

# TRANSPARENT INSTITUTIONS, INFORMED CITIZENS (GUIDE FOR PROACTIVE TRANSPARENCY)

## CONTENT:

INTRODUCTION.....	2
WHAT IS PROACTIVE TRANSPARENCY?.....	4
WHY IS PROACTIVE TRANSPARENCY IMPORTANT?.....	5
HOW DO WE BENEFIT FROM PROACTIVE TRANSPARENCY?.....	5
WHO SAYS THAT INSTITUTIONS SHOULD BE TRANSPARENT?.....	6
PROACTIVE TRANSPARENCY STANDARDS.....	6

# HAVE YOU EVER HEARD OF THE OPEN GOVERNMENT PARTNERSHIP INITIATIVE? .....11

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## INTRODUCTION

When the holders of public information are open to the public, citizens easily find out what and how the state government bodies and other establishments and institutions work. This enables them to participate equally in public life and continuously control the work of the authorities.

Proactively publishing public information represents a legal obligation of all holders of public information, implying self-initiated and continuous publishing of information about their work and actions for decision-making, finances, and the services they provide to citizens on their websites.

The goal of fulfilling the obligation to publish information proactively is reflected in the opportunity for citizens/information seekers to exercise their constitutionally guaranteed right of access to information by providing services to information holders in a simple and fast way. At the same time, the holders of information receive the necessary legitimacy because they demonstrate responsibility in their work, thus restoring the trust of the citizens in the institutions.

The public's right to know is part of the modern world's corpus of fundamental human rights. This right is unthinkable without free access to information, one of the key pillars on which modern democracies are based.

One benefit of free access to information is that it makes the institutions more answerable to the people they serve. It also gives people the complete and up-to-date information they need to participate actively in public life.

As a key guarantor of transparency, the public's right to know is also the greatest barrier against corruption. Corrupt practices and the abuse of public resources show that these negative phenomena predominantly develop in secrecy, where public information is unavailable and public control is impossible.

To this end, the right of free access to public information is part of the right to free expression, included in Article 19 of the Universal Declaration of Human Rights, which

includes the freedom to "request, receive and transmit information and ideas through any media regardless of the limits and borders."

Moreover, the **Council of Europe Convention on Access to Official Documents** from 2009 stipulates that all "official documents are in principle public and can be denied access to the public only if the protection of other rights and legitimate interests are in question."<sup>1</sup>

The right to free access to information obligates information holders to publish information relevant to the public in two ways. This right implies the following:

- Proactive obligation for holders to provide, publish, and distribute information about their activities, work, policies, plans, and resources at their disposal so that citizens can know what and how the state government bodies and other establishments and institutions work, as well as
- Reactive obligation of the holders to respond to requests for free access to information about their work, but also an obligation to enable citizens/information requesters to inspect the requested documents.

The Law on Free Access to Public Information primarily regulates the mechanisms by which the public can request information from holders of public information. This Law supports the right to public information that the information holders have and is guided by the principle of maximum publication of public information.<sup>2</sup>

The principle of maximum publication establishes an assumption that all information available to the information holders should be subject to the principle of maximum publication except for the information pertinent to Article 6 of the Law on Free Access to Public Information.

The Law on FAPI ensures publicity and openness in the operations of the holders of information. It also enables natural and legal persons to exercise the right of free access to public information. As a result, information holders must provide information about their work to the public.

According to the Law, all legal and natural persons, as well as foreign legal and natural persons have the right to access public information.

The obligation of the public information holders, primarily as a service to the citizens and authorities, is to enable immediate inspection of the requested public information to the applicants who would like to do so.

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<sup>1</sup> Council of Europe Convention on Access to Public Documents, Article 2 and 3, Tromsø, June 18, 2009.

<sup>2</sup> Toby Mendel, "Freedom of Information: A Comparative Legal Survey", p. 25, 2008.

The public can monitor the work and functioning of the following public information holders, in accordance with the Law on FAPI:

- The bodies of the state government and other bodies and organizations established by law;
- Municipal authorities, the city of Skopje, and the municipalities in the city of Skopje;
- Institutions and public services;
- Public enterprises;
- Legal and natural persons holding public authority and perform activities of public interest;
- Political parties in the area of income and expenditure.

## WHAT IS PROACTIVE TRANSPARENCY?

The **transparency** (lat. *Transparency* – transparent, *trans* "across" and *parere* "to show") of the public information holders represents a principle of publicity in their work.

If the institutions make the information they prepare and possess available to the public for inspection even when no request has been submitted, we refer to those institutions as **proactively transparent**.

The first law on free access to public information was adopted by Sweden in 1766. With the development of information technologies in the 21<sup>st</sup> century, citizens assume that institutions will independently publish the information they possess on their web pages without waiting for their requests.

## WHY IS PROACTIVE TRANSPARENCY IMPORTANT?

**When, for instance, the budget of the local self-government is publicly available, its residents can find out whether new roads, public facilities, or educational scholarships**

**will be awarded in their municipality.**

Proactive transparency of the institutions is important for the following reasons:

- Institutions spend citizens' money, who have the right to control their work;
- The work of the institutions, by law, is public;
- Proactive transparency increases the **responsibility** of the institutions and the **trust** in their work;
- The space for corruption and the abuse of public powers is reduced;
- It empowers individuals to engage in making better decisions for their best interests.

## **HOW DO WE BENEFIT FROM PROACTIVE TRANSPARENCY?**

When institutions are proactively transparent, fewer resources are spent on handling requests for free access to public information. Citizens trust such institutions because they do not hide anything from them.

Thanks to the available and open data from the institutions, for example, the business community receives the information they need for investments (ex., number of Internet users, quantities of imports of certain materials, general and detailed urban plans, etc.), while the citizens gain from the development of numerous contemporary services (ex., electronic monitoring of court cases, public transport timetable apps, availability of medical appointments, etc.).

## **WHO SAYS INSTITUTIONS SHOULD BE TRANSPARENT?**

**Institutions should cultivate openness in their work and constantly indicate that proactive transparency is the best solution because the public will always find a way to discover what interests them.**

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- The Universal Declaration of Human Rights;
  - European principles for good public administration;
  - The Data Reuse Directive 2019/1024/(EU);
  - The Constitution of the Republic of North Macedonia (Art. 16);
  - Regulations (Law on Free Access to Public Information, Law on Public Procurement, etc.);
  - The strategy for transparency of the Government of the Republic of North Macedonia 2019-2021;
  - The Public Administration Reform Strategy and Action Plan 2018-2022;
  - The Open Data Strategy 2018-2020;
  - National Strategy for Combating Corruption and Conflict of Interests of the Republic of North Macedonia 2020-2024;
  - The Open Government Partnership (OGP) initiative.

## **STANDARDS FOR PROACTIVE TRANSPARENCY**

Article 10 of the Law on FAPI should be the basic standard for proactive transparency of the institutions because it exhaustively lists the necessary information on what the institutions should publish on their web pages. The information should be timely, accurate, regularly updated, and presented in an open format/open data per the Law on using public sector data.

With the proactive publication of public information, the legal obligation is clearly established for the holders not only to respond to the submitted requests in relation to the Law on the FAPI but also to publish public information on their websites, as well as those that have not been requested.

Proactive publication of public information is an integral part of the right to access information, ensuring that key information is available in a timely manner. The European Court of Human Rights recognizes free access to public information as a fundamental human right and cites that "the information is transitory and any delay in its publication, even for a short period of time, may reduce its overall value and interest."<sup>3</sup>

A major advantage of proactively releasing public information, especially when it is done immediately, is that it makes it more difficult for information holders to deny the existence of the information or manipulate it.<sup>4</sup> This means that all citizens/requesters of public information save time, money, and effort in obtaining the information.

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<sup>3</sup> Proactive Transparency: The Future of the Right to Information?, Helen Darbyshire, p.25, 2011

<sup>4</sup> Proactive transparency..., p.11

The principle of equality enables the realization of this right, as well as fulfillment of obligations, and participation in political, social, and economic processes, all aiming to strengthen trust in institutions. On the other hand, the low proactivity of publishing information makes it impossible for the public to monitor and control the work of information holders.

Also, by publishing as much public information as possible on the websites of the information holders, the number of access to information requests will be reduced. In turn, this facilitates the work of the information holders, i.e. reduces the need for additional administrative engagement of the official person for mediation with public information regarding the procedure for requests of access to information.

In case of submission of a request for access to information regarding already published information, the holders of information will inform the requester that the requested information has been published on the website and will direct them to the link leading to the requested information.

The following are information that should be proactively published according to Article 10 of the Law on FAPI:

- **Information gathered from the Law's competencies domain;**
- **Basic contact data of the information holder, i.e. name, address, telephone number, fax number, e-mail address, and website address,**
- **Data of the official or the responsible person of the the information holder (biography, contact data, etc.),**
- **Basic contact data of the official person for mediating information, i.e. first and last name, e-mail address, and telephone number,**
- **Basic contact data of the person authorized for protected internal reporting, i.e. first and last name, e-mail address, and telephone number,**
- **List of persons employed by the information holder, including work position, official email, and official phone number,**
- **Laws referring to the competence of the information holder related to the register of regulations published in the Official Gazette,**
- **Regulations that the information holder adopts within their competence in the form of a by-laws, i.e. rules (rules for internal organization, systematization of workplaces, protected internal reporting, etc.), decrees, orders, instructions, plans, programs, decisions, and similar acts aimed at the execution of laws and other regulations authorized by law,**
- **Organogram of the internal organization,**

- **Strategic plans and strategies pertaining the work of the information holders,**
- **Annual work plans and programs,**
- **Annual budget and final account,**
- **Annual financial plans by quarters and programs for the implementation of the budget,**
- **Audit reports,**
- **Types of services provided by the information holders (information on the physical availability for the realization of services, information on e-services, the legal basis data, name of the services, documents and data required for the realization of each of the services, mechanisms for legal protection, and other relevant data),**
- **Tariff lists for the fees imposed for issuing real acts,**
- **The method of submitting a request for access to information (method of submitting a verbal and written request for access to information, as well as an electronically submitted request),**
- **The entire public procurement documentation, documents pertaining concessions and public-private partnership agreements,**
- **Proposed programs, programs, views, opinions, studies, and other similar documents pertaining to the acts of the authority of the information holder, public announcements about things taken from their website in accordance with the legal competencies, information bulletins, official gazettes if they are obligated according to law, etc.;**
- **Work reports submitted to the authorities responsible for control and supervision implementation,**
- **Statistical data on the work, as well as other information, acts and measures that affect the life and work of citizens that stem from the competence and work of the information holder, and**
- **Other information resulting from the competence and work of the information holder.**

The holders'/officials' proactive transparency includes publishing the requests for free access to information they received and acted on within the legal term and the decisions they made after the request was submitted so that future applicants are familiar with the information of interest. This way, the information holders will reduce the number of submitted requests based on the Law. The requester will be directed to the link from the website where the received requests have been moved and, at the same time, they have been acted upon.



Moreover, the Government of the Republic of North Macedonia, at its 121 Session, adopted the Information on improving the transparency and accountability of institutions from the public sector through the publication of mandatory information in accordance with the Law on free access to public information on the websites of the institutions, as well as the publication of the most frequently requested information systematized by area, all with the aim of greater transparency of the institutions.

For more information, please refer to the following link:

[https://aspi.mk/wp-content/uploads/2023/02/Упатство\\_MKD-финално.pdf](https://aspi.mk/wp-content/uploads/2023/02/Упатство_MKD-финално.pdf)

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For the full implementation of the Law on FAPI, officials for mediating public information are recommended to visit the Agency's website [www.aspi.mk](http://www.aspi.mk) where they can get all the necessary materials related to the Law, such is the **Guide on the Method and Procedure for the Implementation of the Law on FAPI**, as well as guidelines for implementing proactive transparency that will contribute to open institutions. The public can also see how they should prepare it and what the **List of Information** should contain according to Article 9 of the Law.

Officials should also self-register at the designated email address for training enrolment to take advantage of the Agency's free trainings: [obuki@aspi.mk](mailto:obuki@aspi.mk).

The trainings designed to give users a more thorough comprehension of the FAPI Law and how it should be implemented have been published in the **E-LEARNING** section of the Agency's website (<https://aspi.mk/едукативни-материјали-видеа/>).

Publishing information on websites can help holders of public information manage the information they have prepared and have at their disposal. This mode of operation will encourage information holders to strive for greater transparency and openness in the public information realm.

The list of holders of public information, prepared and published by the Agency, with all the necessary contact information for the holders, is available on the Agency's website: <https://aspi.mk/листа-на-иматели-на-информации/>

**Information that must be found on the websites:**

- **Plans and notices;**
- **Financial documents (financial plans, notices) and documents related to public procurement (eg tender documentation established by law);**
- **Decisions and general acts (e.g. statute, regulations, and various decisions);**
- **Proposal of programs, strategies, opinions and other documents related to the competence;**
- **Structure of organs and their contacts;**
- **Data on officials for mediating public information, etc.**

## HAVE YOU EVER HEARD OF THE OPEN GOVERNMENT PARTNERSHIP INITIATIVE?

The Open Government Partnership (OGP) is a voluntary international initiative launched by eight countries (Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, Great Britain, and the United States) in 2011.

Immediately after its launch, the Republic of North Macedonia became part of this global initiative within which Governments and civil society organizations advocate for Governments that are more open and responsible to citizens.

Today, 78 member countries and many civil society organizations participate in the initiative.

By signing the Declaration to the initiative, the Government of the Republic of North Macedonia committed to working with civil society organizations and citizens for at least two years to develop and implement concrete measures to increase transparency, encourage citizen participation, combat corruption, and increase the use of innovative technologies throughout the public sector.

In addition to the OGP process by the executive power, the same processes are carried out by the legislative (Open Parliament) and judicial power (Open Judiciary) in our country.

The main objective of OGP is to ensure concrete commitments from governments to promote transparency, support citizen participation, fight against corruption, and implement new technologies in the public administration sector and beyond by supporting innovation.

Ultimately, the driving force of OGP is giving primary importance to citizens, i.e. **"CITIZENS ARE THE ONES WHO SHOULD CREATE THE POLICIES AND SERVICES THAT AFFECT THEIR LIVES."**