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INDEPENDENT HUMAN RIGHTS GROUP

# **MONITORING ACCESS TO INFORMATION IN THE KYRGYZ REPUBLIC**

**Bishkek-2013**

This report was prepared by the Public Fund “Independent Human Rights Group” in the framework of the project “Promoting fundamental freedoms in the Kyrgyz Republic” and implemented with the support of the Open Society Foundation (Budapest) and the OSCE Centre in Bishkek.

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The present report is intended primarily for policy makers, individuals and organizations interested in the realization of the right to access to information as well as academia, research institutions, and a wide range of individuals interested in political and socio-economic aspects of development of the Kyrgyz Republic.

*The authors bear full responsibility for the content of this paper, and their opinions do not necessarily reflect the position of the organizations which contributed to publication of this paper.*

## **TABLE OF CONTENTS:**

Main terms and definitions in the area of access to information.....	4
1. INTRODUCTION.....	7
2. METHODOLOGY .....	11
3. LEGISLATION IN THE AREA OF ACCESS TO INFORMATION.....	13
3.1 International standards in the area of access to information.....	13
3.2 national legislation on access to information.....	16
4. RESULTS OF THE MONITORING OF THE PRACTICE OF PROVISION OF INFORMATION BY GOVERNMENTAL BODIES AND BODIES OF LOCAL SELF- GOVERNMENT	
4.1 Monitoring of provision of information in response to written requests.....	33
4.2 Monitoring of presence of official information .....	35
4.3 Monitoring of access to meetings.....	37
4.4 Monitoring of active publication of information by the means of modern telecommunication networks (e.g. websites).....	38
5. ON AWARENESS RAISING ACTIVITIES TARGETING REPRESENTATIVES OF GOVERNMENTAL BODIES AND BODIES OF LOCAL SELF-GOVERNMENT IN THE SPHERE OF PROVISION OF INFORMATION.....	49
6. STRATEGIC LITIGATION IN THE AREA OF ACCESS TO INFORMATION.....	51
7. CONCLUSIONS AND RECOMMENDATIONS.....	53
8. ATTACHMENTS [available only in Russian version of this report]	

## MAIN TERMS AND DEFINITIONS IN THE AREA OF ACCESS TO INFORMATION

*Information:* data (messages), regardless of the form of its presentation.

Information on activity of governmental bodies and bodies of local self-government is information (documented) created within the powers of governmental bodies, their territorial bodies, bodies of local self-government or organizations subordinate to governmental bodies, bodies of local self-government, or received by these bodies or organizations.

Information on activity of governmental bodies and bodies of local self-government also includes laws and other normative legal acts, and information on activity of bodies of local self-government is municipal legal acts setting the structure, powers, the order of establishment and activity of bodies and organizations, and other information regarding their activity.

*Document:* information fixed on a material carrier, allowing it to be identified.

*Governmental bodies:* organizations established on a continuous basis according to the Constitution of the Kyrgyz Republic, constitutional or other laws of the Kyrgyz Republic, decrees of the President of the Kyrgyz Republic, charged to carry out the functions of legislative, executive and judicial governmental power, and also charged to implement executive decisions and ensure their realization, financed entirely from the national budget; also any territorial subdivision or structural unit, carrying out functions or part of functions of the central governmental body.

*Bodies of local self-government:* representative, executive and administrative and other bodies, established by the local community for solution of affairs of local importance, and also any territorial subdivision or structural unit carrying out functions or part of functions of the body of local self-government.

Terms “governmental body” and “body of local self-government” cover also any institution, including its territorial subdivision or structural unit, financed entirely or partially from the national or local budget and carrying out functions not connected with execution of governmental power and functions of local self-government, including health, educational, informational, statistical, consultation, and credit institutions.

*Limited access information:* information regarding governmental secrets and also confidential information.

*State secrets:* information, stored or transmitted by any types of carriers, affecting the defense, security, economic and political interests of the Kyrgyz Republic, controlled by the government and restricted by special lists and rules, established on the basis and in compliance with the Constitution of the Kyrgyz Republic.

*State secrets* of the Kyrgyz Republic are divided into three categories: governmental, military and official secrets.

- a. *Governmental secret:* information which if disclosed could result in severe consequences for defense, security, economic and political interests of the Kyrgyz Republic. Information, constituting a governmental secret, is given a restrictive stamp “very important” and “top secret”

- b. *Military secret*: military information which if disclosed may cause harm for armaments and interests of Kyrgyz Republic. Information relating to a military secret is stamped as “top secret” and “secret.”
- c. *Official secret*: information which if disclosed may have a negative impact on defense capability, security, economic and political interests of the Kyrgyz Republic. Such information has certain parts of information relating to state or military secret and cannot be disclosed fully. Official secret information is stamped as “secret.”

*Imposing secrecy on information*: a group of events organized by the government aimed at limiting the spread of information.

*Declassifying of information*: a series of events led by the state authorities aimed at removal of limitation on disclosure.

*System of state secrets protection (secrecy regime)*: a procedure of providing security and state secrets protection approved by the laws of Kyrgyz Republic and other legal acts of the state.

*Disclosure of secret information*: illegal or careless actions by executives or citizens who were given certain authority on delivery, transfer, presentation or publication of secret information for persons not having an opportunity to access the information due to the position they were taking.

*Limitation signature stamp*: mandatory attribute of secret information holder or accompanying documentation, which determines special procedure for the use of information.

*Confidential information*: information about official secrets of public and local authorities as well as information administered by public and local authorities holding secrets of other persons protected by the law.

*Confidential information containing an official secret of local and public authorities*: information specifically related to organizational technical rules of guaranteeing security guarantee for public and local authorities reflecting concrete content of closed sessions and meetings, as well as personal attitudes of executives during closed meetings and voting procedures.

*Confidential information, containing secrets of other persons protected by the law*: information relating to personal life privacy as well as to commercial, professional and other types of secrets.

*Personal data*: any information directly or indirectly relating to a person (subject of personal data).

*Commercial secret*: an information confidentiality regime which helps its holder to increase the income, avoid extra expenses, keep market position or get some other commercial benefit.

*Information system*: information contained in database and information technologies and technical means providing its processing.

*Informational- telecommunication network:* a technological system, intended for the transmission over communicational lines of information, access to which is carried out with use of computer technology.

*Informational technologies:* processes, methods of search, collection, storage, processing, supply and distribution of information and ways of implementing such processes and methods.

*Request:* an appeal of a requester in oral or written form, including in the form of electronic document, to a governmental body or a body of local self-government, or to its official, for provision of information on activity of this body.

*Holder of information:* an individual who created information independently, or received it on the basis of law or treaty regarding the right to allow or restrict access to information.

*Operator of informational network:* an individual or a legal entity, carrying out activity on exploitation of an informational system, including on processing of information, contained in its databases.

*Website or Internet-site:* a set of related informational online resources, intended for viewing via a computer network with special programs (web browsers).

*Official website of governmental body or body of local self-government:* a site in the informational telecommunication network Internet, containing information on activity of a governmental body or a body of local self-government, the electronic address of which includes domain, rights for which belong to a governmental body or a body of local self-government.

*User of information:* a citizen (individual) organization (legal entity) carrying out a search of information on activity of a governmental body or body of local self-government. Users of information are also governmental bodies, bodies of local self-government, conducting search of specified information.

*Provision of information:* activities directed toward receiving of information by an unspecified range of individuals or transmission of information to an unspecified range of individuals.

*Electronic message:* information transmitted or received by a user of an informational-telecommunication network.

*Informational message:* information (document), containing information, notifying the user about specific facts, events or processes on activity of a governmental body.

*Informational material:* information (document), containing, as a rule, additional details about the facts, events and processes in activity of a governmental body, which also includes separate content related documents and/or their parts.

*Informational security:* a desired level of integrity, exclusivity, accessibility and effectiveness for protecting data from loss, mutilation, destruction and unauthorized use.

## 1. INTRODUCTION

Freedom of information includes freedom of thought (freedom of opinions, beliefs), freedom of speech (freedom of expression) and freedom of the media. The philosophical foundation of these freedoms dates to the modern times, and they get their normative implementation in the first constitutions. However, starting from the middle of the last century new ideas have appeared in the legal science focusing on information.

Two main directions can be identified in the development of informational rights. The first direction is connected with development of the so-called *freedom of expression* as a complex informational law: it contains the right to freely seek, receive, transmit, produce, impart and disseminate information, and also other constitutional rights in the sphere of informational exchange: freedom of thought, freedom of speech and freedom of the media. The second direction is connected exclusively with *access to information*, that is with the publicity of activity of governmental bodies. The purpose of this approach is creation of legal capacities of an individual or organization to receive information obtained by bodies of public government in connection with realization of their powers.

The main task of guaranteeing the right for access to information is permitting an individual or organization to access information which governmental bodies would prefer to hide from the public, explaining these activities by requirements of national security or the official nature of documentation. The right for access to information must therefore be implemented not only by giving a variety of information to society, but also by guaranteeing openness of activity of governmental bodies.

The legislation of foreign states on access to information of governmental bodies is connected with the principle of freedom of information and relates exclusively to issues of governmental bodies. That is why foreign laws, which contain national equivalents of the term *freedom of information* in their name, as a rule regulate only issues of access to information held by governmental bodies.

According to the data of the organization “Transparency International Russia,” today only about 100 countries<sup>1</sup> in the world have separate laws on access to information as a part of national legislation. It is believed that a significant impetus to the development of legislation on the right for access to information and justification of the independence of this right was given by the struggle of American society with secrecy of documentation, which had a resonance during the War in Vietnam, where documents of the Pentagon demonstrated what threats are hidden in excessive secrecy. Adopted in 1966 and later undergoing more liberal changes, the Law of the USA “On freedom of information” today is one of the most powerful documents in the area of establishment of a system of legal mechanisms of access to information in national legislation.

Since the beginning of sixties there is a tendency on adoption of independent national laws to guarantee access to information about activity of governmental bodies. Starting since this time (except Finland, where this law was adopted in 1951, and in Sweden- in 1766), the amount of domestic legislation adopted on access to information has increased in geometric progression, the majority of laws regulating freedom of access to information having being adopted during the last twenty years.

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<sup>1</sup>[www.svobodainfo.org/ru/node/195](http://www.svobodainfo.org/ru/node/195).

On September 28, 2013, two non-governmental organizations “Access Info Europe” (*AIE*, Spain, Madrid) and “Centre for Law and Democracy” (*CLD*, Canada, New Scotland, Halifax) published the results of a study named “Rating of the analysis of data on right for information: review of results and tendencies.”<sup>2</sup> According to it, during the last 20 years the number of laws adopted on access to information in the world increased more than in five times: in 1993- 18 laws, in 2013- 95. The research included in the methodology international human rights standards developed by the UN and regional organizations as well as the study of legislation regulating the right for access to information in 95 countries of the world, and its comparative analysis. 61 indicators, according to which national legislation of every country is evaluated in the area of access to information, were developed by experts of the above mentioned organizations in cooperation with an Advisory Board composed of worldwide famous experts on the right for access to information.

The highest score, in full compliance with the normative legal foundation of international standards, was 150. The scores were given according to the results of indicators’ analysis, united in seven main categories, with an established restriction of the maximum score.

**Table 1.**

**Main categories, according to which legislation in the area of access to information was evaluated, in the framework of the research of AIE and CLD**

#	Category	Maximum score
1	Access to information	6
2	Sphere of application	30
4	Required procedures	30
5	Exclusions and refusals	30
6	Procedures for appeals	30
7	Sanctions and protective measures	8
8	Promotional measures	16
Total score		150

According to the results of the rating, the first place indicating maximum compliance of national legislation to the requirements of international standards in the area of access to information, was given to Serbia (135 points out of 150), the second place to India and Slovenia (130 points out of 150). The Republic of Tajikistan took the 93rd place in the rating, the Republic of Uzbekistan-86<sup>th</sup>, Russian Federation- 54<sup>th</sup>, USA- 42<sup>nd</sup>, Ukraine and Azerbaijan- 8<sup>th</sup> place. The Kyrgyz Republic took the 22<sup>nd</sup> place in this rating.<sup>3</sup>

The authors of the research pointed out that although demonstrating a high rating in legal provision of access to information, a country can fail to fulfill its obligations on realization of access in practice, i.e., even strong laws cannot ensure openness of governmental bodies. The following table points out the ten countries with the best rating in the area of legal provision of the right for access to information and the ten countries with the worst rating.

<sup>2</sup>[www.access-info.org](http://www.access-info.org).

<sup>3</sup>Full information on this rating is given in Appendix 1 to this report.



**Table 2.****Ranking of countries on legal access to information**

#	Country	Score
Countries with the best rating		
1.	Serbia	135
2.	India	130
3.	Slovenia	130
4.	Liberia	126
5.	Salvador	126
6.	Mexico	124
7.	Antigua	119
8.	Azerbaijan	117
9.	Ukraine	115
10.	Ethiopia	115
Countries with the worst rating		
1.	Austria	37
2.	Liechtenstein	38
3.	Tajikistan	51
4.	Germany	52
5.	Jordan	56
6.	Belgium	56
7.	Italy	57
8.	Taiwan	60
9.	Uzbekistan	61
10.	Dominican Republic	61

Along with research conducted by foreign non-governmental and international organizations, representatives of the civil sector of the Kyrgyz Republic are actively engaged in analysis of the domestic situation in the sphere of the freedom of information during the last years.

The present publication reflects the results of research on practice of realization of the right for access to information held by government bodies and bodies of local self-government, conducted by the Public Fund “Independent Human Rights Group” (further, “Independent Human Rights Group” PF), in the framework of the project “Promoting fundamental freedoms in the Kyrgyz Republic” and implemented with the support of the Open Society Foundation (Budapest) and the OSCE Centre in Bishkek.

The report is intended for governmental bodies and bodies of local self-government of the Kyrgyz Republic, non-governmental organizations, human rights activists and other individuals, interested in the issues of compliance with the right for access to information held by governmental bodies.

The report develops conclusions and recommendations aimed at provision of a guarantee of compliance with the right for access to information, in accordance with norms of international and national legislation.

The first part of the report contains a description of the project's methodology, including general information on purposes, tasks of the project, its main components and activities undertaken in the framework of the project.

The second part of the report includes a review of international and national legislation in the area of access to information.

The third part of the report includes the description of the results of monitoring of the practice of provision of information by governmental bodies and bodies of local self-government.

The description of the activity of the team of the project on appeals of actions/ inactions of governmental bodies that cause violation of the right for access to information, and also on raising awareness of governmental bodies, is provided in the fourth and the fifth parts of the report.

The final part of the report contains conclusions and recommendations, established according to the results of the research.

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–Edigeeva Marina, NGO "Solidarity Union" (Talas)

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## 2. METHODOLOGY

The research on the project “Access to Information in the Kyrgyz Republic” was conducted during the period January 1 through September 30, 2013. This research is a continuation of the activity of the “Independent Human Rights Group” PF in the area of access to information, carried out since 2006.

### GOAL OF THE PROJECT

The main goal of the project was cooperation in the implementation of the right for access to information in the Kyrgyz Republic.

### TASKS OF THE PROJECT

The participants of the project were given the following tasks:

- Conducting of a comparative analysis of the extent of transparency of governmental bodies and bodies of local self-government;
- Conducting analysis of legislation on compliance with international standards on issues of access to information;
- Initiation of cooperation between civil society and governmental bodies in the process of decision-making in this area.

## OBJECT OF THE RESEARCH

The object of research in the framework of the project was the present practice of provision of information held by governmental bodies and bodies of local self-government of the Kyrgyz Republic.

## CONDUCTING THE RESEARCH

The research included conducting the following activities:

- Increasing awareness of employees of governmental bodies and bodies of local self-government on issues on access to information by means of conducting a series of educational trainings on issues of access to information in Bishkek and four regions of the country- Issyk-Kul, Naryn, Talas and Osh.
- Continuation of previous activity of a network of activists all over the country with the purpose of contribution to practical realization of the Law of the Kyrgyz Republic “On access to information held by governmental bodies and bodies of local self-government” (further, the Law on access to information) and Decree of the President of the Kyrgyz Republic dated May 8 2007, #240 “On realization of the Law of the Kyrgyz Republic ‘On access to information held by governmental bodies and bodies of local self-government’” (further, the Decree of the President of KR).
- Conducting monitoring of compliance of provisions of the Law on access to information and Decree of the President of KR by governmental bodies and bodies of local self-government by the means of work with requests, conducting visits to sessions of governmental bodies, and also analysis of informational openness of websites.
- Creation of legal cases on facts of violation of legislation in the sphere of access to information.
- Development of recommendations and further cooperation with central bodies of government on the results of research on the practice of realization of the Law on access to information and Decree of the President of KR.

The main condition for the effective implementation of the project was the active involvement of partners from the regions and Bishkek City. Due to this fact, special attention was given to building the capacity of those partners on the basics of the right for access to information, techniques of conducting monitoring, and also mechanisms of realization of the Law on access to information.

For conducting trainings for partners from human rights organizations, as well as for employees from governmental bodies, a special program of the training on “Access to information held by governmental bodies and bodies of local self-government” was developed, which included formulation of relevant questions on access to information, study and analysis of the Law on access to information and other normative legal acts, as well as training on how to reclaim/provide information. In the framework of the trainings for representatives of governmental bodies, results of previous research and comparative analysis of the situation in the area of implementation of previously developed recommendations were used.

Overall six trainings took place in Issyk-Kul, Naryn, Talas and Osh regions and in Bishkek City, during which more than 100 people were trained.

During the monitoring process, regional partners and employees of the project tracked different ways of provision of information, including by providing information on oral and written requests, provision of direct access to documents and materials, and access to sessions of governmental bodies and bodies of local self-government. In parallel, experts of the project monitored informational openness of websites of governmental bodies.

In order to produce a uniform and trustworthy report, all the partners made use of standardized monitoring instruments (surveys forms), covering ways of accessing information in line with the Law on access to information,. All information received was directed to the “Independent Human Right Group” PF for further analysis and synthesis.

The results of the research were classified:

- According to the type of governmental body or body of local self-government
- According to the way of receiving information held by a governmental body or body of local self-government.

The present report is a synthesis and analysis of information received during the research, and conclusions and recommendations.

### **3. LEGISLATION IN THE AREA OF ACCESS TO INFORMATION**

#### **3.1. INTERNATIONAL STANDARDS IN THE AREA OF ACCESS TO INFORMATION**

In one of its first resolutions, the General Assembly of the United Nations declared that “freedom to information” is a basic human right and an essential element of many kinds of freedom which are protected by the United Nations.<sup>4</sup> Despite this statement, freedom for information was developed initially in universal and regional documents on general human rights, not as an independent right, but as a part of a fundamental right for thought and expression of opinion.

Thus, article 19 of the Universal Declaration of Human Rights proclaimed:

*“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 state borders.”*

Article 19 of the International Covenant on civil and political rights includes similar provisions:

*“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 state of borders, either orally, in writing or in print, in the form of art, or through any other media of his or her choice.”*

Over the years, freedom of expression strengthened. The effective activity of a number of international organizations responsible for the promotion and protection of human rights contributed to this, including the United Nations, and regional human rights institutions and mechanisms as well.

In 1998, the Special Rapporteur of the UN on promotion and protection of the right for freedom of opinion and expression, in his annual report, pointed out that the freedom includes the right for access to governmental information:

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<sup>4</sup>Resolution of UN General Assembly No. 59 (1) from December 14, 1946.

*“Freedom to seek, receive and impart information and ideas puts positive obligations on the states to provide access to information which the government has in all types of storage and search systems.”<sup>5</sup>*

In his 2000 report he gave an extended commentary about the content of the right for information:

- *Governmental institutions have an obligation to disclose information, and every member of society has a corresponding right to receive information; “information” includes all documents which governmental institutions have, regardless of the form of storage;*
- *Freedom of information presumes that governmental institutions publish and spread special documents with a significant social interest, for example, working information about functioning of governmental institutions, and content of any decision or policy which concerns society;*
- *All governmental institutions are obliged to establish open, accessible internal procedures, which guarantee the right for information to society, and the legislation must prescribe strict deadlines for processing the requests and require that all refusals are followed by corresponding explanations regarding the reasons for refusal;*
- *The cost of getting information, which governmental institutions have, must not be in an amount which would restrain potential claimants from requests, and contradict the goal of the law itself;*
- *The law must contain provisions, according to which, all sessions of governing bodies are open to the public.”<sup>6</sup>*

A Joint Declaration by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), and the Special Rapporteur of the Organization of American States (OAS), in December 2004 included the following statement:

*“The right for access to information held by governing bodies is a fundamental human right, which must be enforced on a national level by means of comprehensive legislation (for example laws on Freedom of Information), based on the principle of the maximum disclosure of information, establishing a presumption that all information is available, except a narrow list of exceptions.”<sup>7</sup>*

Acknowledging the importance of access to information as a means of reducing corruption, protecting the environment, and improving government and democracy, the Kyrgyz Republic joined in a large number of international treaties and agreements in this area, and voluntarily accepted obligations on realization of practical measures for enforcement of the right for access to information, including the information held by governing bodies.

For example, on May 1, 2001, Kyrgyzstan joined the Convention of UN European Economic Commission on access to information, participation of society in the process of decision-making and access to legislation on issues regarding the environment (the Aarhus Convention). The Aarhus Convention imposes obligations to take legal actions for implementation of its provisions on access to information regarding ecology and environment:

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<sup>5</sup>Report of the Special Rapporteur on the promotion and protection of the right for freedom of opinion and expression "Promotion and protection of the right for freedom of opinion and expression." UN Doc.E/CN.4/1998/40, January 28,1998, par.14.

<sup>6</sup>Report of the Special Rapporteur on the promotion and protection of the right for freedom of opinion and expression "Promotion and protection of the right for freedom of opinion and expression", UN Doc.E/CN.4/2000/63, 18 January 2000, par.44.

<sup>7</sup> Adopted on December 6, 2004, <http://www.cidh.org/Relatoria/showarticle.asp?artID=319&IID=1>.

*“Each party... guarantees, when a governmental institution receives a request to provide information regarding ecology and environment, a disclosure of this information to citizens....”*<sup>8</sup>

The Aarhus Convention became the first legally binding international instrument which sets specific standards regarding the right for information.

In November 2001, the Kyrgyz Republic officially supported the Plan of Action on fighting against corruption in Asian countries and the Pacific Region, which was established by the Asian Development Bank and the Organization of economic cooperation and development (further, the Action Plan).<sup>9</sup> According to the Principle 3 of the Action Plan, governments are obliged to provide to society as a whole and to the media the freedom to receive and transmit information, specifically information about corruption, according to the legislation of that country (and thus, it does not have a negative impact on the effectiveness of operating activities of the administration and does not cause any harm to the interest of governing bodies and individuals), by means of:

- *Development of a requirement for provision of information by judicial authorities and other governmental bodies to the public, including information about efforts on ensuring integrity and accountability and fighting against corruption;*
- *Realization of measures ensuring a real right of society for access to corresponding information.*

When the Kyrgyz Republic, in November 2003, joined with Istanbul Plan of Action on Fighting against Corruption (Plan of Action on Fighting against Corruption for Azerbaijan, Armenia, Georgia, Kyrgyzstan, Russia, Tajikistan and Ukraine), an obligation was placed on the Government of the Kyrgyz Republic to provide access to information to the public, specifically information about corruption, by the means of development and application of:

- a) requirements on provision of information to society, including information about efforts of governments on ensuring legitimacy, honesty, civil control and prevention of corruption in their activity, and also about the results of specific cases, materials and other reports regarding corruption;*
- b) measures ensuring freedom of society as a whole and the media for requesting and receiving corresponding information related to the prevention and fighting against corruption;*
- c) informational systems and databases regarding corruption, facts and circumstances which contribute to its occurrence, and also measures provided in governmental and other state programs/plans for its prevention, in order that this information is available to social and other non-governmental organizations, and other organizations of civil society.*

On December 10, 2003, the Kyrgyz Republic signed the UN Convention against corruption.<sup>10</sup> Article 10 of the Convention puts requirements on countries-participants to take actions for strengthening transparency, including by means of:

*“adopting procedures or rules, allowing society in corresponding circumstances to get information about organization, functioning and process of decision-making of the public administration, and with a due regard of protection of private life and private data, about decisions and legal acts, concerning interests of the population.”*

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<sup>8</sup> Adopted on 25 June 1998, entered into force 30 October 2001, Doc.UNEKE/KEP/43 at <http://www.unece.org/env/pp/treatytext.htm>.

<sup>9</sup> <http://www1.oecd.org/daf/asiacom/ActionPlan.htm>.

<sup>10</sup> [http://www.africaunion.org/Official\\_documents/Treaties](http://www.africaunion.org/Official_documents/Treaties).

According to the Declaration on Principles of International Law of 1970, each state is obliged to conscientiously follow the requirements which it adopted according to the UN Charter, arising from generally accepted norms and principles of international law, as well as requirements arising from international treaties valid under generally accepted principles and norms of international law. All international treaties entered into force in accordance with law, setting standards regarding the right for access to information, and putting obligations on the Kyrgyz Republic on creation of conditions for realization of this right, and also generally accepted principles and norms of international law in this area, are a formal part of the legal system of the Kyrgyz Republic according to Part 3 of Article 6 of the 2010 Constitution. These norms and principles have a direct effect and must be strictly followed.

### **3.2. NATIONAL LEGISLATION ON ACCESS TO INFORMATION**

#### **Constitution**

The right for information had a gradual development in the Constitution of the Kyrgyz Republic. Despite the fundamental right for freedom of thought, speech and the press, the time of its occurrence relates to the latest wave of development of constitutionalism.

The Constitution of the Kyrgyz SSR of 1937 was a key toward successful realization of freedom of speech, press, peaceful assembly, by providing to working people “printing presses, stocks of paper, public buildings, streets, means of communication and other material conditions.”<sup>11</sup> The Constitution of the Kyrgyz SSR of 1978 found these measures insufficient: Article 48 of that Constitution included an obligation on ensuring the spread of information on the side of the government. According to the requirements of Article 75 of the Constitution, the report on report on the national budget expenditures of the Kyrgyz SSR was to be published for “the public.”

The right to freely gather, store, use information and impart it orally, in writing or by any other means, as a separate and independent right was first established in the Constitution of the Kyrgyz Republic adopted on May 5, 1993. This constitutional provision is a basis for the development of the current national legislation of the Kyrgyz Republic on access to information.

A powerful breakthrough in the development of the right for access to information was adoption of new Constitution of the Kyrgyz Republic in June 2010.<sup>12</sup> Openness of governmental bodies to a society was described in article 3 of the Constitution as the most important principle of governmental power in the country. Special attention is given in the Constitution to the right for access to information held by governmental bodies, local governments and their officials.

Part 3 of the Article 33 states that:

*“Everyone has a right for receiving information about activity of governmental organs, bodies of local governments and their officials, legal entities with participation of governmental bodies and bodies of local governments and also organizations which are financed from national and local budgets.*

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<sup>11</sup>The Constitution of the Kyrgyz SSR, approved by the Fifth Extraordinary Congress of Councils of the Kirghiz SSR, March 23, 1937, article 96.

<sup>12</sup>The Constitution of the Kyrgyz Republic, adopted by referendum(national vote) of the Kyrgyz Republic on June 27,2010.

Part 4 of the same article provides that everyone is guaranteed access to information held by governmental bodies, bodies of local governments and their officials.

The current national legislation is equipped with a whole group of regulatory legal acts, including clarification of the mechanism for the realization of the right for access to information. These are Codes, laws, decrees of the President, resolutions of the Government, regulatory legal acts of governmental bodies, authorized to issue regulatory legal acts, and regulatory legal acts of representative bodies of local government.

### **Law “On guarantees and freedom of access to information”**

The Law of the Kyrgyz Republic “On guarantees and freedom of access to information” (the Law) was adopted by Legislative Assembly of the Jogorku Kenesh on November 11, 1997, with the purpose of regulation of the process of realization of the constitutional right of everyone to freely seek, receive, process, produce, transmit and impart information. In the opinion of some international experts, this Law is generally in line with international standards.<sup>13</sup>; however it includes a number of inconsistencies which unnecessarily restrict access to information in the Kyrgyz Republic.

First of all, the Law contains significant inconsistencies in determining the personal scope of the right for access to information. Article 3 states that everyone is guaranteed the right for access to information, and that the State protects the right of everyone seeking, receiving, processing, producing, transmitting and imparting information. However, in other articles, only citizens and organizations are entitled to this right. The 2010 Constitution states that “In the Kyrgyz Republic foreign citizens and individuals without citizenship enjoy the rights and shall fulfill obligations equally with the citizens of the Kyrgyz Republic, except in cases set by the law or by international treaties in which the Kyrgyz Republic participates.”<sup>14</sup>

Also, restrictions on access to secret and confidential information set by the Law equally apply to foreign citizens and individuals without citizenship, as well as citizens of the Kyrgyz Republic. The Law does not mention any other case where additional restrictions on the right for access to information in the state by foreigners and individuals without citizenship can be imposed. Accordingly, it would be recommendable to stick to the requirements of the 2010 Constitution while taking into account best practice from other countries in this area, and allowing any individual regardless of citizenship and place of residence to access information on equal grounds.

Article 6 of the Law imposes obligations on governmental bodies, bodies of local self government, social associations, enterprises, institutions, organizations and officials to provide everyone with a chance to familiarize themselves with those documents, decisions and other materials which concern their rights and legal interests.

Obligations on individuals to motive their interest in requests for information is not to be considered in line with best practice in the majority of European countries. According to existing recommendations of the Committee of Ministers of the Council of Europe:

- *“access to information cannot be denied due to the reason that an individual applying for information does not have a particular interest in the given area.”<sup>15</sup>*

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<sup>13</sup> David Banisar, Comments on the Draft Law "On guarantees of freedom and access to information", 2005, pp. 7-8.

<sup>14</sup> The Constitution of the Kyrgyz Republic. Part 1 of Article 19.

<sup>15</sup> Recommendation # R (81) 19 of the Committee of Ministers to Member States Concerning access to information held by public authorities.



- *“an individual applying for an official document is not required to give the reasons why he wants to get access to this document.”*<sup>16</sup>

While the Kyrgyz Republic is not a member of the Council of Europe and recommendations of that body are not compulsory, these recommendations do set shared standards on access to information and are useful very practical tool in improving legislation and its implementation.

In Kyrgyzstan the above mentioned issue remains problematic. Although Article 9 of the Law “On access to information held by government bodies and bodies of local governments” (further, the Law on access to information)() states that an individual requesting information does not have to justify his/her request, in practice a significant portion of refusals to provide information is explained by the fact that the initiator of the request did not explain how the requested information concerns his or her rights and freedoms, with reference to Article 6 of the Law. Unfortunately, this explanation finds support in the courts during legal proceedings on challenging actions (or inactions) of officials violating the right for access to information.

A significant drawback of the Law of KR “On guarantees and freedom of access to information” is that it does not set any time frame in which information must be provided.

### **Law on “Access to information, held by government bodies and bodies of local governments of the Kyrgyz Republic”**

The Law “On Access to Information held by government bodies and bodies of local governments of the Kyrgyz Republic” (further, Law on access to information) was adopted in 2006 to regulate special issues related to access to information held by government bodies and bodies of local governments. In the opinion of a number of experts, however, there are still some lacunae in legislative reforms on access to information by dividing the sphere of regulation into information held by government bodies and information held by individuals.

The Law “On guarantees and freedom of access to information” continue to contain provisions regarding access to information held by governmental bodies, and the norms regarding access to information held by individuals do not fully ensure the right for access to information, and the name of the law does not reflect its objective -- ensuring access to information held by individuals. In addition, the Law continues to contain provisions not related to the right for access to information but relates to the subject of regulation of the right for freedom of speech, freedom of the media and ensuring professional activity of journalists<sup>17</sup>.

Against this background on December 29, 2010, the Public Fund “Open Position” created a draft law “On access to information held by business entities,” which is supposed to regulate the right of everyone (i.e. individuals) to access information held by business entities. Business entities are defined as commercial and non-commercial organizations, in the creation, financing and management of which governmental bodies and bodies of local government do not participate, and also individual entrepreneurs and other individuals carrying out business activity.<sup>18</sup> At the present time the draft law is in the discussion stage.

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[http://www.coe.int/T/e/legal\\_affairs/Legal\\_cooperation/Administrative\\_law\\_and\\_justice/Texts\\_&\\_Documents/Recommendation\(81\)19.asp](http://www.coe.int/T/e/legal_affairs/Legal_cooperation/Administrative_law_and_justice/Texts_&_Documents/Recommendation(81)19.asp).

<sup>16</sup> Recommendation Rec (2002) 2 of the Committee of Ministers to member states on access to official documents), 2002. [http://cm.coe.int/stat/E/Public/2002/adopted\\_texts/recommendations/2002r2.htm](http://cm.coe.int/stat/E/Public/2002/adopted_texts/recommendations/2002r2.htm).

<sup>17</sup> A. T. Esengeldiev, Expert opinion on the Law of the Kyrgyz Republic "On guarantees and freedom of access to information", <http://prava.kloop.kg/?p=646>.

<sup>18</sup> <http://prava.kloop.kg/?p=646>.

The Law on access to information received a positive evaluation from international experts, who especially pointed out “*extensive definition of the right for access to information, procedural guarantees, extensive obligations about disclosure and immediate access, and also a right to access to public hearings.*”<sup>19</sup>

Compared to the Law of KR “On guarantees and freedom of access to information,” the Law on access to information is more thorough a document, regulating different ways of ensuring the right for access to information held by government bodies and the bodies of local governments. The Law on access to information provides that the right for access to information is carried out through direct access to information about the activity of governmental bodies and bodies of local governments, using the following methods provided by the law:

**Getting information based on a request** The requests can be initiated in the form of oral direct appeal or by phone, and also written request, delivered by direct transmission, by mail, courier or transmitted by electronic communication channels. The response to the request should be made in the form the request was received.<sup>20</sup> A requester does not have to describe the reason for his request. There is a time frame during which the response request must be prepared and provided, two weeks also procedure for calculation and deferral of the deadline.

**Direct familiarization with the database with official information** Governmental bodies and bodies of local self-government form binders for review, and also binders which contain specimens of documents and materials. Not less than once a month, there must be an inventory of documents and material contained in the binders for review. For the work with binders, each government body and body of local self-government has special places with conditions allowing one to take extracts from documents and materials and also copy them.<sup>21</sup>

**Direct familiarization with the library database with official information** Governmental bodies and bodies of local self-government send to libraries official reports, informational materials, official reference books and other documents and materials held in their possession. Based on these materials public database of official information are formed in libraries.<sup>22</sup>

**Direct familiarization with** Governmental bodies and bodies of local self-

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<sup>19</sup> Article 19, Memorandum on the draft law of the Kyrgyz Republic on Access to information, London October 2006, available at <http://www.article19.org/data/files/pdfs/analysis/kyrgyzstan-foi-06.pdf>.

<sup>20</sup>The Law on access to information. Article 7

<sup>21</sup>The Law on access to information. Article 23.

<sup>22</sup>The Law on access to information. Article 24

## **databases with official information**

government implement measures on development and support of a centralized automated informational system of official information, uniting databases with official information of governmental bodies and bodies of local self-government.<sup>23</sup>

The system of official information includes a full range and texts of normative acts valid in the territory of the Kyrgyz Republic.

## **Attendance at public meetings**

Meetings of the state as well as local authorities are always open to the public except for closed sessions.<sup>24</sup> Openness of the meetings is guaranteed by an opportunity to attend the meeting given to those citizens who have made a request for participation in the meeting.

Public authorities as well as local authorities publish a schedule of meetings where they specify the topic, date, time and venue. A special showcase is equipped at their location where information on the topic, date, time and type of the meeting (closed or open) is placed not later than one week in advance. If the meeting is closed to the public, then the reasons for limited access of the public have to be presented on the showcase.

The law establishes the rules for participation in meetings by public and local authorities by providing for an opportunity for citizens to be included in the list of the meeting's participants, providing seating for the attendees, and an order of determining those who may attend the meeting in case of exceeding the limit of possible attendees.<sup>25</sup>

The implementation of the right to access to information also implies an opportunity of indirect access through promulgation of legal acts; information on the current decisions and official events of state as well as local authorities; annual reports on the results of the work of state and local authorities; and other informational materials.

## **Promulgation of legal acts**

Official publication of legal acts affecting the rights and freedom of citizens is not enough for ensuring the transparency of state and local authorities. It is necessary for the act to be accessible practically. This may be accomplished by means of publishing by subject collections of legal acts, guaranteeing of the public access to the database of information, and stimulation of spreading information through mass media.

## **Promulgation of information on current decisions and official events**

Article 17 of the Law on access to information establishes the types of official information that should be promulgated. The included information is:

- 1) information on the responsibilities of state as well as local authorities;

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<sup>23</sup>The Law on access to information. Article 25

<sup>24</sup>The Law on access to information. Article 26.

<sup>25</sup>The Law on access to information. Article 28.

2) the national as well as local budgets of the Kyrgyz Republic and budgets of state and local authorities, revision of the national and local tax rates and other charges including municipal payments;

3) approval of legal acts on regulation of assets being owned by the state or local governmental bodies;

4) approval of legal acts on distribution of land;

5) approval of legal acts on construction of objects owned by foreign juridical entities;

6) conclusion and process of execution of international treaties;

7) measures taken to address emergencies threatening people's health and lives.

### **Promulgation of annual reports on results of the work**

Regular publication of reports on the results of the work of state and local authorities plays a significant role in implementation of the right of access to information. Accessibility of such reports allows formation of understanding of the essence of the activities of state and local authorities and independent evaluation of the effectiveness of those authorities' performance.

In accordance with article 18 on the Law of information accessing, the government of the Kyrgyz Republic should provide annual messages of the President of the Kyrgyz Republic to its people on how things are in the country, reports of the Constitutional Court of the Kyrgyz Republic on constitutional legality, and of the "Akyikatchy" (Ombudsman) on matters of protection and observance of human rights and fundamental freedoms.

State and local authorities are responsible for the regular publication of reports on their activities which reflect the dynamics of the changes in the socio-political, economic and cultural sphere; main statistical indicators include:

-expenditure of budgetary funds;

-sources and amounts of tax proceeds in national and local budgets;

-production and consumption volumes in different market sectors;

-volume of internal and external investment;

-crime control;

-health care;

-migration;

-ecology,

etc.

### **Dissemination of other information**

In accordance with the requirements of article 19 on the Law of access to information, the Government of the Kyrgyz Republic is obliged to publish information on the structure of executive bodies, including their main authorities and areas of control as well as names of employees holding executive positions and their contact information and working schedule. Information on their work performance has to be presented as well.

Article 20 of the Law on access to information establishes a list of 36 points that have to be published by the state as well as local authorities on an annual basis. The list includes information on the examination of the requests and complaints that can be used by citizens who have come across the same situations; guides, rules, collections and manuals containing information on the execution by state and local authorities of their prescribed functions; any mechanisms or procedures with the help of which citizens and organizations may affect the execution of the public and local authorities of their functions; information on the administration of the budget by state and local authorities; information on the main indicators characterizing the situation and dynamics of development of different sectors that are under competence of state and local authorities, etc.

One of the main methods of keeping the public informed is coverage of official information in the mass media. In accordance with the requirements of part I, Article 21 of the Law on access to information, press services of

state and local authorities, as well as employees responsible for spreading information, are obliged to provide the staff of mass media with information and materials on the activities taken and decisions made by state as well as local authorities.

The concluding chapter of the Law on access to information regulates the responsibilities of state and local authorities on approval of organizational measures directed at access to information. In accordance with the requirements of Article 30, those measures consist of creation of a specialized service, attached to the corresponding functions and authorities, or assigning the functions on organization to public and local authorities or some particular public officer. The function of providing information to those who have requested it must be specified in the regulations of particular state and local authorities. Rights, obligations and responsibilities of specialized services, subdivisions, and public officers that implement the activities directed at guaranteeing information to those who have requested it are specified by the regulations on those services, subdivisions and job descriptions.

However, the Law on access to information contains some significant disparities in determining the circle of persons with the right for accessibility to information, as does the Law of the Kyrgyz Republic “On Guarantees and Freedom of Access to information”. Initial regulations of the Law on access to information state that “*everyone participating in administration of state and local authorities is guaranteed with the right for access to information.*” In line with this logic, article 2 of the Law on access to information, in addressing the scope of its application, establishes that it regulates the access to information of individuals and legal entities that participate in the administration of the state and local authorities. However, subsequent articles regulating the issues concerning the form and content of a written request (article 9), expenses necessary for presenting the information (article 13), responsibilities on providing the information of local and public authorities (article 20), narrow down the circle of subjects by implying that those may only be citizens and organizations.

The Law on access to information, just like the Law of the Kyrgyz Republic “On Guarantees and Freedom of Access to information” establishes only limited access to secret and confidential information. The limitation equally applies to citizens of the Kyrgyz Republic as well as to foreign citizens. There are no other limitations in the Law on access to information specially provided for foreign citizens. International experts might be right saying that information that is accessible to five and a half million citizens of the Kyrgyz Republic will not threaten national security if it also becomes accessible to a foreign citizen or person without citizenship. Therefore, it would be better to follow to the approach that allows requests by any person despite his citizenship or place of residence. During the implementation of this project, there was no request from a foreign citizen or a person without citizenship, but such problems are potentially unavoidable.

The Law on access to information determines the circle of “state and local authorities” who are obliged to disclose the information. Many experts believe that the circle should also include nongovernmental organizations partly financed by the government. Germany’s experience is exemplary as it was the first country in the world to amend its access to information legal framework imposing that if the government owns 50 percent or more of some private business then the annual report on the performance of the business has to be presented along with the governmental reports. Earlier, such a rule was applicable only when the governmental interest in the corporation made up more than 70-80 percent.<sup>26</sup>

#### Access to judicial information

The current Kyrgyz President A. Atambayev has stated that one of the first priority tasks of

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<sup>26</sup> Data from the circular table on “Guaranteeing of the right for general and judicial information as international obligation of Kazakhstan,” 2013. p.24.

judicial reform conducted in the country is formation of judicial system that is more open, accessible and understandable for citizens. According to the President, it is necessary to present the decisions made during the judicial process not only to lawyers but to everyone who is interested. He also suggested publication of statistics on the quality and quantity of cases examined by each judge<sup>27</sup>.

Temporary rules on the use of the Internet that establish the main principles of work organization, tasks and responsibilities of the Internet users were approved by the Chairperson of the Supreme Court of the Kyrgyz Republic on December 11, 2012, under order №116 “On events for providing the access of the public to judicial acts and meetings through Internet”.

The Internet is meant to provide access of citizens, legal entities, public and local authorities to information on judicial acts and meetings as well as openness, transparency and publicity of the Supreme Court and local courts of the Kyrgyz Republic. It is possible to find sentences on civil, administrative and economic cases examined at open judicial processes. Judicial acts are placed on the internet within five days for the local courts and within ten days for the Supreme Court of KR from their approval, while on criminal cases immediately after they enter into force.<sup>28</sup> In order to get access to information on a judicial case, an interested person may send his request in a system that will present a list of cases and an opportunity to get acquainted with the judicial documents on a particular case.

In the future issues of access to judicial decisions and information on judicial hearings will be targeted within the framework of a new draft law currently being developed by a working group under the National Council for Judicial Reform. An alternative draft law “On guaranteeing access to information on the activity of the judicial system of the Kyrgyz Republic” has been already developed by a working group led by the NGOs “Institute of Public Analysis” and “Precedent”.<sup>29</sup>

### Restrictions on access to information

The wide range of restrictions allowed under national legislation represent the main obstacle for the full implementation of the right for access to the information administrated by state and local authorities. Indeed the mere attribution of information to the category “access limited/classified” is the basis for rejecting its disclosure in accordance with Paragraph I, part I, of article 15 of the Law on access to information.

Article 5 of the Law on access to information states that factual access to information can only be limited if information is secret or confidential. The article also states that *confidential information is:*

- a) information containing some professional secrecy of state and local authorities that:
  1. Relates exceptionally to organizational – technical rules of guaranteeing security for state and local authorities;
  2. Reflects specific content of closed sessions and meetings as well as personal opinions of public officers during the conduct of closed meetings.
  
- b) information administered by state and local authorities containing secrets of persons protected by the law (private life secret, commercial secret, professional secret, etc.).

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<sup>27</sup> [http://www.vb.kg/doc/218814\\_prezident\\_predlozil\\_vvesti\\_onlayn\\_transliacii\\_sydebnyh\\_processov.html](http://www.vb.kg/doc/218814_prezident_predlozil_vvesti_onlayn_transliacii_sydebnyh_processov.html).

<sup>28</sup> Temporary rules of Internet use of judicial acts and meetings of the Supreme court and local courts of the Kyrgyz Republic, approved by the Chairperson of the Supreme Court of the Kyrgyz Republic on December 11, 2012.

<sup>29</sup> [http://koom.kg/view\\_material.php?id=2139](http://koom.kg/view_material.php?id=2139).

The definition of “state secrets” is contained in the Law of KR “On protection of state secrets of the Kyrgyz Republic.” *State secret* is:

information, kept and delivered by any type of media concerning defense capability, security, economic and political interests of the Kyrgyz Republic, that is under control of the government and limited by special rules developed on the basis of the Constitution of the Kyrgyz Republic.<sup>30</sup>

State secrets fall into three categories:

- Governmental secret – information, disclosure of which may have negative consequences for the defense capacity, security, economic and political interests of the Kyrgyz Republic;
- Military secret – information, disclosure of which may threaten the armed forces and interests of the Kyrgyz Republic;
- Official secret – information, disclosure of which may have a negative impact on defense capacity, security, economic and political interests of the Kyrgyz Republic. Such information may contain some part related to governmental or military secret and cannot be disclosed fully.

The Law of KR “On protection of state secrets of Kyrgyz Republic” establishes a list of information that may not be kept in secret:

- on disasters and emergencies that threaten citizens’ health;
- on accidents and their consequences;
- on ecology, on the use of natural resources, health care, sanitation, culture, agriculture, education, trade, law and order;
- on cases of violence by state organs and public officers;
- on facts affecting the rights and legal interests of the citizens as well as threatening their personal security.

One may conclude that any other information not included in the list of information to be kept open administered by state as well as local authorities can be characterized secret and become officially related to one of the categories of state secrets. Certainly article 8 of the Law of KR “On protection of state secrets of the Kyrgyz Republic” states that categorizing information as state secrets must be implemented in accordance with the regulations on determining the extent of secrecy of information and documents based on the existing list of secret information and a list of information which are subject to being characterized as secret by the administrators of ministries, governmental committees and administrative offices. However those acts determining the process for characterizing information as state secret and “for office usage” documents, are limited in access.

For example, Governmental decree № 267/9 “On approval of the list of main points included in the state secrets and regulations on establishment of the extent of the secrecy of information contained in works, documents and items” is in itself, according to the legal database “Toktom”, a document meant for official usage only and limited in access, not to mention the internal regulations and instructions that the decree approves.

Such practices contradict the requirements of Part 4, Article 4 of the Law on access to information which states that if a person has requested information, his request cannot be rejected without knowing the reasons why the access to information is limited. Indeed the practice of not disclosing the very decision based on which information is kept secret, causes

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<sup>30</sup> Law of the Kyrgyz Republic “On protection of state secrets of Kyrgyz Republic” from April 14, 1994, No.1476-XI. Article 1.

significant obstacles for the implementation of access to information. The person who is not allowed to get some particular information is told that the information is part of a state secret. Following article 3 of the Law of KR “On protection of state secrets of the Kyrgyz Republic” and principles of lawfulness and reasons for keeping information secret, it is required to have a decision by a person familiar with the reasons for which the access to information is limited and an expert evaluation of reasonability for keeping the information secret for the sake. However, both the decision and the expert’s conclusions are limited in access as well. It is impossible to check the reasons for keeping the information secret, and it is quite complicated to dispute such a matter with public officials.

A good example of such a situation can be a dispute about the access to information on budget expenditures made by public officials. The parliamentary committee on defense and security examines the budget of the defense and law enforcement agencies without disclosure stating that this is secret information.

1) On November 26, 2012, during the parliament meeting on discussion of the budget for 2013, Deputy A. Keldibekov stated that the defense budget cannot be kept secret. *“The budgets of the Ministry of Internal Affairs (MoI), Ministry of Defense and other security agencies have never been secret. I cannot understand why they would be secret. There are some articles but not all. We should keep information open for the public. The direct function of those departments is guaranteeing security and all this should be kept transparent. Even Russia keeps such information open, but in our country it is kept closed,”* stated the MP.<sup>31</sup>

The budget of MIA of KR should be open for the public. Ex-minister of internal affairs Sh. Atakhanov has the same opinion. *“I, as an ex-minister of internal affairs, state that the budget of the ministry should not be kept secret except for the articles on some special expenditures,”* he said.<sup>32</sup>

However, on October 8, 2013, the Parliamentary Committee on legality and public order discussed the budget of the law enforcement agency for the next years during a closed session again.<sup>33</sup>

For more than a year, members of the civic coalition “For reforms and result” monitoring and developing recommendations for the reform of the MoI tried to convince the government of the necessity of disclosing information on the level of strength, structure and budget of the Ministry that are necessary for the estimation of the reforms budget. It is impossible to say how much money is necessary for reforms as the information on the needs of the MoI is kept secret. *“We tried to discuss it with the public officials; we even talked about this particular topic with the Prime Minister, but nothing has changed so far- Public Oversight Committee member T. Shaikhutdinov stated. “We have insisted that information on operational developments and personal information of the employees cannot be kept secret.”* Having brought an action before the court, claimants ask for disclosure of the basis for giving secrecy status to such information as level of strength, structure and budget. *“The government along with the MoI even keeps the reasons secret,”* T. Shaikhutdinov states.

2) Lawyer and human rights advocate N. Toktakunov states that the budget of the State Committee on National Security (SCNS – GKNB in Russian) should be open to public scrutiny. He points to the Law on access to information, according to which public officers should disclose the information on the budget.

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<sup>31</sup> [http://www.knews.kg/parlament\\_chro/24755/](http://www.knews.kg/parlament_chro/24755/)

<sup>32</sup> <http://www.knews.kg/society/29208/>

<sup>33</sup> <http://kg.akipress.org/news:584106>



N. Toktakunov has been arguing with SCNS for the transparency of their expenditures since January 2012. The inter-district court of Bishkek and the Bishkek municipal court have ruled against the human rights advocate stating that there is no need to disclose information on the expenses of special services. The Supreme Court of the Kyrgyz Republic has also stated that such kind of information may be kept secret.

Some experts believe that there is a way out, referring to the Law of KR “On protection of state secrets of Kyrgyz Republic” and pointing to specific descriptions that relate to state, military or professional secrets, following the example of Article 5 of the Federal Law of Russia “On the state secret”<sup>34</sup> that makes a list of reasonable state secrets. While such an approach has its supporters among the drafters of a new law “On the protection of state secrets of Kyrgyz Republic,”, the draft bill itself *“has significant disadvantages from conceptual and technical points of view as well as from the fundamental rights point of view. Its acceptance will hardly contribute to the development of the Kyrgyz Republic as a country with supremacy of law.”*<sup>35</sup>

Other experts believe that it is not specification of secret information that is important in the law, but rather the procedure of giving information a secrecy status, and the circle of public officers authorized to make such decisions.

According to the international NGO Article 19<sup>36</sup> instead of specifying various categories of information (“information for limited access,” etc.), the protection of particular interests should follow a three-stage test concerning the procedure of disclosure of information.

Firstly, information can be classified as secret only for the reasons recognized by the law. The holder of the information has to specify which particular interest he is trying to protect when he refuses to disclose the information; otherwise, the requests for disclosure cannot be rejected in order to simply avoid publicity of some unpleasant facts. The Recommendation of the Council of Europe on access to official documents contains the following list of legal interests:

- 1) national security, defense and international relationships;
- 2) social security;
- 3) preventive measures, investigation and prosecution of crime;
- 4) privacy;
- 5) commercial and other economic interests – both private and public;
- 6) equality of parties during the judicial process;
- 7) ecology;
- 8) inspectional, control and supervisory functions of public officials;
- 9) economic and monetary policy of the government in the sphere of currency exchange;

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<sup>34</sup> Accepted July 21, 1993 No. 5485-1 (as amended on October 6, 1997, June 30 and November 11, 2003, June 29, and August 22, 2004, December 1, 2007).

<sup>35</sup> L.V. Golovko. Expert conclusion on the project of the law “On protection of state secrets of Kyrgyz Republic.”

<sup>36</sup> Article 19 promotes the development of international standards on the freedom of speech and access to information as well as their implementation in the national legislation. See their analysis of the draft law of Kazakhstan “On public access to information” presented within the framework of the UNESCO project in Almaty “Promotion of freedom of speech and access to information,” p.18-21.

10) confidentiality of discussions during the examination of some issues between public officials.

Secondly, the information holder not only has to specify the interest that he tries to protect but how disclosure of information will threaten this particular interest (“test on threat to the interest”). It is necessary to point out that harm is a concept that may depend on time. Information that may threaten the legal interests today may be absolutely harmless six months from now.

Thirdly, the information holder should apply the principle of “prevailing social interest”: he has to compare the harm caused by the disclosure of information with the harm caused by keeping the information secret and take action based on the results of the test. Simply highlighting potential harm is not enough. There are situations when disclosure of information causes particular problems; however, keeping the information secret causes even more problems. For example information on contagious disease: the disclosure of such information may be harmful for social security as people will start to panic; however, keeping the information secret will cause even more harm as people will not be able to take protective measures.

Summing up, it can be said that the primary practice of modern laws on information freedom is recognition of three-stage test.

Information cannot be kept secret except in the following cases:

- 1) its limitation should be supported by a protected legal interest;
- 2) consequences from the disclosure of the information significantly threaten this particular interest;
- 3) there is more harm caused by disclosure of the information than by keeping it secret.

### **Presidential decree “On the implementation of the Law of the Kyrgyz Republic ‘On access to information administered by public and local authorities of the Kyrgyz Republic’”**

On May 8, 2007, the President of the Kyrgyz Republic issued a decree “On realization of the Law of the Kyrgyz Republic ‘On access to information administered by public and local authorities of the Kyrgyz Republic’”.

In accordance with this decree, following the goals of implementation of the Law on access to information providing the citizens with valid, full and timely information as well as achieving the highest possible extent of openness, publicity and transparency of the public and local authorities’ activities, public officers are obliged:

- to designate structural departments who are assigned the functions of delivering of information, or placing those functions on the existing services and departments. and to assign persons responsible for implementation by the applicable authorities;
- to organize telephone services where people may find out any information regarding the working schedule and procedure of acquaintance with official information database;
- to conduct explanatory work among the population on the procedures of implementation of the possibilities for accessing the information provided by the Law;
- to publish in the mass media reports on the results of execution of the requirements of the Law.

The responsibility for the execution of the Law on access to information was vested on state and local authorities.

### **Official instruction by the Prime Minister of the Kyrgyz Republic**

In order to establish uniform rules, conditions and procedures of examination of citizens' and juridical entities' requests on accessing the information administered by state and local authorities, on April 2, 2008, the Prime Minister of the Kyrgyz Republic issued an official instruction in accordance with the Law on access to information for the public and local authorities to follow.

The instruction established the reporting format concerning the implementation of the Law on access to information. All the ministries, state committees, administrative departments, city halls of Bishkek and Osh were obliged to present a report on the process of implementation of the Law in accordance with the confirmed schedule.

Moreover, these bodies were obliged to perform the following tasks before September 1, 2008:

- to develop and confirm regulations on structural departments and executives implementing the procedures of providing information to those who have requested it, as well as relevant job descriptions;
- to provide promulgation of details of structural departments, public and local authorities responsible for implementing the procedures of delivering information to those who have requested it (e-mail address, telephone number, fax, network resource, working schedule);
- to provide the population with sample forms for requesting information according to confirmed templates;
- to determine categories of presented information, types of state and extra services related to its delivery (including the order of access to automated information systems), other conditions of providing the access to information for the population in accordance with the Reporting Form as well as procedures of formation and registering of official documents;
- to include the offers on copying services in accordance with article 13 of the Law on access to information, order and payment amount for their use so that a uniform price list of copying services can be formed;
- to examine other organizational and technical issues coming from the Law on access to information.

National and local authorities responsible for providing access to requested information who were among the participants of the seminars conducted during the implementation of this project stated that truly active work on the implementation of the requirements of the Law on access to information was carried out only during the first year following the order issued by the Prime Minister, as it was necessary to present a report on the details of activities conducted within a limited time period. Afterwards, the government stopped requiring the report, and activity significantly slowed down.

### **Uniform Requirements on creation and support of web-sites of national and local authorities of the Kyrgyz Republic**

In accordance with paragraph 1, article 25 of the Law on access to information, public officials must implement activities on development and support of a centralized automated informational system of official information that may be available for digital network users.

In order to provide access to information on automated informational systems, public officials have to include them into the network of general usage and place information on an official server (website, portal) of a state body to make it accessible for the citizens and organizations using the network.

One of the first steps in the execution of the provision of the Law was development and approval by the Government of the Kyrgyz Republic<sup>37</sup> of Uniform Requirements on creation and support of websites of governmental bodies and bodies of local governments of the Kyrgyz Republic (further, Uniform Requirements), which established an obligatory requirement for creation of websites by government bodies.

As is stated in the introduction, Uniform Requirements are established with the purpose of realization of the Law on access to information, National Strategy “Informational-communicational technologies for the development of the Kyrgyz Republic” and the Concept of the Plan of Action on “Electronic Government.”

These Uniform Requirements set provisions which must be taken into consideration at creation and maintenance of a website, including requirements for the design, language support, preparation and placement of informational materials, the quality of these materials. etc.

Opponents say that placement of information on activity of governmental bodies in informational systems is not the most democratic way of providing access, given the number of Internet users in our country. However, this way of spreading information should be extensively supported as the least costly in light of the volume of material, means and organizational resources involved. The list of information, access to which is required, deserves special attention. Listed in the Uniform Requirements, twenty-four paragraphs of types of data indicate the serious intentions of the government in solving the problem of access to information.

The urgency of creating websites was reflected in the instruction of the Prime Minister, which established the form and time frames of reporting for government bodies on realization of provisions of the Law, including a report on creation of websites and publication of information on them.<sup>38</sup>

In conclusion, there are the main organizational questions which must be solved in the process of implementation of the Uniform Requirements, including thorough planning and control of deployment and exploitation of the website, increasing computer literacy of a wider range of employees, right choice of the project manager, enforcement of copyright and property rights for intellectual product, including databases with confidential information about citizens and optimal choice of hardware and software platform.

### **Other official documents**

The clarification of mechanisms for the implementation of access to information can also be found in departmental legal acts and bodies of local governments.

Article 30 of the Law on access to information put on governmental bodies and bodies of local, government an obligation on taking organizational measures to promote access to information. These measures presume, first of all, creation of specialized services having

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<sup>37</sup> Government Resolution of December 14, 2007, № 594.

<sup>38</sup>The form of the report on the implementation of the Law on access to information . Paragraphs 4, 6, 10.

corresponding functions and powers in a prescribed manner, and imposition of the carrying out of these functions on other services or departments existing in the structure of governmental body or body of local government or on a specific official. Given this, the function of providing information to individuals requesting information must be determined in provisions on corresponding government bodies and bodies of local governments. And rights, obligations, and responsibilities of specialized services, departments, and officials, carrying out activity on realization of the functions of providing information to individuals requesting information, are set by provisions about these services.

Government bodies and bodies of local government chose different approaches toward taking organizational measures on contribution to access to information. A small part of government bodies chose creation of specialized services, having corresponding functions and powers about providing information in a prescribed manner to individuals requesting information, publication of new provisions and instructions. For example:

- Provision “On the order of execution of requests in provision of information, held by the State Committee of the Kyrgyz Republic on administration of state property” approved by the order from August 29, 2008, number 66a-n.
- Instruction “On the order of placing information on the website of the state registration service, approved by decree number 55, dated March 31, 2010.
- The order of provision of information, held by the State Committee on Taxation and Levies approved by order number 86, dated August 25. 2008.
- Memo on the provision of information to individuals and legal entities of the Kyrgyz Republic approved by order dated June 24, 2008.

In the absolute majority of cases, government bodies and bodies of local government granted the performance of given functions and powers to a service or department existing in the structure of government bodies and bodies a local government or on a specific official.

So, by Order of the Ministry of Justice of the Kyrgyz Republic number 84 dated June 29, 2007, the functions on coordination of publication on the website of the ministry of information on activity of the central apparatus and structural departments and organization of provision of information by telephone about the order of familiarization with databases of official information were granted to the department of legal information; organization of provision of information by telephone, including information regarding working mode, conducting annual publication of reports by the Ministry about the results of following the requirements of the Law was granted to the Administration on record keeping and monitoring of document execution; organization and conducting outreach among the population about the order of realization of the opportunities for receiving information provided by the Law were granted to the press-secretary. Corresponding changes were made in corresponding provisions.

A similar wide range of parties were granted functions of provision of information, established by the Order of the Minister of Defense number 111, dated April 23, 2008. According to paragraph one of the Order, the function of direct provision of information belongs to the Administration of the Ministry of Affairs. The order creates an obligation to provide necessary information, to carry out legal consultation and conduct examinations, which do not go beyond the limits of the before mentioned law, on the managers of press services, administration of educational work, administration of legal support and military law within its powers. Corresponding changes were made in corresponding provisions.

With the purpose of execution of requirements of the legislation on access to information held by government bodies and bodies of local government, on April 24, 2008. the Board of

National Agency on affairs of local self-government approved the draft of a Model provision on “Order of organization of informational exchange between bodies of local self-government and the population.” The Model provision sets the order of organization of effective informational exchange between bodies of local self-government and the population and has the following goals:

- To provide realization of constitutional rights of citizens for participation in affairs having a general interest;
- To arrange the work of the body of local self-government on strengthening of informational exchange with the population and execution of requirements of the Law on access to information and legislation on the order of consideration of citizens’ appeals by creation of a system of workflow, allowing effective concentration of information, to document with the purpose of its further provision to the population and consideration of public opinion;
- To determine the range of duties of a specialist on informational exchange and other departments of the local self-government on spreading of official information for public opinion;
- To determine the procedure for estimation of the effectiveness of the informational exchange.

A model provision was recommended to the bodies of local self-government for consideration and approval at the session of the local Kenesh.

Some bodies of local self-governments have adopted a mechanism of informational exchange between bodies of local self-government and the population foreseen by the Model Provision. For example, the Jalal-Abad city Kenesh of deputies by order dated February 2, 2010, number 9, approved a model provision “On the order of organization of effective informational exchange between bodies of local self-government and the population.” Ensuring the work of the provision is delegated to the mayor of the city.

In the National Strategy for Sustainable Development of the Kyrgyz Republic for the period of 2013-2017, the following were stated as the main directions for the state information policy:

- Ensuring openness of the bodies of the state government and bodies of local self-government
- Improving of legislation and practical activity of the bodies of state government, local self-government, with the purpose of ensuring the rights of citizens to freely seek, receive, store, use information and spread it orally, in writing or by any other means;
- Ensuring, according to the law, guarantees of access to information by citizens, held by government bodies, bodies of local governments and officials;
- Cooperation with the mass media, social independent professional associations and associations in the informational sphere, with the purpose of ensuring compliance with legislation on right of citizens for access to information;
- Developing educational programs and increasing potential of press-services employees and other services of governmental bodies, responsible for public relations, taking into account the increased role of information and the relevance of the rapid response to informational requests of the society.

#### **4. RESULTS OF THE MONITORING OF THE PRACTICE OF PROVISION OF INFORMATION BY GOVERNMENTAL BODIES AND BODIES OF LOCAL SELF-GOVERNMENT**

The main ways of provision of information held by governmental bodies and bodies of local self-government were determined in Article 6 of Law on access to information:

- Provision of information to individuals and legal entities based upon request;
- Ensuring direct access to documents and materials of governmental bodies and bodies of local self-government;
- Ensuring direct access to open sessions of governmental bodies and bodies of local self-government;
- Publishing and spreading of corresponding materials;
- Disclosure of information about activity of governmental bodies and the bodies of local self-government.

The Law on access to information gives to governmental bodies and bodies of local self-government the right to use any means for informing the population about their activity, which are not prohibited by the legislation of the Kyrgyz Republic. Monitoring of access to information was conducted during the realization of the project.

##### **4.1 MONITORING OF PROVISION OF INFORMATION IN RESPONSE TO WRITTEN REQUESTS**

One of the main means of receiving information is a written request.

In the framework of this research project, monitoring was conducted with respect to the right for access to information held by governmental bodies and bodies of local self-government by addressing written requests to these bodies by individuals and legal entities. The general task was analysis of the situation based on qualitative and quantitative indicators.

*Quantitative indicators* included data on the general number of requests, responses received for them, and also data on timeliness of provision of responses according to the time frames established by the Law.

*Qualitative indicators* included evaluation of the content of responses received for requests, including on the following criteria:

- a) Response to the question posed in the request is full and detailed;
- b) partial/formal response with a partial answer of the questions stated in the request;
- c) refusal to provide information is explained;
- d) refusal to provide information is not explained;
- e) there is no response to the request (the request is ignored).

Overall during the course of the research project, there were 602 written requests directed to different governmental bodies and bodies of local government.

The requests were sent on behalf of both the organization conducting the research project and partner regional organizations, as well on the behalf of individuals who were interested in participating in the study. The requests contained appeals to provide different kinds of information, including data on spending of budget funds by governmental bodies and bodies

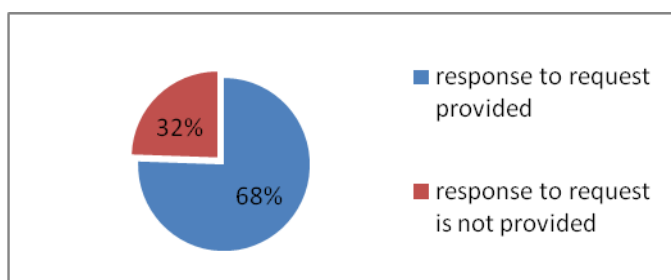
of local self-government, the usage of governmental databases, about the results of public hearings and meetings, etc.

The requests were made in written form in full compliance with requirements of the Law on access to information. In 87 % of cases the requests were sent to an addressee in the form of a registered letter with acknowledgement. Registering the letter this way, the authors of the request could get information about the date the request was received by the addressee and calculate the two-week period established by the legislation from this date.

It is worth pointing out that despite of the requirements of the Law on access to information that the response must be sent in the same form in which the request was received, in 13 % of cases the governmental body or body of local self-government contacted the author of the request and asked him or her to come and get the response in person, stating that governmental body or body of local self-government does not have “*enough funds for sending the response by standard mail*” or that the worker of the governmental body “*is too overloaded in order to send the response by standard mail.*”

As stated above, during the period of the project there were 602 written requests, and 410 of them (68%) received a response. The rest of the requests (32%) were ignored.

**Diagram 1.**  
**Provision of responses to written requests**



The Law on access to information obliges governmental bodies and bodies of local self-government to provide a response having a comprehensive nature so as to exclude the need for a second appeal of the interested party with the same subject of the request.<sup>39</sup>

In addition to that, the Law sets the range of data and documents required to be included in the response to a written request, specifically:

- 1) Identification of the person responsible for the query, including a brief statement of the subject of the query, list of documents provided, name and title of the executor of the request, the date of signing the response;
- 2) texts of documents provided or parts of the texts of documents, if such parts contain comprehensive information satisfying the request, and if their provision is clearly permissible according to the nature of the request;
- 3) price list for materials and informational services, and also the list of names and contact details of the main governmental bodies and bodies of local self-government, in the area of the community in which the requester lives.<sup>40</sup>

<sup>39</sup>The Law on access to information, Article 11, Part 4.

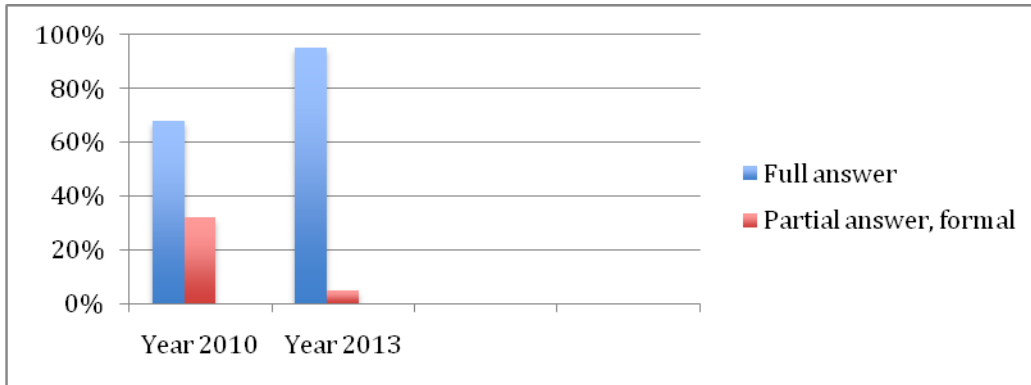
<sup>40</sup>The Law on access to information, Article 11, Part 4.



A positive tendency in provision of responses to written requests should be noted. If in 2010 responses to requests were full and comprehensive only in 68 % of cases, then in 2013 the percentage of full responses was 95 %.

**Diagram 2.**

**Correlation between the number of full comprehensive responses to written requests in 2010 and 2013**

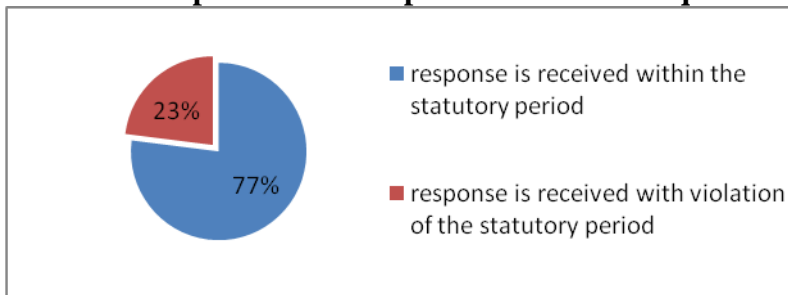


In 23 % of cases the response to a written request was provided outside of the two-week period established by the law. In none of these cases did the governmental body or body of local self-government fulfill the requirement of the Law on access to information that if the response to the request cannot be prepared during two-week period, it is necessary to inform the requester, stating the reason for delay.

One of the reasons for late submission of the response to written requests was unsatisfactory work of post offices. For example, the majority of responses to written requests in the Talas region were in the post office of Talas city for two months.

**Diagram 3**

**Timeliness of provision of responses to written requests**



**4.2 MONITORING OF PRESENCE OF OFFICIAL INFORMATION**

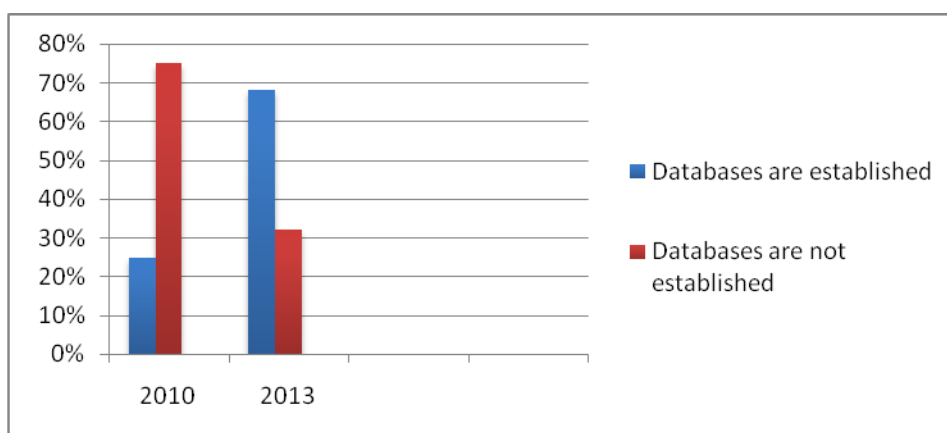
One of the forms of provision of access to information is familiarization with documents and materials of governmental bodies and bodies of local self-government. For these purposes the Law on access to information sets the requirement on establishment of a database of official information<sup>41</sup> of governmental bodies and bodies of local self-governments.

<sup>41</sup>The Law on access to information, Article 23.

For determination of compliance of practice with the present requirements of the legislation, in the framework of the research, a monitoring was conducted of 180 different governmental bodies and bodies of local self-government in different regions of the country on the subject of the presence of a database with official information. According to the results of the monitoring, it was found that out of 180 governmental bodies, a database with official information is present in 122 cases (68 %). It should be noted that in the cases when databases were present, they were not always 100 % compliant with the requirements of the legislation (not all of them have binders, catalogs, capacity for familiarization by citizens, etc.). However, in general, indicators on the presence of databases with official information in 2013 were significantly higher than the results of monitoring during previous years.

### Diagram 5

#### Correlation between presence of established databases with official information in governmental bodies in 2010 and in 2013.



The Law on access to information places an obligation on governmental bodies to establish a database with official information in a way to provide access to them by direct personal familiarization of citizens with them at the location of the corresponding body.<sup>42</sup> This requirement, in turn, includes a necessity of establishment of binders for familiarization and binders with control copies of documents and materials, and also specially equipped places with conditions allowing doing extracts from documents and materials, and copying.<sup>43</sup> In governmental bodies that established a database with official information, binders with legal acts, other materials and documents were provided to the observers only in 43% of cases.

In the remaining cases, where observers acknowledged that the database was established in one degree or another, documents and materials were not systemized according to the requirements provided by the legislation. Part of materials in hard copy was missing, and for familiarization with the document and printing it, the requester has to apply to the General Department (Administrative office).

The Law on access to information sets a requirement to conduct an inventory of documents and materials, which must be included in binders for familiarization, not less than once a month. This requirement is not fulfilled by any state body where these binders are established and updated.

It was not possible to study the question about timeliness of inclusion into the database of official information of legal acts and materials of governmental bodies and bodies of local

<sup>42</sup>The Law on access to information, Article 22.

<sup>43</sup>The Law on access to information, Part 5 of Article 23.

self-government, where they were gathered in binders. And in bodies where such binders were formed, it was noted that some documents immediately go to the binders; thus, they were put up for review even before the one-week period established by the legislation.

It is important for real provision of access to a database with official information of governmental bodies and bodies of local self-government, to fulfill the requirement on equipping special places with conditions allowing doing extracts from documents and materials and copying them. Only in 33% of cases did observers find the presence of proper conditions for familiarization with the database of official information in governmental bodies.

### 4.3 MONITORING OF ACCESS TO MEETINGS

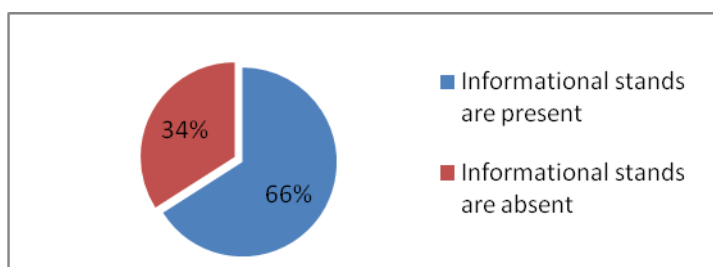
The Law on access to information requires that sessions of governmental bodies and bodies of local self-government are open to the public, except closed sessions. In this case, it is clearly stated that the sessions can be held in closed form, if the questions or information discussed is a state secret or is confidential.

In the framework of the present study, the monitoring of access to open sessions of governmental bodies and bodies of local self-government covered 180 of them in all regions of the country. The monitoring revealed, at this time, that the problem is ability to receive information about the governmental body or body of local self-government assigned to conduct a session.

The Law on access to information obliged governmental bodies and bodies of local self-government to publish a plan on conducting sessions with identification of agenda, and also date, time and place of the sessions, in mass media on a monthly basis. In addition to the first requirement on the obligation of informing the public about the plans on holding sessions, the Law puts an obligation on the governmental bodies to equip places at their location with an informational stand, on which information about agenda, time, as well as the mode of the meeting (open or closed) is placed not later than a week before the day of the session.<sup>44</sup>

In 34% of the cases, informational stands are missing in governmental bodies and bodies of local self-government. In those bodies which had such stands, only in 42 % of cases was there information about the date and place of the session.

**Diagram 6**  
**Presence of informational stands**



<sup>44</sup>The Law on access to information, Article 27.

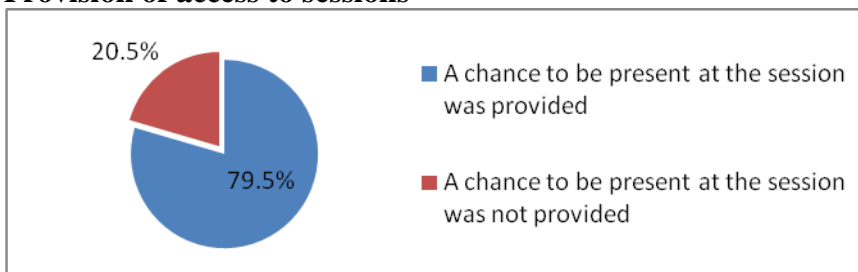
That is why in 58 % of cases the observers had to receive information on scheduled sessions from the employees they know who work in governmental bodies and bodies of local self-government.

The observers noted that in sessions of governmental bodies and bodies of local self-government covered by the monitoring, only workers of these bodies participated where questions had a major social interest. However, one of the reasons for absence of the public at the sessions was lack of information about these sessions (agenda, date, time, and place).

As to this lack of information about the scheduled sessions, officials cited mainly the lack of funds provided for these purposes.

In 143 cases (79.5%), observers got a chance to be present at the sessions of governmental bodies and bodies of local self-government.

**Diagram 7**  
**Provision of access to sessions**



During the monitoring, observers tracked the organization of sessions conducted by governmental bodies and bodies of local self-government. In addition, it was noted that the order for registering of the people willing to participate in the sessions, set by legislation,<sup>45</sup> was used in 12 cases.

The Law on access to information puts an obligation on governmental bodies and bodies of local self-government to equip places for visitors in the hall for meetings. During the visit of observers to sessions of governmental bodies, to which they were permitted, places for visitors did not exist, as there were enough free places.

#### **4.4. MONITORING OF ACTIVE PUBLICATION OF INFORMATION BY THE MEANS OF MODERN TELECOMMUNICATIONS NETWORKS (e.g. WEBSITES)**

The development of telecommunication networks and modern Internet technologies allows communication with the authorities to be potentially optimal, fast and varied. Official websites, forums, and e-mail electronic files have become the most cost-effective ways of disseminating information about the activities of officials and distributing the official point of view of the state on socially relevant issues to the attention of the public.

The website of a governmental body is the most effective means of disseminating official information on the activities of the body. From the content of websites of governmental agencies and local authorities, a determination can be made of the level of openness of each

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<sup>45</sup> Law on information of accessibility., Article 11, part.4.

authority, and the state in general, transparency of management decisions and procedures, and the ability of citizens to get the information they need.

In order to implement the National Strategy "Information and communication technologies for development of the Kyrgyz Republic"<sup>46</sup>, the Law on access to information, and concepts and action plan "e-government"<sup>47</sup>, on December 14, 2007 the Government of the Kyrgyz Republic approved the "Uniform requirements for the creation and support of websites of government bodies and bodies of the local self-government of the Kyrgyz Republic" (hereinafter, the Uniform Requirements).<sup>48</sup>

One of the main tasks of the website, in addition to providing services to the public, business entities, international and non-governmental organizations in the static and the "on-line" mode, is to acquaint the Internet audience with the activities of state agencies and bodies of local self-government. Creation of a website is intended to reinforce cooperation of society and the state.<sup>49</sup>

As part of this study, release of information on official websites of state bodies and local self-government was monitored. Such a study was conducted for the first time by "Independent Human Rights Group" Public Foundation in 2010.<sup>50</sup>

The object of monitoring was to determine the degree of compliance with the Uniform Requirements for the establishment and maintenance of websites in terms of design, language support, preparation and placement of informational materials, the quality of these materials, and so on. Special attention was paid to the list of information set out in paragraph 3.1 of the Uniform Requirements, which are required to be posted on the websites. The experts of the project also made a comparative analysis of the results of this monitoring of official website with the results of 2010.

33 major criteria for evaluation of websites were identified, for example, in terms of completeness, timeliness and availability of information posted on websites.

Each of the criteria was evaluated by experts from 0 to 2 points ("0" - does not meet the requirements, "1" - corresponds partially/information available is incomplete, "2" - full compliance).

The monitoring covered the websites of 15 ministries of the Kyrgyz Republic.

In 2010, at the time of monitoring, websites of three ministries were not functioning. The reason for the temporary unavailability of these websites lays in the destruction of the State portal *gov.kg* during the events of April 2010 (the portal was located in a building of the Government of the Kyrgyz Republic). Following these events, the reorganization of the

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<sup>46</sup> National strategy "Information and communication technologies for development of the Kyrgyz Republic" approved by the Decree of the President of the Kyrgyz Republic "On the National Strategy 'Information and communication technologies for development of the Kyrgyz Republic'" dated March 10, 2002, No. 54.

<sup>47</sup> Concept and Action Plan on "e-government" approved by the decision of the Information and Communication Technology Council the President of the Kyrgyz Republic, September 16, 2003, No.3.

<sup>48</sup> Uniform Requirements for the establishment and maintenance of websites of government agencies and local self-government of the Kyrgyz Republic. Approved by the Resolution of the Government of the Kyrgyz Republic, December 14, 2007, No. 594.

<sup>49</sup> Uniform Requirements for the establishment and maintenance of websites of government agencies and local self-government of the Kyrgyz Republic. Paragraph 1.

<sup>50</sup> "The right of access to information held by public bodies and local self-government of the Kyrgyz Republic. Monitoring findings" "Independent Human Rights Group," Bishkek, 2010.

structure of the Government of the Kyrgyz Republic resulted in the creation of new, as well as the modernization of existing, official websites.

For example, in 2010, in response to a written request about the reasons why its website was not working, the Ministry of Education and Science explained that: "Previous active website ([www.minedu.kg](http://www.minedu.kg)) did not meet the standards established by the Government of the Kyrgyz Republic dated December 14, 2007, No.591 "On approval of the Uniform Requirements for the establishment and maintenance of websites of government agencies and local self-government." In this connection the website of Ministry of Education and Science of the Kyrgyz Republic is in the development process. In addition, the official website will be on the following [www.edu.gov.kg](http://www.edu.gov.kg)."<sup>51</sup> From 2011 to the present, the new website of this ministry, created by ITEG, was active.

In the past three years, most of the websites of ministries have been upgraded with the financial support of international organizations or by public organizations (e.g., website of the Ministry of culture, information and tourism of the Kyrgyz Republic created with the support of the NGO "Internet movement"). So, in 2010 the website of the Ministry of Finance of the Kyrgyz Republic (at the same time, the main page has a link to the old website of the Ministry), and in 2011 - the Ministry of Justice, the Ministry of Defense, the Ministry of Internal Affairs of the Kyrgyz Republic, were upgraded.

In 2009, by the method of monitoring, websites of 21 state departments and agencies were analyzed. The results were published on the website of "News-kg": [www.kyrgyznews.com](http://www.kyrgyznews.com)<sup>52</sup>. It was concluded that the main reasons for unavailability of information posted on the websites of the government was the absence of the website, hosting support, unbootable websites, slow access speed, incompleteness of publication, the lack of important information for the user, the use of old and non-renewable resources.

Experts of the project who monitored transparency of websites in the study of 2013 pointed out that in recent times the websites are becoming more informative, and the situation in general has changed for the better. But, unfortunately, some of the bodies of the central government do not yet consider websites as one of the most effective ways of disseminating information about activities and ensuring access for citizens and organizations to government information resources.

A positive aspect was highlighted by the adoption of special instructions or a plan of action to ensure the right of access to information by certain ministries. Thus, the Ministry of Transport and Communications of the Kyrgyz Republic has developed a "Plan of measures to ensure access to information held by public bodies," paragraph 2 of which requires the establishment and maintenance of a website with a quarterly update with the latest changes, as well as an indication on the websites of contacts (phone, e-mail) of the people responsible for provision the information. There is no doubt that such initiatives of the central government towards the realization of the right of access to information are welcomed.

Among the websites to be monitored in 2013, the websites of the following ministries should be highlighted as the most open and rich in terms of information, which have an original graphic design and provide enough functionality and ease of use:

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<sup>51</sup> Response of the Ministry of Education and Science of the Kyrgyz Republic of May 13, 2010 ref. No.01-30/2046 on request of "Independent Human Rights Group" Public Fund.

<sup>52</sup> The analysis was conducted by experts and submitted to the parliamentary faction "Social Democratic Party of Kyrgyzstan" in April 2009, as a rebuttal to the report of the acting Prime Minister I.Chudinov in the Parliament of the Kyrgyz Republic on the development of websites and government efficiency.

- The Ministry of Finance of the Kyrgyz Republic,
- The Ministry of Justice of the Kyrgyz Republic,
- The Ministry of Economy and Antimonopoly Regulation of the Kyrgyz Republic,
- The Ministry of Foreign Affairs of the Kyrgyz Republic,
- The Ministry of Emergency Situations of the Kyrgyz Republic,
- The Ministry of Internal Affairs of the Kyrgyz Republic.

In contrast to the results of 2010, the results of monitoring in 2013 showed that most of the websites of ministries are in compliance with the essential requirements of the Law. The content of the website has expanded to include the information about the heads of ministries, departments, as well as the legal framework, including international instruments on human rights and fundamental freedoms.

However, there are some problems, in particular graphic design and website design (no footer, attendance statistics, search engine, etc.). A common mistake of all websites of ministries in terms of layout and design is the need for a horizontal "scroll" of the main page which does not meet the Uniform Requirements. The only exception is the website of the Ministry of Foreign Affairs of the Kyrgyz Republic; the home page is available on the one list screen, without having to "scroll" down in search of the individual sections.

None of the websites of ministries publish information about the author of publications, as required by law.

In general, for an inexperienced user, websites of all the ministries are clear enough, except in cases of lack of language support (Kyrgyz or Russian language version).

Despite the presence on all websites of "Questions & Answers," "Contact," "Web Surveys," and "Letter to the Minister," only half of them provides communication of the authority with the people. Experts from the Independent Human Rights Group" Public Fund sent a number of relevant questions to each ministry via emails filed under "Letter to the Minister" or "FAQ" to assess the degree of provision of feedback to the population. Responses to e-mails were received from only two ministries - the Ministry of Foreign Affairs and the Ministry of Justice. It should be emphasized that the response of the Ministry of Foreign Affairs of the Kyrgyz Republic was received in electronic form and in the form of a letter to the address specified in the email.

Also we would like to highlight the work of the Ministry of Justice of the Kyrgyz Republic on provision of information on questions submitted by e-mail. As was revealed in the course of monitoring, all the electronic messages are logged in the ministry by assigning an incoming number and indicating the date of registration. The person making the request is informed about the acceptance of the letter and details by email.

In both cases, the answer to the e-mail was not only comprehensive, but also designed appropriately, indicating the name of the author, date and number of outgoing letters.

In monitoring information on transparency of websites the highest score was received the websites of the Ministry of Finance and the Ministry of Justice (56 points). By a small margin, in second place is the website of the Ministry of Economy and Antimonopoly Policy (55 points), the third website is the Ministry of Foreign Affairs (54 points). The lowest score was given the website of the Ministry of Energy and Industry (19 points).

### **Table 3.**

## Rating of transparency of websites of the ministries of the Kyrgyz Republic<sup>53</sup>

Place in the rating	Name of the Ministry	Address of the website	Points
1.	Ministry of the Finance of the Kyrgyz Republic	<a href="http://www.minfin.kg">www.minfin.kg</a>	56
	Ministry of Justice of the Kyrgyz Republic	<a href="http://www.minjust.kg">www.minjust.kg</a>	
2.	Ministry of Economy and Antimonopoly Policy of the Kyrgyz Republic	<a href="http://www.mert.kg">www.mert.kg</a>	55
3.	Ministry of Foreign Affairs of the Kyrgyz Republic	<a href="http://www.mfa.kg">www.mfa.kg</a>	54
4.	Ministry of Defense of the Kyrgyz Republic	<a href="http://www.mil.kg">www.mil.kg</a>	49
	Ministry of Emergency Situations of the Kyrgyz Republic	<a href="http://www.mes.kg">www.mes.kg</a>	
5.	Ministry of Internal Affairs of the Kyrgyz Republic	<a href="http://www.mvd.kg">www.mvd.kg</a>	47
6.	Ministry of Health of the Kyrgyz Republic	<a href="http://www.med.kg">www.med.kg</a>	42
7.	Ministry of Education and Science of the Kyrgyz Republic	<a href="http://www.edu.gov.kg">www.edu.gov.kg</a>	38
8.	Ministry of Agriculture and Land Reclamation of the Kyrgyz Republic	<a href="http://www.agroprod.kg">www.agroprod.kg</a>	37
9.	Ministry of Transport and Communications of the Kyrgyz Republic	<a href="http://www.mtc.gov.kg">www.mtc.gov.kg</a>	34
10.	Ministry of Culture and Tourism of the Kyrgyz Republic	<a href="http://www.minculture.gov.kg">www.minculture.gov.kg</a>	33
11.	Ministry of Social Development of the Kyrgyz Republic	<a href="http://www.mlsp.kg">www.mlsp.kg</a>	32
12.	Ministry of Labor, Migration and Youth of the Kyrgyz Republic	<a href="http://www.mz.kg">www.mz.kg</a>	28
13.	Ministry of Energy and Industry of the Kyrgyz Republic	<a href="http://www.energo.gov.kg">www.energo.gov.kg</a>	19

Below are some comments, observations and recommendations on the management and support of the website of each of the monitored ministries.<sup>54</sup>

### *1. Ministry of Foreign Affairs of the Kyrgyz Republic*

The website of this ministry is one of the best websites of government agencies. It was developed with the support of ITEG in 2007. In general, the website meets the required standards, but there are some comments on the design and the software. The content of the footer does not fully meet the Uniform Requirements.

It is recommended to structure the "Legal Framework" section into sub-headings: "Laws," "Codes," "Instructions," etc., as well as to complement the section of international instruments on human rights and fundamental freedoms. The documents relating to the activities of the ministry (the "Regulations of the Ministry," etc.), should be placed in the "Ministry" section and, separately, to have a subsection "draft regulations."

A map of location of the building of the Ministry and directions to it should be put in the "Contacts" section.

### *2. Ministry of Finance of the Kyrgyz Republic*

<sup>53</sup> Web addresses of all the ministries are taken from the information provided on the official website [www.okmot.kg](http://www.okmot.kg).

<sup>54</sup> The full results of the monitoring of websites of government agencies can be found on the website of "Independent Human Rights Group" Public Fund.



This website received the highest grade by experts. It was developed by ITEG in 2010. Information is updated on the website daily. The experts noted the very good functioning of the search engine and a good navigation system. It is one of the two websites (also the website of the Ministry of Education and Science of the Kyrgyz Republic) where there is a map of the building of ministry.

It is the only website which has a section "The right of access to information" with the placement of the samples in it, forms of a written request for individuals and businesses, and the Law on access to information.

There are minor comments on the design: it is required to make a footer in accordance with specified requirements and change the location of information on the home page in order to eliminate the need to "scroll" the screen. The section "Regulatory and legal framework" must be fully completed, placing international documents in the "International instruments" section.

### 3. Ministry of Justice of the Kyrgyz Republic

Along with the website of the Ministry of Finance, this website scored maximum points in the ranking of information transparency. The new version of the website was created with the assistance of the European Union and the UNDP in 2011.

In the "Public Relations" section is posted a subsection "Acts governing public reception of citizens," which has the Law on access to information and sample forms of a written request for individuals and businesses. It is recommended to eliminate the need to "scroll" the main page, and to place in the "Contacts" section a map of the location of the building of the Ministry and a location map.

### 4. Ministry of the Defense of the Kyrgyz Republic

The website was created by ITEG in 2011. The content and design partially meet the requirements. There are no statistics of website attendance traffic, and the footer is not designed properly. Information on the website is updated daily. The Kyrgyz version of the website provides information in Russian.

It is recommended to add to the "Legislation" section, texts of international human rights documents, including documents relating to the activities of the armed forces, to develop a heading "Access to Information," putting there all the necessary documents and sample requests and in the section "Contact Us" put a map of the location of the building of the Ministry and a location map.

### 5. Ministry of Internal Affairs of the Kyrgyz Republic

The website of the ministry was developed in 2004; in 2011 it was modernized with the assistance of the OSCE Centre in Bishkek.

The experts noted that there are good photo and video galleries in the website. However, the photos do not contain information about the date and place of events, imprinted on them. The section "Request for information" was created, but to visit this page is not possible ("*outdated bookmark/favorite, the search mechanism, list is outdated for this website*"). The heading "*Recent discussion*" does not open. It should be noted that the "Questions and Answers" section, which has detailed answers to frequently asked questions and links to relevant documents, is operating. There is a column "Page of the Minister of Internal Affairs," where

you can ask the Minister a question, by sending an e-mail message. One of the fields of the messages requires a "purpose of the information requested," marked as optional.

Requirements for content and design are partially implemented. The news line is updated regularly. The Kyrgyz version of the website provides information in Russian. It is recommended to bring the subsection "Legislation" from the section "Ministry" under a separate heading, grouping documents into categories: "International treaties, agreements, etc.," "National law." Under the heading "Ministry" should be placed internal documents relating to the activities of the ministry (the position of the ministry, memos, manuals, etc.). It is also necessary to modify the heading "Request for Information" by putting in it all the needed documents and samples of form requests, and place under the heading "Contacts" a map of the location of the ministry building and a location map.

#### 6. *Ministry of Emergency Situations of the Kyrgyz Republic*

The website was created with the support of the German Society for International Cooperation (GIZ) in 2009. The experts noted the good Kyrgyz language version of the website, all documents and information are translated into Kyrgyz language completely. Website attendance statistics are operating.

There are some flaws in the design and content of the website. The design of the home page is not quite convenient for the user in terms of finding the correct heading or chapter. The section "Regulatory Framework" contains only two sections, "The legal framework of Ministry of Emergency Situations" and "Bills." The sub-section "Public discussion of the bills" is not operating. There is no section "Access to information" and no information about how to request information held by the Department.

It is recommended to supplement the section "Normative legal acts" with instruments of international law, to have a separate section on access to information and store in it all the necessary documents and samples of forms requests, and place under the heading "Contacts" a map of the location of the ministry building and a location map.

#### 7. *Ministry of Energy and Industry of the Kyrgyz Republic*

The developer of this website is the "Union of Crisis Managers" (2013). This website received the lowest score among all websites of the ministries (19 points).

The website needs a thorough revision. Uniform Requirements such as language support and support of ongoing dialogue with users of internet services are not met. There is no Kyrgyz version of the website, no forum and no sections "Questions and Answers", "Letter to the Minister," "Contact," etc. There is no section "Access to Information." The experts noted the lack of daily updates of information and poor quality of materials published on the website. On the main page there should be a news section containing information on necessary documents and samples of form requests, and there should be placed under the section "Contacts" a map of the location of the ministry building and a location map.

On the main page, on news line, there is information in large type: "Today, August 20, 2013 ..." (as of October 10, 2013). The photo gallery consists of 13 photographs without comments on the events depicted in the photograph, date and place of the event. There are no statistics on traffic of the website, which is of great significance for promoting the efficiency of the website. "The poll on the site" section is operating with three different answers to the question, "Your opinion about the site" - "excellent," "good," "satisfactory." An interesting fact is that the evaluation "unsatisfactory" or "bad" was not included in this survey. According

to the published results, "excellent" was given by 43.7%, "satisfactory" was given by 45.7% of users. In addition to the problems set forth above in the website of the ministry, it is necessary to supplement the section "Regulatory Framework" with international instruments affecting not only the sphere of activities of the Ministry, but also human rights and freedoms.

#### 8. *The Ministry of Economy and Antimonopoly Policy of the Kyrgyz Republic*

In the ranking of transparency in 2013, this website took second place (55 points). In general, the content of the website is good, and an update of information is provided daily. Its excellent search engine should be highlighted. Information materials comply with the legislation. In a well designed section "Questions & Answers", one cannot only ask questions by sending an e-mail, but also find answers to frequently asked questions concerning the scope of activities of the Ministry, listed by category. There is a reference to the Minister's personal blog where you can leave your e-mail.

The disadvantages of the website include an abundance of information placed on the main page, which creates some difficulties in locating the necessary information, and the need, as in many other websites, to "scroll" on the main page.

It is recommended to re-structure the main page of the website, complete the section "Bank Documents" and subsection "International documents," to create a separate section on "Access to Information" and eliminate "scrolling" of the main page and to put under the heading "Contacts" a location map of the ministry building and a location map.

#### 9. *The Ministry of Agriculture of the Kyrgyz Republic*

The website of the ministry is in need of improvement. Among the many comments on the design and content are the following: lack of Kyrgyz language support, attendance statistics, an "Access to Information" section. Experts rated the quality of informational materials as satisfactory.

#### 10. *The Ministry of Transport and Communications of the Kyrgyz Republic*

Like many other websites analyzed, the website of the ministry is not complete. There is no language support, web forum and attendance statistics. Website design does not meet the Uniform Requirements. The website has only internal regulations affecting the operations of the ministry, draft regulations and a list of regulations of the Ministry of Transport and Communications of the Kyrgyz Republic. News, located on the main page, does not have the time, date of publication and name of employee who posted the informational material. There is no map of the location and access to the building of the ministry.

It is recommended to eliminate the above disadvantages, as well as complement the legal database with documents of international law and national legislation, including legislation governing access to information.

#### 11. *Ministry of Health of the Kyrgyz Republic*

This website has been upgraded in 2013 with the support of the World Bank, in the framework of "Manas" project. Website pages are updated regularly. The design is modest but with enough structure and it is easy to find the information needed. There is a good search engine. Website contains information about the leaders, hours of reception of citizens and the structural units. The normative legal base, contained on the website, is limited to national legislation. There is an "Access to information" section with the necessary documents for

submitting a request. There are no statistics of attendance or feedback (forum, discussion, etc.). There is no signature of the author of the news published. In the "Question-Answer" section there is the following: "Dear visitors, if you have any questions, you can ask them by using our email address - press@med.kg. All answers will be posted in this section." However, not a single question and the answer to it is published.

#### 12. The Ministry of Education and Science of the Kyrgyz Republic

Like many other websites studied, this website requires additional work. The software and the quality of information materials do not comply with the provisions of the Uniform Requirements.

It should be noted that, in contrast to other websites, this website has a map showing the location of the ministry. The section "Send a letter" operates, and the recipients are divided into three categories: 1) letter to the minister, 2) request for information, 3) questions and answers. The answer comes to the email address of the sender of the question. There is a section "You asked, we answered," which provides answers to frequently asked questions. But its search on the website is difficult ("Main Page" - "Press Center" - "Questions and Answers" - "You asked, we answered").

This is the only website where a special sub-section "Answers to anonymous requests" is established, which has one sentence: *"The web site of the Ministry of Education and Science receives various questions and requests, often the sender remains anonymous and does not include contact information. The Law of the Kyrgyz Republic 'On the order of consideration of citizens' request' states: "A written request of citizens, which does not have the name and postal address to which the reply should be sent, is considered to be anonymous and cannot be considered."* Please state the exact address." The point of creating a separate sub to accommodate this request is not clear.

The Kyrgyz language version of the site is not complete and contains materials in Russian.

#### 13. Ministry of Culture and Tourism of the Kyrgyz Republic

This website was created by the "Internet movement" NGO in 2013. Despite the rather modest design, overall the website is convenient for the user and has a good navigation system. There is detailed information about the leaders, schedule of their acceptance. Irregular updates are noted. Some news posted on the main page of the website does not have the time, date and data of the person publishing it.

With all the shortcomings, it should be noted this website is the only one that meets the statutory details of the outcome of suggestions, comments, complaints of citizens received by the ministry (as of the second quarter of 2013).

#### 14. Ministry of Social Development of the Kyrgyz Republic

The website of the ministry does not meet many of the requirements. There is no Kyrgyz language version of the website. The search of different sections is difficult. Documents are unstructured. On the same page are documents in Kyrgyz and Russian languages. Some sections of the website do not contain any information. In the "Bank Documents" section, regulations cannot be opened. There are no documents on international law and regulations governing the access to information.

The experts noted that the news on this website is updated regularly, but only in Russian. Announcement of job openings are located in the "News" section. There is a section "Questions & Answers" with answers to frequently asked questions in Kyrgyz and Russian languages on the same page. E-mail messages can be sent in the "comments and suggestions" section.

#### *15. Ministry of Labor, Migration and Youth of the Kyrgyz Republic*

On the website [www.okmot.kg](http://www.okmot.kg), the website of the Ministry of Labor, Migration and Youth of the Kyrgyz Republic (under the former name of the Ministry of Youth, Labor and Employment of the Kyrgyz Republic) is indicated to be [www.jashtar.kg](http://www.jashtar.kg), which is currently not operating. In violation of the law, there is no information that the website of the Ministry was renamed.

The current website of the ministry ([www.mz.kg](http://www.mz.kg)) took last place in the ranking of transparency of websites of ministries.

On the website there is no indication of the year of its creation and with the support of which organization it was created.

The website needs improvement as it does not meet the minimum online standards. Many of the requirements are met partially and some are completely ignored.

In the "History" section, there is no history of the ministry. Only the "Regulation of the Ministry of Youth, Labor and Employment of the Kyrgyz Republic," approved by the Government of the Kyrgyz Republic on February 20, 2012, No. 122, is uploaded.

In the "Legislation" section, the "Laws and Rights" subsection contains only six codes, there are no materials affecting the rights (as stated in the title of the section). There are no international human rights instruments.

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In conclusion, the analysis of websites of public authorities and local self-governments showed that it is still too early to talk about the overall results of website development in terms of optimization of these bodies with the public, international and non-governmental organizations, and cooperation of society and the state. Only a few of the monitored sites operate in accordance with all requirements of the legislation and meet the full technical requirements on the content of websites and the needs of individuals and businesses in obtaining information held by government bodies from online sources.

While most of the necessary information on the website of ministries is available, the amount of the uploaded materials is not always consistent with its quality. It should be noted that the degree of information transparency of a website is markedly reduced when it comes to specific information, e.g. information on the expenditure of funds under the national budget.

There is no uniformity with respect to a template of websites. Uniformity would make it much easier and faster to find information on the websites of state and local self-governments.

There is no doubt that every authority has the right to develop its own website design, but it must not be forgotten that the incompleteness / inaccuracy of website material is in direct violation of the Law on access to information, whereby: *"...state agencies and local self-*

*governments are responsible for the content, accuracy and completeness of the information posted on the official server (website portal)”.<sup>55</sup>*

**5. ON AWARENESS RAISING ACTIVITIES TARGETING REPRESENTATIVES OF GOVERNMENTAL BODIES AND BODIES OF LOCAL SELF-GOVERNMENT IN THE SPHERE OF PROVISION OF INFORMATION**

In order to raise awareness of the representatives of state bodies and local self-government, in 2013, in Bishkek and in four regions of the country, experts of "Independent Human Rights Group" Public Fund held six workshops on the topic of "Access to information held by public bodies and local self-government."

**Table 4.  
Information about dates and venues of training seminars in 2013**

<b>№</b>	<b>Date</b>	<b>City</b>	<b>Oblast</b>
1.	April 18	Naryn	Naryn oblast
2.	April 30	Bishkek	Chui oblast
3.	May 28	Osh	Osh oblast
4.	July 5	Cholpon-Ata	Issyk-Kul oblast
5.	September 4	Talas	Talas oblast
6	September 6	Karakol	Issyk-Kul oblast

Participants in the training were representatives of the territorial units of the following ministries:

1. Ministry of Internal Affairs
2. Ministry of Emergency Situations
3. Ministry of Defense
4. Ministry of Education and Science
5. Ministry of Health
6. Ministry of Education
7. Ministry of Justice
8. Ministry of Social Development



**Participants of the training,  
May 28, 2013**

Also among the participants in trainings were representatives of the Office of the Ombudsman, city mayors, members of city councils, and prosecutors. The particular interest of the General Prosecutor's Office in participation in training about access to information held by "Independent Human Rights Group" should be noted. According to the Training Center of Prosecutors, the issue of participation of employees in these training sessions has been discussed since the spring of 2013 and controlled by the Prosecutor General of the Kyrgyz Republic.



The training program included the following sessions:

- The right of access to information in the context of other rights and freedoms.
- International standards in the field of access to information.

<sup>55</sup> Law on access to information, Article 31, part 1.

- Problems and prospects of national legislation on access to information.
- Monitoring the practice of implementation of the right of access to information
- The practice of appeal of violations of the right of access to information.
- Issues of mutual cooperation between state agencies, local self-governments and civil society organizations in the area of access to information.

Training tools included presentations, lectures and general discussion. During the training, participants were able not only to get new information on the right to access to information, but also to share their practical experience in this field. Training participants in Cholpon-Ata noted an increase in the number of written and oral questions from citizens over the past two years. They talked about the need for additional training of staff responsible for providing the information at the request of individuals and legal entities, as well as on the need for individual staff units whose functional duties would include only this work



Training in Talas city,  
September 4, 2013

Participants in the cities of Bishkek and Osh showed a greater degree of awareness of the rights of citizens to access information, and talked about their successful experience in providing information upon written request, as well as access to the public meetings.

The following topics and sessions were noted as the most interesting: "The disclosure of information about the activities of state bodies and local self-government with the use of advanced networks" and "The practice of challenging violations of the right of access to information."

Almost all participants agreed that each authority should pay more attention to their websites and place information in a timely manner specified in the law. During the sessions the participants were asked questions about the technical side of creating and maintaining a website, as well as the nature of information that a website should contain.



Participants of the training,  
Karakol, September 6, 2013

During the session "The practice of appeal of violations of the right of access to information," the trainers provided participants with the active decisions of the courts in which one or another state agency or local authority had to fix a violation of the right of access to information and to provide to the applicant a written response to the request. Participants recognized that the risk of a meeting an author of request in court helps to ensure that they are trying to respond to written requests in a timely manner.

At the end of the training, participants expressed their willingness to continue their education in the future, and expressed hope for further cooperation in the field of access to information.

Employees of the General Prosecutor's Office and the Office of the Ombudsman of Kyrgyz Republic also expressed their willingness to cooperate with the "Independent Human Rights Group" Public Fund on the issue of receiving from the experts of the organization information on violations of the right of access to information.

## 6. STRATEGIC LITIGATION IN THE AREA OF ACCESS TO INFORMATION

The Constitution of the Kyrgyz Republic guarantees everyone the legal protection of his/her rights and freedoms, provided by the Constitution, laws, international treaties in which the Kyrgyz Republic participates, and general principles and norms of international law.<sup>56</sup>

According to the Law on access to information, refusal to provide of information, and other actions and decisions of a person in charge, violating the requirements of the present law, may be appealed.<sup>57</sup> The most effective way is a legal appeal in accordance with the law.

During the present project, 12 claims for violation of the right for access to information by governmental bodies and bodies of local self-government were initiated. Seven claims were considered by the court; in the rest of the cases the requester received an answer from the corresponding governmental body before the trial, and the claims were withdrawn.

According to the results of trial, three claims on appeals of action (inaction) of governmental bodies and bodies of local self-government were granted.<sup>58</sup>

Defendants in the three cases were:

- Soviet aiyl district (Batken province);
- Chauvayskiy aiyl district (Batken province);
- Aksy district state administration (Jalal-Abad province)

According to the trial on June 22, 2013, the Inter-district court of the Jalal-Abad region refused to grant the claim to Bazar-Korgon district administration. Appeals were submitted for the refusal of the claim. At the present time the case remains under consideration by the court.

Also, at the present time claims to Ala-Bukinskaia, Toguz-Toruiskaia, and Chatkalskaia district administrations are under court's consideration.

### Example 1.

On December 29, 2012, M.A. applied to Aksyi district administration with a written request to provide information on whether a website is created by this district administration, in compliance with Uniform Requirements on creation and support of websites of governmental bodies and bodies of local self-government of the Kyrgyz Republic.

This written request was ignored by the district administration.

On March 5, 2013, M.A. applied with a claim to Inter-district court of Jalal-Abad region on the inaction of Aksyi district administration, which refused to provide a response to the request. In the verdict of the Inter-district court, dated August 6, 2013, the claim of M.A. was granted. The court obliged the Aksyi district administration to fully eliminate the violation of the right to access to information.

### Example 2.

In February 2013, M.B. applied to the Soviet aiyl district with a written request on provision of information regarding revenue and expenditure on the part of this aiyl district for the first

<sup>56</sup>The Constitution of the Kyrgyz Republic, Part 1 of Article 40.

<sup>57</sup>The law on access to information, Article 35.

<sup>58</sup>See Appendix number 11: copies of court decisions in cases of non-provision of information by the authorities.



half-year of 2012 as well as line item spending. The aiyl district ignored this request. In April 2013, M.B. applied to Inter-district court of Batken region with a claim for inaction of the Soviet aiyl district, which refused to provide a response to the request. The verdict of Inter-district court, dated April 16,2013, granted the claim of M.B. The court obliged the Soviet aiyl district to fully eliminate the violation of the right to access to information.

Example 3.

In January 2013, M.A. applied to the Bazar-Korgon district administration with a written request on provision of information as to whether a website of the district administration is created and functions according to the Uniform Requirements on creation and support of websites of governmental bodies and bodies of local self-government of the Kyrgyz Republic. This written request was ignored by the district administration.

On March 11,2013, M.A. applied with a claim to the Inter-district court of Jalal-Abad region for inaction of the district administration, which refused to provide a response to the request.

On July 22,2013, the Inter-district court rejected the claim of M.A. The defendant in this lawsuit did not appear; due to this fact M.A. filed a petition to postpone consideration of the case to another day. The judge told M.A. that the defendant should “speak somewhere on platform stage with such persistence,” refused to honor the petition, and without going to the jury room, made a decision to refuse to grant the claim of M.A.

## 7. CONCLUSIONS AND RECOMMENDATIONS

As was noted above, the right of access to information held by governmental bodies and bodies of local self-government was built as an independent right in the 2010 Constitution.

Emphasis has been placed on the considerably effective normative legal base designed to ensure openness and transparency of activity of governmental bodies, access to information about these bodies, and also to information held by governmental bodies and bodies of local self-government.

Nonetheless, the results of monitoring showed that for effective implementation of the right of access to information held by governmental bodies and bodies of local self-government, the mere assertion of the principles of openness in activity of governmental bodies in normative legal acts are not enough. It is very important that there are conditions and mechanisms for practical implementation of these legal norms, ensuring access to information.

According to the results of research in previous years, one of the reasons preventing realization of the right of access to information was unawareness of the population and of a significant number of officials about legal norms, guarantees of compliance and mechanisms of ensuring this right.<sup>59</sup>

In the previous years international and non-governmental organizations conducted a number of activities on raising the awareness of the population about the right of access to information and mechanisms for realization of this right. However, despite all efforts, the level of knowledge of individuals and legal entities still does not allow complete implementation of their right for obtaining information from governmental bodies.

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<sup>59</sup>“The right to access to information held by governmental bodies and bodies of local self-government of the Kyrgyz Republic.” Results of monitoring of realization practice. PF “Independent Human Rights Group”. Bishkek, 2010.

During this project, an attempt was made to raise awareness of employees of governmental bodies and bodies of local self-government in questions of access to information, specifically about the obligation to publish and provide upon request information which does not relate to governmental secrets and is not confidential.

A serious obstacle to wide access to public information is the rather loose interpretation of the terms “closed” and “restricted” nature of information held by governmental bodies, and frequently there is an inadequate reaction of officials toward a request, including refusal to accept and register a written request, and being even impolite to the requester.

In the past the lack of an established practice for receiving information was explained with impunity by officials, ignoring requests on provision of information or unreasonably refusing to provide it. With the beginning of the practice by activists of the civil sector and human rights defenders of initiating judicial actions about the violation of the right to access to information and approaching justice officials about violation of this right, the situation in the area of access to information improved to some extent. For example, a positive trend in provision of information to written requests was noted. According to the results of monitoring in 2010, 43 % of the requests were ignored by governmental bodies, and according to the results of the monitoring in the present year this figure fell to 32%.

Comparative data on comprehensiveness of responses provided to a written request is also illustrative: in 2010- 32% of responses received from governmental bodies were not full and formal, in 2013- only 5% of the responses did not fully answer the questions posed.

Experts of the project noted improvement of the situation in the area of publication of information through maintenance of official websites. Thus, in contrast to the results of 2010, monitoring of official websites in 2013 indicated that the majority of ministries significantly improved the design and content of their websites, the main part of which comply with the requirements of the legislation now. Content of websites significantly expanded and the quality of posted materials improved.

The conclusions reached during the implementation of the project allow the development of a number of recommendations:

- It is necessary to continue conducting activities on raising awareness of the population about the right of access to information held by governmental bodies and bodies of local self-government and procedures of appeals of violation of this right.
- It is necessary to continue conducting educational activities covering all areas of the country on raising awareness of officials about the obligation of governmental bodies and bodies of local self-government on publication of information and on provision of information in response to requests of individuals and legal entities according to the requirements of the Law on access to information and international treaties in which the Kyrgyz Republic participates.
- It is necessary to establish and implement with respect to the practices of governmental bodies and bodies of local self-government general rules and instructions for the execution of requests of individuals and legal entities for information according to the Decree of the Prime Minister of the Kyrgyz Republic number 210, dated April 22, 2008, which should result in:
  - The execution of responsibilities for realization of the provision of information to the population, as well as implementation of procedures for control of proper and timely registration and execution of requests for information, accuracy and completeness of the data provided, compliance deadlines and conditions imposed on officials from the

- heads of governmental bodies and bodies of local self-government in the framework of distribution of powers.
- Development and approval in the prescribed manner of structural subdivisions and officials carrying out activity on provision of information to requesters, and also corresponding to official instructions;
  - Ensuring disclosure by structural subdivisions and officials of governmental bodies and bodies of local self-government responsible for realization of functions on execution of requests to provide information (name, postal address, telephone number and fax number, electronic address, network resource), including their working hours.
  - Ensuring the production of, and providing standardized forms for requests of information by the population;
  - Determination of the category of information provided, types of governmental and additional services, connected with it provision (including the order of access to automated informational systems), and also the order of development of a registry of official documents.
  - It is necessary to require the governmental bodies and bodies of local self-government to annually disclose reports on realization of legislation in the area of access to information in mass media and/or websites.
  - It is necessary to bring into full compliance the design, layout, content and software of official websites of public bodies with the Uniform Requirements.
  - It is necessary to conduct systematic monitoring of compliance with the right of access to information by representatives of civil society, as well as by relevant governmental bodies, and also to enhance the activity of supervisory bodies on identification of violations of this right and react to them correspondingly.
  - The Supreme Court of the Kyrgyz Republic should coordinate the judicial practice in the cases on violation of the right to access to information and provide guiding clarifications to inter district courts and boards on economic and administrative affairs of regional and Bishkek city courts.

Careful evaluation by international organizations and experts of the present normative legal base of the Kyrgyz Republic in the sphere of access to information brings to the conclusion that national legislation generally complies with the requirements of international standards.

Nevertheless, the above mentioned recommendations in the area of improving the normative legal base, setting guarantees for implementation of the right of access to information held by governmental bodies and bodies of local self-government, are aimed at further bringing the legal base to standards and significantly expanding access to information. Detailed justification for the suggested recommendations is given in corresponding sections of the present publication.

- It is necessary to eliminate inconsistencies in the norms of the Law of KR “On guarantees for access to information” and the Law on access to information regarding determination of the range of parties having the right of access to information, with the purpose of elimination of discrimination toward foreign citizens and individuals without citizenship.
- It is necessary to eliminate from the Law of KR “On guarantees and freedom to access to information” the norm which puts an obligation on the requester to explain his interest in it (Article 6). It is necessary to establish the right of access to information to all individuals, and not only to those who have a legitimate interest.

- It is necessary to reconsider the use of the terms “citizen” and “individual” in the Law of KR “On guarantees and freedom of access to information” and Law on access to information.
- It is necessary to establish time frames for provision of information in response to oral requests in the Law on access to information.
- It is necessary to include into the list of Governmental bodies and bodies of local self-government which have an obligation to provide information, non-governmental organizations, including those financed or partially financed by the state.
- It is necessary to eliminate obscurity of some formulations, causing ambiguous interpretation of Article 15, part 1, paragraph 3 of the Law on access to information.
- It is necessary to establish three criteria in the Law on access to information, i.e. “legitimacy,” “damage appraisal” and “balanced approach,” to determine whether access to information can be restricted.
  - *Legitimacy*: the holder of information, refusing to provide information, has to indicate which interest protected by the law he or she is defending.
  - *Damage appraisal*: the holder of information must also explain how disclosure of information in reality can harm a protected interest at the given time.
  - *Balanced approach*: the holder of information has to take into account the priority of the public interest and act, weighing and comparing the extent of the harm from disclosure of information and the extent of harm from hiding it. There are often situations when disclosure of information indeed harms a protected interest, but it’s concealment is much more dangerous.

The implementation of these recommendations, in the opinion of researchers, will contribute to the compliance of the right in Kyrgyzstan with access to information and the process of the development of democracy in the Kyrgyz Republic.