

# Proactive Publication of Information

## Contents

STANDARDS.....	2
METHODOLOGY .....	14
RECOMMENDATIONS.....	15
ANNEXES .....	16

## STANDARDS

The main principle of the access to information legislation is that all information generated and held by public institutions which is not subject to restrictions, i.e. access to it would not harm any public or personal interest, should be accessible. The process of ensuring accessibility of the information, which is not subject to any restrictions, includes its publication, and the latter is most effective when using new technologies, i.e. the Internet.

### 1. The principle of proactive publication

One of the main elements of the access to information legislation is the principle that public bodies shall pursue a policy of publishing information of common interest without the need for an individual request, the so-called **policy of proactive publication**.

The Convention on Access to Official Documents of the Council of Europe (the Convention 205)<sup>1</sup>, establishes active transparency as one of the principles of the right of access. Article 10 of the Convention gives a broad formulation of the obligation for executive bodies, but, nevertheless, reflects the developing legislation in the member states, namely:

#### ***Article 10 – Documents made public at the initiative of the public authorities***

On its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage an informed participation by the public in matters of general interest.

The Explanatory Report to the Convention<sup>2</sup> clarifies which “official documents of general interest” shall be made public without the need for individual requests, namely: ***documents on structures, staff, budget, activities, rules, policies, decisions, delegation of authority, information about the right of access and***

---

<sup>1</sup> The Convention was open for signature on June 18, 2009 and entry in force on December 1, 2020, after 10 ratifications. See: Full list (coe.int); North Macedonia signed the Convention 205 on June 18, 2009 but not ratify yet.

<sup>2</sup> [TROMSØ CONVENTION \(coe.int\)](#).

***how to request official documents, as well as any other information of public interest.***

All these documents ensuring that citizens are able to form an opinion on the authorities that govern them and to become involved in the decision-making process should be published on the initiative of the public authorities.

## **2. Legal regulation of the principle of proactive publication**

The policies of proactive publication of information by public bodies are regulated to a large extent, although not entirely by the access to information laws.

The Explanatory Report to the Convention advises the member-states to establish national rules for proactive publication and thus encourage the policy of making public information accessible without the need for individual requests.

With the adoption of the LAW ON FREE ACCESS TO PUBLIC INFORMATION (LFAPI)<sup>3</sup> in 2006 and the new one 2019, the obligations for promulgation, announcement, and publication of specific categories of information were established, namely in the provisions of Art. 9, and Art.10. The categories of information of common interest, subject to **promulgation by all bodies obliged under the law**, were listed in Art.10: description of powers and data on the organizational structure, the functions and the responsibilities of the administrative bodies; list of acts (decisions) issued within the powers; financial information; contact information; summary of data related to the LFAPI implementation.

## **3. Elements of the legal regulation of proactive publication**

### **3.1. Equality of obliged bodies**

The LFAPI establishes the obligations for the courts to publish information under Article 10, but without specification for the Courts taking into account the specifics of their functioning and produced information. Consequently, proactive publication in the Courts under Article 10 is a matter of good practice.

---

<sup>3</sup> <https://aspi.mk/en/documents/agency-documents/>

The Rules of Procedure of the National Assembly<sup>4</sup> establish some rules for the publication on the Internet of specific categories of information related to the work of National Assembly, but do not specify an obligation for transparency.

There is no specification also for other categories of obliged bodies under Art.10 the LFAPI.

### **3.2. The Internet rule**

The Explanatory Report to the Council of Europe Convention on Access to Official Documents, in its paragraph 72 related to Art. 10 of the Convention, encourages public authorities to use different forms of proactive publication, including the use of new information technologies and publicly accessible Internet sites, together with the traditional reading rooms and libraries of the institutions.

Before the Internet era, the approach embedded in the access to information legislation with regard to the information of public interest generated by public bodies was that it shall be promulgated, announced, or published.

In the XXI century, the standard for publishing information of importance to society was complemented by publication on the Internet. Currently, the so called “Internet clause” is introduced in the access to information legislation. States with older legislation are amending it or are adopting new laws for electronic access to information, containing rules for publication on the Internet sites of public authorities. The “Internet clause” was introduced in the LAW ON FREE ACCESS TO PUBLIC INFORMATION (LFAPI) in 2006 and developed in 2019 by Art. 9 therein.<sup>5</sup>

### **3.3. Categories of information of common interest**

The proactive publication of information is among the most important elements of the right of access to information. Its significance for the exercise of that right has been increasing and the standards in the area have gradually been set. In most access to information laws adopted during the past decade, obligations for online publication of specific categories of information have been established. A review of this legislation

---

<sup>4</sup> RULES OF PROCEDURE of the Assembly of the Republic of Macedonia; [https://www.sobranie.mk/rules-procedures-of-the-assembly-ns\\_article-rules-of-procedure-of-the-assembly-of-the-republic-of-macedonia.nspix](https://www.sobranie.mk/rules-procedures-of-the-assembly-ns_article-rules-of-procedure-of-the-assembly-of-the-republic-of-macedonia.nspix)

<sup>5</sup> <https://aspi.mk/en/documents/agency-documents/>

shows that some categories of information mandatory for online publication are common.<sup>6</sup> For instance, information about the powers and the normative acts of the public authorities, about their structure and functions, their activities, signed contracts, and the transparency of the decision-making process are mandatory for publication under most access to information laws.

During the past years, within the global Open Government Partnership initiative, Open Government Standards were developed and widely discussed.<sup>7</sup> An important part of these standards is the “Standards for Proactive Publication of Information,” namely the online publication of:

- Institutional information – legal basis of the institution, internal regulations, functions and powers;
- Organizational information – organizational structure, information on personnel, and the names and contact information of public officials;
- Operational information – strategies and plans, policies, activities, procedures, reports, and assessment of performance – including factual analysis and other documents and data on the basis of which policies are being formulated;
- Decisions and acts – including data and documents which prove the necessity of these decisions and acts;
- Public services information – description of the services provided by the authority, manuals and guidelines, forms and information about the fees and the time periods for their provision;
- Budget information – budget procedure, draft budget, budget, financial reports, including information about the salaries within the public institution, auditor’s reports;
- Open meetings information – the topic, the time, the agenda, information about public discussions and the conditions for participation in them;
- Decision-making and public participation – information about the decision-making procedures, including the mechanisms for public consultation and participation in the process;

---

<sup>6</sup> Comparative review of the categories of information for proactive disclosure (standard-setting) of the Council of Europe, the Organization for Security and Cooperation in Europe, etc. can be found in Helen Darbshire’s working paper: [http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Darbshire\\_Proactive\\_Transparency.pdf](http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Darbshire_Proactive_Transparency.pdf), p. 39..

<sup>7</sup> <http://www.access-info.org/en/open-government-data>

- Subsidies information – about subsidized persons, about the purposes of the subsidies, the amounts paid and the process of execution;
- Public procurement information – about the tender procedure, the selection criteria, the results of the tender, the contracts signed, and the execution reports;
- Information volumes and resources – description of the information resources, indexes, lists of public registers, description of public registers, the access procedure, including online registers and databases;
- Information about the information generated and held by the information – register of the documents/information, generated and held;
- Information about the publications issued by the institution, including information about free and paid publications;
- Information about the right to information:
- Information concerning the right of access to information and how to request information, including contact information for the responsible person in each public body.<sup>8</sup>

Many categories of information listed above as standards in the area are mandatory for online publication under the Macedonian legislation as well. For instance, the institutional, organizational, and operational information, the administrative acts, information about the exercise of the right of access to information, budget and financial information, public procurement information etc. is mandatory for publication on the institutional Internet sites under Art. 10 of the Law for Free Access to Public Information

### **Comparative list of information for proactive publication between “Standards for Proactive Publication of Information” (SPPI) and Art.10 of the Law for Free Access to Public Information (LFAPI)**

	<b>Standards for Proactive Publication of Information (SPPI)</b>		<b>Art. 10 of LFAPI</b>
1.	<b>Institutional information</b> – legal basis of the institution, internal regulations, functions and powers;	1.	<b>Institutional information</b> – -data arising from the competences it performs, stipulated by law - the laws pertaining to the competence of the holder of information, related to the register of regulations published in the official gazette

<sup>8</sup> <http://www.access-info.org/en/open-government-data>

2.	<b>Organizational information</b> – organizational structure, information on personnel, and the names and contact information of public officials;	2.	<b>Organizational information</b> – -organizational chart of the internal organization -basic data for contact with the holder of information as follows: name, address, telephone number, fax number, e-mail and website, - data on the public official or the responsible person at the holder of information (CV, contact information, etc.), - basic data for contact with the official for mediation with information as follows: name and surname, e-mail and telephone number, - basic data for contact with the person authorized for protected internal reporting as follows: name and surname, e-mail and telephone number, - list of persons employed at the holder of information including position, business e-mail and business telephone number,
3.	<b>Operational information</b> – strategies and plans, policies, activities, procedures, reports, and assessment of performance – including factual analysis and other documents and data on the basis of which policies are being formulated;	3.	- reports on the operation submitted to the bodies competent for control and supervision, - statistical data on the operation, as well as other information, acts and measures that affect the life and work of the citizens, arising from the competence and the operation of the holder of information, and
4.	<b>Decisions and acts</b> – including data and documents which prove the necessity of these decisions and acts;	4.	<b>Decisions and acts</b> – regulations adopted by the holder of information in accordance with its competence in the form of a by-law: rulebooks (rulebook on internal organization, rulebook on job systematization, rulebook on protected internal reporting and other), decrees, orders, instructions, plans, programs, decisions and other types of acts for the enforcement of laws and other regulations, when authorized for that purpose by the law
5.	<b>Public services information</b> – description of the services provided by the authority, manuals and guidelines, forms and information about the fees and the time periods for their	5.	<b>Public services information</b> – -types of services provided by the holders of information (information on the physical availability for the provision of services and information for e-services, data on the legal grounds, the name of the services, the documents and data required for the provision

	provision;		of each service, mechanisms of legal protection and other relevant data), - pricelists of fees for issuing real acts
6.	<b>Budget information</b> – budget procedure, draft budget, budget, financial reports, including information about the salaries within the public institution, auditor’s reports;	6.	<b>Budget information</b> -  -annual budget and annual accounts, - annual financial plans by quarters and programs for budget implementation, - audit report
7.	<b>Open meetings information</b> – the topic, the time, the agenda, information about public discussions and the conditions for participation in them;	7.	<b>Open meetings information –</b> - draft programs, programs, standpoints, opinions, studies and other similar documents pertaining to the acts under the competence of the holder of information, press releases on downloads from their websites in accordance with the legal competences
8.	<b>Decision-making and public participation</b> – information about the decision-making procedures, including the mechanisms for public consultation and participation in the process;	8.	<b>Decision-making and public participation –</b>  -draft programs, programs, standpoints, opinions, studies and other similar documents pertaining to the acts under the competence of the holder of information;
9.	<b>Subsidies information</b> – about subsidized persons, about the purposes of the subsidies, the amounts paid and the process of execution;	9.	<b>Subsidies information –</b> Statistical data on the operation, as well as other information, acts and measures that affect the life and work of the citizens, arising from the competence and the operation of the holder of information СУБВЕНЦИИ
10.	<b>Public procurement information</b> – about the tender procedure, the selection criteria, the results of the tender, the contracts signed, and the execution reports;	10.	<b>Public procurement information –</b> -the entire documentation pertaining to public procurements, concessions and public-private partnership agreements;
11.	<b>Information volumes and resources</b> – description of the information resources, indexes, lists of public registers, description of public registers, the access procedure, including	11.	<b>Information volumes and resources –</b>  - regulations adopted by the holder of information in accordance with its competence in the form of a by-law: rulebooks (rulebook on internal organization, rulebook on job systematization, rulebook on protected internal reporting and other), decrees, orders,



	online registers and databases;		instructions, plans, programs, decisions and other types of acts for the enforcement of laws and other regulations, when authorized for that purpose by the law
12.	<b>Information about the information generated and held by the information –</b> register of the documents/information, generated and held;	12.	<b>Information about the information generated and held by the information –</b> - regulations adopted by the holder of information in accordance with its competence in the form of a by-law: rulebooks (rulebook on internal organization, rulebook on job systematization, rulebook on protected internal reporting and other), decrees, orders, instructions, plans, programs, decisions and other types of acts for the enforcement of laws and other regulations, when authorized for that purpose by the law
13.	<b>Information about the publications issued by the institution,</b> including information about free and paid publications;	13.	<b>Information about the information generated and held by the information</b> -press releases on downloads from their websites in accordance with the legal competences, newsletters, official gazettes if they constitute an obligation under the law, and other
14.	<b>Information about the right to information;</b>	14.	- basic data for contact with the official for mediation with information as follows: name and surname, e-mail and telephone number,
15.	<b>Information concerning the right of access to information</b> and how to request information, including contact information for the responsible person in each public body.	15.	<b>Information concerning the right of access to information -</b> - basic data for contact with the official for mediation with information as follows: name and surname, e-mail and telephone number - the manner of submission of an application for access to information (manner of submission of an oral and written application for access to information, as well an electronic application),
16.	<b>Other information</b>	16.	<b>Other information</b> - other information arising from the competence and the operation of the holder of information.

The law, however, does not specify how often publications should be updated.

### **3.4. Flexible approach towards the categories of information to be published**

It is evident that the list of categories of information subject to publication under the law is not exhaustive. Increased interest towards a specific type of information may emerge as a result of ongoing debates, crises, and other public issues.

The states where legislation has established the institution of the Information Commissioner (Agency) have that independent, centralized, specialized body entitled to create model publication schemes. Thus, the possibility for consideration of the specifics of the generated and held information within the powers of the institution is increased. On the other hand, external control is exercised over the publication schemes.

A possible legislative solution for deciding which information should be additionally published is to consider the extent to which the information at issue is sought with requests. Such an approach is offered in the Council of Europe Convention (Art. 10, item 73). A similar approach is embedded in the laws of Mexico, Slovenia, USA, Bulgaria etc.

### **3.5. Extension of the categories of information of general interest through special laws**

Besides the obligation for maintaining an Internet site and providing access to the information which is uploaded on it, the law should require the publication of information about the public authority that is of general interest – how the citizen can contact the institution; what kind of services they can obtain; how the institution fulfills its powers and functions; information which helps the visitor to form an opinion about the activities of the institution; how the public funds are spent; how to obtain information from that authority.

The process of review and update of the lists of categories of information subject to publication should also follow specific approaches and should be subject to control.

In a number of states, which had access to information legislation before 1990, the obligations for proactive disclosure have been extended not only through the access

to information laws, but also through specific laws introducing obligations for publication of specific categories of information – contracts, budget transparency, or developing the so-called guided transparency. Recently, this process of enhancing transparency has been specifically studied and systematized.<sup>9</sup>

The development and maintenance of public registers on the Internet is another precondition for the development of guided transparency.

### **3.6. Publication of categories of information related to health and environment**

The standards for the publication of specific categories of information which is of public interest require that there are rules concerning the update of the information and its free obtaining. For some categories of information, public bodies are obliged to seek other channels of dissemination when there is a risk to the life, health, and property of citizens. In such cases, an additional obligation is established for the administration to inform the citizens as fast as possible by all appropriate means.

There is such category in Art. 10 of the Law of Free Access to Public Information and the Law of Environment, Art 90, but without details for time frames and specific obligations.

### **3.7. Determining the ways, channels, formats of publication, metadata of published information**

The interest towards the free use of whole data sets and data bases, generated by the public bodies increases with the development of information technologies.

In 2003, the European Community adopted Directive 2003/98/EC on the Re-use of Public Sector Information.

In 2013, the Directive was revised.

---

<sup>9</sup> Full Disclosure. The Perils and Promise of Transparency, Archon Fung, Mary Graham, David Weil, Cambridge University Press, 2007.

In Macedonia the revised Directive 2013/37/EU was introduced through the Law on re-use of Public Sector Information - **ЗАКОН ЗА КОРИСТЕЊЕ НА ПОДАТОЦИТЕ ОД ЈАВНИОТ СЕКТОР (February 3, 2014 година)**

The purpose of the revisions of the Directive on the Re-use of Public Sector Information is to provide for a clear obligation of the Member States to permit the re-use of all available documents, unless the access is restricted or excluded pursuant to the national access to documents regulations and in compliance with the other exemptions provided by the Directive.

With the purpose of facilitating the re-use, the Directive provides that when possible and appropriate, public sector bodies should make documents available in open and machine-readable formats. The new Directive introduces a few important principles which are significant for the legislation on access to and free use of information.

The data sets maintained by public sector bodies should contain:

A. A description of the information contained in data sets and data bases, its thoroughness and coherence. The current text of the law establishes an obligation for a “description of data bases and data sets” and the “procedure for accessing” them. The Directive introduces the requirement for the provision of data, together with metadata.

B. Coherence of the published data and their relevance to other data.

C. Transparency of the criteria forming the charges for access to data sets, registers, etc.

In 2019 a new Directive was adopted - DIRECTIVE (EU) 2019/1024 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on open data and the re-use of public sector information.<sup>10</sup>

### **3.8. Rules for updating the information and ensuring its availability**

The legal regulation of the proactive publication of up-to-date information introduces rules and time frames for its publication.

---

<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1024>

The same is valid for the update of the information subject to publication in the sections "Access to Information".

### **3.9. Accessibility of the content on the Internet sites**

Public bodies, which are obliged to publish information on the Internet, should undertake measures to make that information accessible on their Internet sites by providing a unique address to it, automatic redirection to the new address if changed, and accessibility of the addresses of the published information to the search engines.

### **3.10. Equal opportunities for access to the Internet sites**

The law stipulates that disabled persons may ask access in a form that corresponds to their ability to communicate. However, such obligations are not pertinent to the proactive publication of information. The aim to insure disabled persons access the information publications in formats. When we have such an aim set with regard to the e-services, i.e. a part of the work of the administration, this principle should be applied with regard to the publication of information about the activities of the public body on the Internet.

### **3.11. Assistance to people without technical skills**

The access to information laws require equality of all requestors. It should be considered that the publication on the Internet does not replace the obligation of the public bodies to provide access to information in appropriate form to people with no technical skills to work with a PC and the Internet. In addition, equipping reading rooms in the public institutions is a necessary condition, but should be complemented with rules for assisting the requestors.

### **3.12. Coordination and control over active transparency**

The process of selection of information which should be published on the Internet should not be left only to the discretion of the administration. This issue could be resolved by regulation of the categories of information mandatory for publication by

all obliged bodies and by harmonization of the publications. Besides the legal regulation, this requires the functioning of a centralized specialized body to oversee the implementation of the law, **namely** the Agency for the Protection of Free Access to Public Information (APFAPI).

## METHODOLOGY

### **Tool for monitoring of proactive publication of list of categories of information by APFAPI on the obliged bodies.**

Recommendations to the instrument for monitoring the implementation of the obligations under Article 10.

The Agency has an obligation to keep up-to-date the List of the obliged subjects under Art. 10. This list covers the state bodies in the system of the executive power, the bodies of the judiciary, the legislative body, the municipalities and public enterprises, schools, which are financed from the state budget or from the budget of the municipalities. The total number of these subjects is 1440. The categories include public bodies from the three branches of state power, municipalities and other public authorities, public enterprises, schools, kinder gardens, hospitals, cultural entities ect. The Agency's initiative to monitor the implementation of the obligations under Article 10 should take into account, first, the Agency's capacity to perform such monitoring periodically and comprehensively. Even the use of an automated monitoring system requires much more capacity to cover all obliged entities. The idea of this monitoring is to encourage the obliged subjects to actively publish the information under Art.10. However, it should be borne in mind that the powers and responsibilities for transparency are different for different categories of obligated entities. Some public enterprises, schools do not have enough administrative capacity and resources to maintain their websites.

**Recommendation:** The Agency should direct the monitoring to the executive bodies and the municipalities, and at the next stage to the other obliged entities. Public authorities and municipalities can play a role in encouraging public enterprises financed by them to develop their active transparency.

**Proposed Action:** The Agency may publish on its website model schemes for the publication of public information, thus making it possible to consider the specifics of the obligated entities, their powers and, accordingly, the specifics of the public information they are required to publish. Active transparency is a constantly evolving process and can be supported by ongoing training, monitoring and financial support. The Agency developed questionnaires for monitoring proactive transparency on the basis of Article 10 of the law and on the basis of the existing methodologies for monitoring active transparency in Macedonia, such as that of the Agency itself and the Center for Civil Communications. They are attached to the current document as annexes. They may serve as model publication schemes prepared by the Agency.

## RECCOMENDATIONS

1. Agency for the Protection of Free Access to Public Information to focus on monitoring of the implementation of Art. 10 of the law by central and local government bodies. These public bodies could create the models of good implementation of the law by other obliged entities that operate under their supervision or in their field of action.
2. To Include a clear obligation for specific obliged bodies to publish online (an Internet rule) categories of information related to their specific activities such as courts, legislative, municipalities etc.
3. To develop regulations to specify how often publications should be updated.
4. To set deadlines for publication of the information obligatory for publication in the internal rules for application of the Law on Free Access to Information. The date of publication of the information should appear automatically.
5. When draft amendmends in the law on the re-use of PCI is under preparation, it is recommendable to discuss the inclusion of an obligation to publish the list of public registers and datasets, which each authority maintains.

## ANNEXES

**Annex 1. List of categories of information for state bodies**

**Annex 2. List of categories of information for municipalities**

**Annex 3. List of categories of information for the monitoring for state bodies**

**Annex 4. List of categories of information for the monitoring for municipalities**

**Annex 5. Directions to the technical project for system for Monitoring**

**Annex 6. Model Information Scheme of AICO**

**Annex 7. Information Publication Scheme overview for Senior Executive Staff**