, and instigated public consultations on the draft bill of the state FOIA. Civil society organizations and the Human Rights Ombudsmen of B&H identified gaps in the proposed legislation. Transparency International of B&H (TI), together with a group of civil society organizations, asked the Ministry to repeal the draft, noting concerns that it would endanger media freedoms and civil liberties, and that rather than improving the existing framework it would reverse rights previously secured. In their motion, this alliance stated that “the proposed model of proactive transparency did not include all necessary categories of information or the manner of their disclosure, as required by standards of proactive transparency. In addition, a public interest test was not prescribed as the general rule to be used in all situations and for all exemptions. In this way, the most important achievement of the existing law was being abandoned. Also, the obligation now rested with the requester to state his or her reasons for the request, which jeopardised the right to freedom of opinion and expression in the most direct way. Further, the proposed exemptions from the regulations on access to information were not clearly defined, and the new deadline of an additional 15 days for responding to a request could be easily misused, and would decrease the efficiency of procedures that grant access to information.”¹¹ The draft bill was not submitted for further consideration.

The Ministry of Justice of B&H worked on a new draft of the FOIA at the level of national institutions,¹² and at the beginning of 2021 launched new public consultations. However, civil society organizations have warned again that the proposed legislation is not in line with international standards, and this might threaten the rights and milestones achieved by the existing law (For more information see: Draft on the Freedom of Information Act at the level of Institutions of Bosnia and Herzegovina).

Application of the Act and (the Lack of) Transparency among Public Authorities

The FOIA is an essential tool with which to request documents under the control of public authorities. Every natural person and legal entity has a right to information, and the Act made it possible to document and bring to light numerous irregularities and abuses by public authorities and officials. It also enabled the monitoring of public authorities’ work, and gave all citizens and legal entities access to information. The deficiencies in the current Act stem

¹¹ Transparency International B&H, The Draft of the Freedom of Information Act Threatens the Media and Civic Freedoms, 2016.

¹² Draft Bill on the Freedom of Information Act in Bosnia and Herzegovina, Bosnia and Herzegovina Ministry of Justice, 2021.

from its lack of provisions on proactive disclosure; inadequate appeal process; lack of a public interest test protocol; and inability to reconcile it with other legislation that restricts right to information. On the other hand, the implementation of the current legal framework has exposed public authorities' lack of competence and capacity, as is seen in its uneven application when dealing with FOIA requests, the lack of legal expertise, and the unfounded denial of requests.

The research revealed that public authorities use various means to restrict the right to information, including; incorrect application of exemptions to disclosure; incorrect application of the public interest test;¹³ administrative silence; missing deadlines for responding to requests; and failing to comply with court decisions¹⁴. A public authority's transparency depends both on the readiness of the manager to make an institution's work available to public, and how well an FOIA officer performed his or her duties.¹⁵

Another issue that arises in the application of the Act is that provisions of other legislation, such as the Law on the Protection of Personal Data, limit access to information. The issues of privacy protection and what constitutes public interest have not been clearly defined, and this gives public authorities the scope to cite arbitrarily the protection of personal data when refusing FOIA requests.¹⁶ Further, reporters and civil society organizations warn that public authorities do not respect the deadlines for answering requests, and that their procedures are inefficient. Even though the Act is not intended to be used exclusively by media outlets, journalists explained that they often cited it so that a public authority would have a legal obligation to provide the requested information. Public authorities often apply exemptions when refusing requests either without conducting a public interest test at all, or without explaining how the test was conducted.¹⁷ The procedure for sending requests for access to information has not been clearly defined in the Act, so public authorities have the discretion to decide how they will receive them. Some do not accept

¹³ Center for Investigative Reporting, Departure from Freedom of Information Act, 2015.

<https://www.cin.ba/javnauprava/price/odstupanje-od-slobodnog-pristupa-informacijama.php>

¹⁴ Mediacentar Sarajevo, New FOIA Could Additionally Restrict Right to Information in B&H, 2021.

<https://www.media.ba/bs/magazin-novinarstvo/novi-zosp-i-bi-mogao-dodatno-ograniciti-slobodan-pristup-informacijama-u-bih>

¹⁵ Mediacentar Sarajevo, Judicial Transparency During the Pandemic: Public and Media Outreach, 2021.

¹⁶ Personal Data Protection Agency of Bosnia and Herzegovina, Report on Personal Data Protection in Bosnia and Herzegovina in 2015, Sarajevo, 2016.

¹⁷ Siniša Vukelić, editor-in-chief of Capital.ba, interviewed on 26.7.2021.; Nermina Kuloglija, journalist from BIRN B&H, interviewed on 27.7.2021.; Berislav Jurić, editor-in-chief of Bljesak.info, interviewed on 26.7.2021.; Uglješa Vuković, head of department for analysis and public policies at Transparency International of B&H, interviewed on 3.8.2021.

requests via email, and require a request to be filed in person or sent via mail, which further hinders access to information.¹⁸

Proactive disclosure depends on a public authority's policy to make information available on its web page, but there are no legal provisions that regulate this. Non-binding recommendations for the proactive disclosure of information of public interest have had little effect, because the type and scope of information published on an authority's website is at the discretion of the authority itself.¹⁹ Reactive disclosure makes it harder for the public authorities as well, because it may mean they receive a number of requests from different parties all seeking the same information. Representatives of civil society organisations and journalists have pointed out that the administrative appeals process is long and inefficient. Nermina Kuloglija, a reporter from the Balkan Investigative Reporting Network in B&H (BIRN B&H), said that if the administrative procedure for deliberating an appeal is conducted by the same public authority that issued the first-instance ruling, it rarely grants access to information. Journalists say that an independent appeals body that would also oversee the application of Act is needed. Siniša Vukelić, editor-in-chief of web-based news outlet Capital.ba says:

We need a government institution that would react speedily—that would issue a binding decision within 48 hours of the public authority's denial of access to information—and that could fine legal entities and their officers. I think the existence of such an institution would significantly increase the transparency of public authorities and force them to do their job, at least to a degree.

Reporters have found that the FOIA officers tasked with reviewing requests often lack the training they need to do their job correctly. This makes it difficult to apply the Act. As Kuloglija says:

You might receive a denial that does not constitute a ruling—it does not include information about the legal remedy on which you can file an appeal—so you have to get in touch with the FOIA officer again to seek a ruling, and that's where we actually lose time.

¹⁸ Balkan Investigative Network in Bosnia and Herzegovina, Part of Judiciary Continues to Refuse FOIA Requests Sent via Email, Detektor.ba, 2021.

<https://detektor.ba/2021/07/21/dio-pravosudja-i-dalje-odbija-zahtjeve-za-pristup-informacijama-putem-e-maila/>

¹⁹ In 2014, the High Judicial and Prosecutorial Council of Bosnia and Herzegovine issued non-binding Guidelines for the disclosure of prosecutorial and court decisions on official web pages. They define the scope and type of information that judicial authorities may publish, with the goal of harmonizing the proactive publication of information. A 2020 study carried out by Mediacentar Sarajevo showed that a number of courts and prosecutor's offices did not follow these Guidelines.

The Draft Bill of the Freedom of Information Act at the Level of Bosnia and Herzegovina

In February 2021, the B&H Justice Ministry launched a public consultation for its draft bill of the FOIA at the level of Bosnia and Herzegovina's Institutions.²⁰ It stated that the bill was vital to B&H fulfilling its international obligations. Because it is a signatory to the Stabilization and Association Agreement between the European Union and its member states, B&H is obliged to transpose and implement all current and future legislation from the moment of the Agreement's ratification until the end of the six-year transition period.²¹ B&H must harmonize its legislation, implementation and application with the European Parliament and Council directive (EU) 2019/1024 on open data and the re-use of public sector information.

The draft asserts that by passing this legislation B&H intends to overcome the deficiencies that have become apparent during the Act's implementation. The nation aims to systematically regulate this matter at the level of its state institutions, to ensure effective application of the Act and compliance with international standards, and promote and protect the right to information. The most significant legal solutions put forward by the draft bill are presented in the following section.

1. Proactive Disclosure

A significant addition set forth by the draft bill regards the proactive disclosure of information, a legal tool that should improve the transparency of public authorities and make access to information easier. Article 13 of the draft proposed the information that should be covered under proactive disclosure, which includes employee records (first and last name; position, contact information and salary); records about the institution's activities (such as strategies and business and action plans); resolutions and by-laws; information about sessions, finances, or grants provided by the public authority, as well as public procurement contracts and job ads; requests for services; registers and databases, and guidelines for granting access to records.²² Proactive disclosure would involve publishing these guidelines on the Central Online FOIA Platform to streamline the Act's application, facilitate access to information and

²⁰ Bosnia and Herzegovina Ministry of Justice, Draft Bill on the Freedom of Information Act at the Level of Bosnia and Herzegovina, 2021.

<https://ekonsultacije.gov.ba/legislativeactivities/details/110763->

²¹ Stabilisation and Association Agreement entered into force on June 6, 2015 while the end of transitional period is on June 1, 2021.

²² Draft Bill on the Freedom of Information Act in Bosnia and Herzegovina, Bosnia and Herzegovina Ministry of Justice, 2021.

adjudicate the dilemmas that public authorities face when dealing with the volume and type of records that might be disclosed as a result of FOIA requests. Reporters say that proactive disclosure should facilitate access to records, but only if information was timely disclosed and regularly updated.²³

In March 2021, eleven civil society organizations warned that some of the draft's provisions failed to improve the public's access to information. The group called on the Ministry of Justice of B&H to the draft bill from Parliamentary consultations for further consideration.²⁴

2. Exemptions from access to information

Two of the draft bill's articles detail a series of exemptions from access to information that differ from the existing Act, which restricts access in cases where disclosure would be reasonably expected to cause substantial harm to: the legitimate aims of foreign policy objectives, defence and security objectives or public safety; monetary policy; crime prevention or criminal investigations; the deliberations of a public authority; or if a request for information involves the confidential commercial interests of a third party, or the privacy of a third person.²⁵

The proposed legislation has significantly widened the scope of exemptions that could be applied in cases where requested documents contain confidential information; intellectual ownership rights; tax or commercial secrets that would violate the privacy of natural persons if disclosed as well as disclosure of personal data related to first and third party requests; and if access to information is limited by, for example, international treaties. It also gives public authorities more freedom to limit access to information that relates to all "pre-trial proceedings in criminal cases for the duration of the proceedings." Justice Ministry officials say that the proposed legislation does not introduce new exemptions, but rather defines the Act's limitations more precisely.²⁶ On the other hand, Transparency International (TI) officials say that the proposed exemptions are a backward step from the current Act. As Uglješa Vuković of TI states:

²³ Nermina Kuloglija, journalist from the Balkan Investigative Network in B&H, interview from 27.7.2021.

²⁴ Civil Society Organizations to the B&H Justice Ministry: A Call to Repeal a Draft Bill of the Freedom of Information Act for Further Consideration, Transparency International B&H, Banja Luka, 2021.
<https://ti-bih.org/wp-content/uploads/2021/03/Press-rls-17.03.21.pdf>

²⁵ Freedom of Information Act in Bosnia and Herzegovina, Bosnia and Herzegovina Official Gazette, 28/00, 45/06, 102/09, 62/11 and 100/13

²⁶ Representative from the Bosnia and Herzegovina Ministry of Justice, interviewed on 3.8.2021.

In practice we know we know that the biggest danger is the form that exemptions from access to information take, and we must ensure that they are limited to the most legitimate, such as national security issues and similar, or in cases where it might be justified to restrict access to information.²⁷

The draft bill proposes that a public authority “may limit access to information if there is a reasonable doubt that its disclosure could prohibit efficient, independent and unbiased conduct of judicial, administrative or other legal proceedings; or affect the execution of a court ruling or a sentence; or prevent the work of a supervisory body over administrative proceedings or inspections, i.e. supervising the legality of work and by-laws.” However the term “reasonable doubt” and its method of determination, are not defined which could lead to the arbitrary application of this provision. B&H Justice Ministry officials stated that in cases where this provision is used, it must be established and defined to justify the denial of a request.

Article 19 contains exemptions cited in the Council of Europe’s Convention on Access to Official Documents, and limitations to the protection of confidential information; intellectual property; trade, tax or business secrets and privacy of natural persons; and personal data of first and third parties. This repeats information given in the previous article.

3. The public interest test

The draft calls upon public authorities to apply a proportionality and public interest test in cases where the exemption is qualified. The proposed provision does not, however, dictate how the assessment should be conducted. This constitutes a serious flaw in the legislation, because public authorities have in the past refused access to information without properly conducting a public interest test, or explaining how it was conducted. The Justice Ministry officials stated that this article will be improved upon in the draft.

4. Request submissions, deadlines, and resolutions

The draft does not specify the possibility whether or not a request can be sent via email, which allows public authorities to continue to decide arbitrarily how a request can be filed. The Ministry of Justice stated that this provision would be amended to include acceptance of requests by email.

²⁷ Uglješa Vuković, head of department for analysis and public policies at Transparency International of B&H, interviewed on 3.8.2021.

Paragraph 5 of Article 23 states that a request for access to an entire case file shall not be considered as an FOIA request. This provision is especially troubling to journalists, who may need access to documents such as those from court proceedings, business registry associations, public procurement cases, and procedures for the allocation of public funds. Ministry officials state that this provision was wrongly added to the draft, and would be erased.

The draft also proposed to extend the deadline for responding to requests by 15 days, when “a record must be identified outside the public authority’s HQ; or if one request demands access to several different documents; or if it is necessary to secure the completeness and accuracy of the required piece of information; and to adequately conduct a proportionality and public interest test, in accordance with the Act’s provisions.” This extension of the current statutory limit of 15 days is unacceptable to journalists and civil society organizations, who believe it will make the process more inefficient. Although journalists point out that even the current deadline is too long, Ministry of Justice officials say that shortening it is not advisable, because responding to FOIA requests takes time. They added that calls from some members of the media community to shorten the deadline for journalists are not helpful:

This would be unpopular, because it would discriminate against all other citizens ... then this would have become some sort of media legislation, which was never the intention.²⁸

Also of concern is that a provision that calls for the extension of the deadline when a number of documents is being requested could be interpreted arbitrarily, but Ministry officials do not see how it can be formulated differently.

In another proposed change, public authorities will not have to issue a resolution on when to inform the requester that the information being sought is already publicly available. This provision could prevent the requester from lodging an appeal.

5. The Appeals Procedure

The draft proposes that the Appeals Committee of the B&H Council of Ministers should be responsible for deliberating (first instance) appeals in the administrative proceedings, with a deadline of 30 days, or 60 or 90 days if additional action is required. If the Appeals Committee’s ruling is negative, the requester can file a lawsuit with the Court of B&H. In the past, proposals to

²⁸ A representative of the Bosnia and Herzegovina Ministry of Justice, interviewed on 3.8.2021.

improve the Act suggested the establishment of an independent body to review appeals, but the Appeals Committee does not meet this requirement because the Council of Ministers appoints its members. Uglješa Vuković of TI says:

The Appeals Committee of the Council of Ministers cannot be considered an independent body in any way, because it is not accountable to either a legislative body or to the public. It does not have that capacity. Nor does it have the capacity to apply this Act, which it has proved in the past.

Ministry officials do not agree, and consider the proposed solution better than setting up a new body, which they see as “... an additional encumbrance to the Act, and to the budget.”

6. The Human Rights Ombudsmen of B&H

The draft has also amended the prerogatives of the Human Rights Ombudsmen. The existing Act states that this body is charged with reviewing appeals related to violations of the right to information, and with producing and disseminating guidance and general recommendations for the implementation and application of FOIA legislation. Ministry officials stated that the proposed legislation did not reduce the scope of the Ombudsmen’s prerogatives, and that this body could continue its existing activities in accordance with the Law on the Human Rights Ombudsmen of B&H. Journalists and civil society representatives are of the opinion that the draft should uphold the Ombudsmen’s existing prerogatives, since it is the only body that has the appropriate expertise and has experience monitoring the Act’s implementation.

7. FOIA Officers

In the proposed legislation, FOIA officers would be responsible for keeping a record of the number of requests received; the type of information requested; the number of first instance and final resolutions issued; the number of unanswered requests; and how public authorities respond to requests. Officers are expected to report to the head of the public authority, the Appeals Committee and the Ombudsmen. The draft does not envisage training for FOIA officers or determine their role in deciding the outcomes of requests, which have both been identified as deficiencies in the Act.

8. Public authorities and their corresponding jurisdiction

In their analysis of the draft bill, the Ombudsmen commented that a number of government agencies have been given different levels of jurisdiction, which

complicates the Act's implementation. The Office of the Secretary General is authorized to run and maintain the Central Online FOIA Platform; the Appeals Committee decides the outcome of second-instance appeals; the Ombudsmen receives information related to FOIA officers; and Administrative Inspectors supervise the Act's implementation. The Ombudsmen pointed out that the draft did not propose a supervisory body to oversee the Act's implementation in its entirety, and that the proposed changes could cause ambiguity and inefficient application of the legislation.²⁹

Conclusion

Changes to the acts that regulate access to information are necessary to fill the gaps in existing legal framework, and efficiently implement and protect the right to information. Some of the Ministry of Justice's proposed new amendments have pit journalists and civil society organizations against government representatives. While Ministry officials present the proposed changes as progress, civil society organizations and journalists warn that some will roll back existing rights. A draft bill should improve the efficiency of the process, and highlight the provisions that have caused incorrect and arbitrary implementation of the Act, and in so doing to restrict those irregularities as much as possible. Aside from providing a means for individuals to access information held by public authorities, the FOIA is intended to guarantee supervision of those authorities, increase their transparency, and provide a key weapon in the fight against corruption. Any new legal solutions will affect the transparency of public authorities, and have a significant effect on how the right to information is exercised, and the ways in which journalists and civil society organizations operate. This is why it is important that the new state-level draft (which is currently in preparation) is in line with international standards and best practices, and preserves the rights enshrined in the current legislation.

²⁹ Human Rights Ombudsmen of Bosnia and Herzegovina, Comments on the Draft Bill of the Freedom of Information Act in Bosnia and Herzegovina, 2021.