



ACCESS TO INFORMATION PROGRAMME

SOFIA 2013

ACCESS TO INFORMATION IN BULGARIA

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AMERICA FOR BULGARIA FOUNDATION

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Access to Information in Bulgaria 2012 Report

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1. TRANSPARENCY AND CIVIL PARTICIPATION REMAIN PROBLEMATIC

The Access to Information Programme (AIP) presents its 13th report on the access to information in Bulgaria in 2012.¹

We have always believed that transparency of institutions and the conditions for exercising the right of access to information constitute a system of normative acts, policies for their implementation, administrative practices and capacity, litigation and awareness about the right of access to information by both the administration and the citizens. That is why we try to cover the developments in all areas in our annual reports – legislation, implementation and reform policies, proactive disclosure, administrative practices reflected in specific cases of information seeking, the case law during the year.

The recommendations given in AIP previous reports regarding the legislation were related to several problems with the law implementation:

The absence of assigned units within the institutions to implement the transparency principles and the provisions of the law, which creates inconsistent practices, makes the process unorganized and dilutes responsibilities.

Lack of control over the implementation and lack of sanctions for non-compliance with the obligations which results in general irresponsibility.

There are no systematic trainings on the implementation of the obligations and compliance with the litigation which results in incorrect administrative decisions which have been overcome through litigation long ago.

These common problems are rooted in the Access to Public Information Act (APIA) which was adopted 13 years ago. With the development of practices, they have become clearer and need specific legislative solutions.

Policies

Without purposeful transparency policies, the changes will never happen. Experience shows that open government can develop by means of civil participation. That is why the principles which united 8 states to launch the Global Open Government Partnership

¹ All AIP reports *Access to Information in Bulgaria* are available at: <http://www.aip-bg.org/en/publications/annualreports/>.

(OGP) Initiative in 2011 were transparency, civil participation, accountability and technological innovation.²

Bulgaria joined the OGP in September 2011. The expectations were for announcement of the national action plan and public discussion with the responsible institutions and the interested parties. In June 2012, the Government Operational Plan with commitments towards the OGP was adopted by the Council of Ministers and published on the government public consultations web portal.³

Adopting an Operational Plan without public consultation and civil participation would have meant that the government did not respect its commitments. That is why all efforts were channeled to the adoption and the publication of the Operational Plan and several statements in the government public consultations web site.⁴

Thus the initiative has remained in a *section* in the public consultation portal known only to some and no one feels part of it as they have not taken part in its discussion and adoption. The government did not make policies in line with the three pillars of the initiative: transparency, civil participation and partnership.

In the Operational Plan, we find 33 measures which are not bad by themselves but seem like a five-year plan. A serious government intention to implement the measures would have meant a preliminary assessment of the capacity, evaluation of existing transparency problems, interest towards the activities and operational plans of other governments. It is better to have two measures but implementable within a year than numberless plans and strategies.

We find nothing in the Operational Plan about Bulgaria's ratification of the Council of Europe Convention on Access to Official Documents, although this was the first and main question put forth to the OGP coordinator for Bulgaria at the presentation of the National Action Plan in Brazil. There is nothing about the coordination and oversight of the proactive disclosure of information; nothing about assigning a public body responsible for the coordination and oversight of the APIA implementation – an independent institution which, based on other countries' experience, is an important element of the good legislation for transparency and its implementation.

Instead about clear and feasible measures, we read about a new strategy for managing the state debt; a vision for financing NGOs; strategy for developing the mining industry; new law for the underground resources and two more measures for transparency of underground resources; impact assessment of legislation, considering that such an

² Information about the initiative is available on its web site: <http://www.opengovpartnership.org/>. AIP maintains a section on its web site with developments and comments: http://www.aip-bg.org/publicdebate/Инициатива_Партньорство_за_открито_управление/204796/.

³ In Bulgarian: <http://www.strategy.bg/Articles/List.aspx?lang=bg-BG>.

⁴ <http://www.strategy.bg/Articles/List.aspx?lang=bg-BG>.

assessment is at the moment mandatory and the thing that have to be done is to extend the timeframes for public consultation; accountability and transparency of the persons providing health services and the so called electronic health care; several measures related to the corporate social responsibility, viewed as an initiative and, unclearly how and why, a government task; several measures for the register of the registers; the information system of the cadastre; several measures related to the budget transparency and financial accountability which found their legal solution in the recently adopted Public Finances Act⁵ without covering the secondary budget spending authorities included in the Operational Plan; several measures for increasing the transparency of the Council of Ministers and amendments to the APIA with regard to the proactive publication. All this – to be fulfilled in a year. One of the most frequent of the expected results in the Operational Plan is *Improving the publicity and transparency through informing* instead of *Improving the informing through publicity and transparency* which would have shown the rational comprehension of what should be done. It is not possible to improve government transparency by informing since it is the transparency of government that makes citizens more informed and not vice versa.⁶

In fact **transparency** has a simple definition: Openness of government information and its use by the public for civil participation in making policies, exercising control, making business and above all building trust in the institutions.

Government Assessment of the Access to Information Situation

The assessment is being made by government experts and is part of the annual report on the state of the administration on Bulgaria. The evaluation is made on the base of data collected from all administrations within the executive power.

What does this annual report show about the access to information?⁷

For a second year, we observe the tendency of a decrease in the number of requests filed to the executive bodies and increase in the number of refusals compared to the data from previous years.

One of the explanations for the decreased number of filed requests is the increase of information published in the institutional web sites.

⁵ The Public Finances Act was adopted in the beginning of 2013. It established new and clear framework, obligations and duties, including sanctions for non-compliance with the obligation for online publication – Law on Public Finances, promulgated State Gazette, issue 15/15.02.2013.

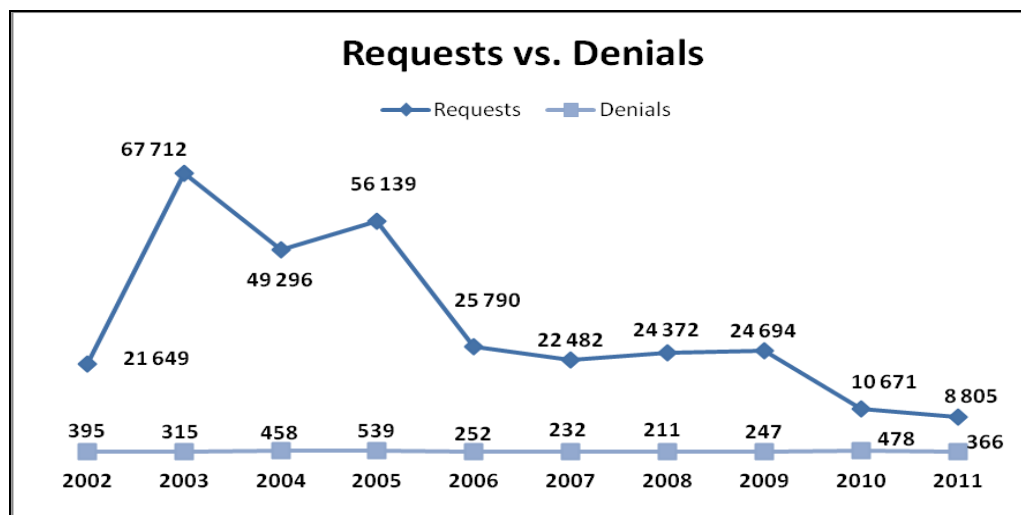
⁶ Comments on some of the measures in the Operational Plan were published in AIP Monthly FOI Newsletter, issue 8(104), August 2012: [Bulgaria: Operational Plan of Undiscussed Strategy](#) (in Bulgarian).

⁷ Pursuant to the *Administration Act*: “Art. 62 (2) (Amended – State Gazette, issue 24/2010) The Prime Minister shall annually, till April 30, present a report on the state of the administration before the Council of Ministers to be adopted by the CoM. The report shall be referred for information to the National Assembly and published on the electronic web site of the Council of Ministers.” On June 20, 2012, the Council of Ministers adopted *The State of the Administration* report for 2011:

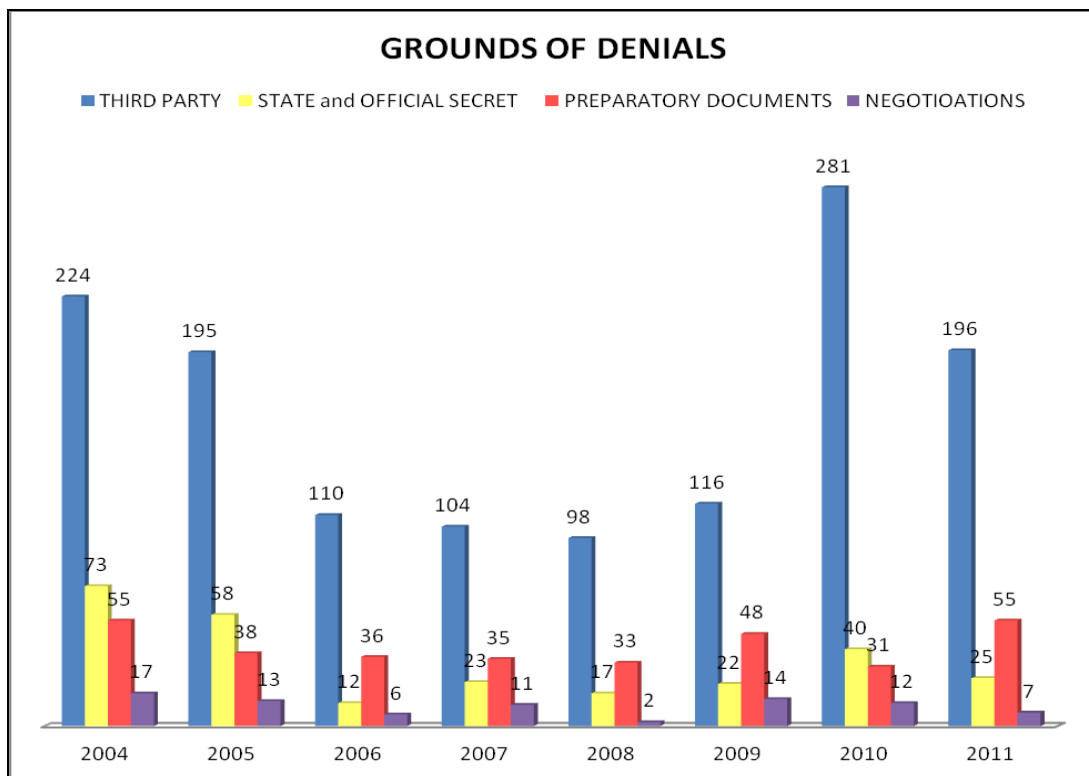
It lacks an analysis and explanation about the increase of the percentage of refusals for provision of information. There is no analysis of the reasons for the permanent tendency of using the ground “the access is of a nature to affect third party's interests and the third party did not give its explicit written consent for the disclosure of the requested public information, unless there is overriding public interest” (Art. 37, Para. 1, item 2 of the APIA).

We find summarized data in the report that out of 8,679 decisions on information requests, after a balance of interests, the decision was in favour of the overriding public interest in 168 cases. An analysis of the cases in which the administration has balanced the interests of the third party with the public interest and has provided the requested information would be interesting.

The report from 2012 presents the situation but differs from the previous reports in the absence of recommendations for overcoming the problems.



The chart is based on the data in the government reports *The State of the Administration 2003-2012*.



The chart is based on the data in the government reports *The State of the Administration 2003-2012*.

It is interesting that there is no data and analysis related to the obligations for proactive publication. Indeed, the legal requirements for the reports of the administration are to contain the number of filed requests, the number of refusals and the grounds for them, but it is extremely important that the report on the state of the administration also analyzes the state of the proactive publication and to outline the problems related to the unfulfilling of the obligations.

AIP Report

It starts with recommendations with regard to the legal regulations and the implementation practices. They are prepared on the base of analysis of the problems in the legislation, assessment of the proactive publication of information, problems stemming from the cases referred to AIP for legal help and consultation, the litigation tendencies.

The report contains an analysis of the access to information legislation from the point of view of problems that have emerged in the process of implementation. The author of the analysis is Alexander Kashumov.

The second part of the report analyzes the results from the audit on online disclosure of categories of information subject to publication by executive bodies. The assessment of 489 web sites was made by Darina Palova, Diana Bancheva, Fany Davidova, Gergana Jouleva, Katerina Kotseva, Kiril Terziiski, Nikolay Marekov, Nikolay Ninov, Ralitza

Katzarska, and Stephan Anguelov. The team of *Svetlozar Online Ltd* developed the software necessary to perform the audit and the rating of the institutions. Gergana Jouleva made the analysis of the results.

The third part of the report makes a review of the cases referred to AIP for legal help and commentary by citizens, partner nongovernmental organizations, and journalists. The analysis of the cases this year outline the most important spheres of public interest in view of information search. The analysis was made by Darina Palova and Fany Davidova.

The fourth part presents the litigation during the year, gives a short description and analyzes the characteristics of court practices during 2012. The review was made by Kiril Terziiski.

As an appendix to this report, we include the comparative results from the Internet sites audits from 2010, 2011, 2012 and 2013, as well as comparative results for 2013 by type of executive body; statistics from AIP internal information system on the cases referred for legal help; annotations of court cases in which AIP has provided representation.

The report outlines the problems related to the access to public information and the openness of government and gives reasonable recommendations for their overcoming.

We honestly hope that the recommendations that we give will be heard by the parties which will go for the forthcoming general elections. The events from the last months have showed the consequences from the deficits in transparency and the effective mechanisms for civil participation and control.

March 2013

Gergana Jouleva

Executive Director of AIP

2. RECOMMENDATIONS

RECOMMENDATIONS RELATED TO THE LEGAL REGULATION

- The government shall undertake steps for the signing and ratification of the European Convention on Access to Official Documents.
- The following amendments to the Access to Public Information Act (APIA) shall be drafted and introduced:
 - To assign a specific public body to supervise, coordinate and control the APIA implementation and to impose sanctions;
 - To list exhaustively and precisely the grounds for refusals in Art. 37 omitting the vague *protection of third party's interests*;
 - To precise and unify the standards for proactive disclosure of information and to provide for sanctions for non-compliance;
 - To assign the officials responsible for finding and sanctioning non-compliance with the APIA in a way that they shall not coincide with and shall not depend on the officials subject to sanctioning;
 - To extend the scope of administrative sanctions under the APIA so that they would cover not responding in the legally prescribed form.
- To narrow the scope of the *List of the State Secrets* appended to Art. 25 of the Protection of Classified Information Act so that the information collected by special surveillance means for the purposes of criminal proceedings, as well as reports on general data about the use of special surveillance means, are not subject to classification as *state secret*.
- To assign the public body responsible for the supervision and coordination of the APIA implementation to issue guidelines for the unification of the requirements for proactive publication of information under Art. 15 and Art. 15a of the APIA and of the internal APIA implementation rules.
- To introduce in the Public Procurement Act an obligation for creating and maintaining of registers of public procurement contracts on the web sites of the contracting authorities.
- To introduce amendments to the Art. 26 of the Law on the Normative Acts which would provide for:
 - A minimum of one month, instead of the current 14 days period, for public consultation on drafts of legislative acts;
 - An obligation for publication of statements and opinions presented during the internal deliberation process and by interested parties and groups as part of the public consultation;
 - An obligation for grounded response to proposals which are dismissed and their publication in the Internet.

- To amend Art. 143 of the Administrative Procedure Code enabling applicants to seek relief from the reimbursement of fees for public bodies' lawyers in cases they lose their court case after demonstrating the public interest of the case.

RECOMMENDATIONS RELATED TO THE INTERNAL RULES FOR THE IMPLEMENTATION OF THE ACCESS TO PUBLIC INFORMATION ACT:

- Regarding the work with requests:
 - Procedure for registering requests filed by electronic mail which excludes the requirement for electronic signature;
 - A place for a review of obtained information (reading rooms) in compliance with § 18 of the Final Provisions of the APIA;
 - Obligation for an informal contact with the requestor (assistance) in the cases when the request has been vaguely or too broadly formulated;
 - The processing of requests to be performed with the active participation of the administrative unit which holds the requested information;
 - The part related to the exemptions should reflect the mandatory instructions delivered by the court in interpretation and application of the law, including the cases of *overriding public interest*;
 - A description of the way by which the factual partial access shall be provided (blackening, etc);
 - A possibility that the requestor authorizes another person to receive the requested information by means of a simple authorization letter and not a letter of attorney;
 - A procedure for provision of information by electronic mail.
- Regarding the proactive publication of information:
 - Assigning an internal unit in charge of and to coordinate the process of proactive disclosure of public information;
 - The precision of the categories of information subject to proactive disclosure;
 - The precision of the procedure for proactive publication of information online and ensuring its timeliness.
- Regarding the oversight: Assigning a unit within the administration to be responsible for the oversight over the work with the requests and the proactive publication of information.

OTHER RECOMMENDATIONS

- Mandatory trainings on APIA for officials in the administration with regard to the obligations for proactive publication of information, the procedure for information provision, the balance of interests test, and the existing litigation.
- The heads of administrative structures should pay special attention to the fulfillment of the obligations under Art. 26, Para. 2 of the the Law on the Normative Acts regarding the:
 - Online publication of all drafts of legislative acts, including the corresponding inducements;
 - Online announcement of the publication date of the drafts and the timeframes for the public discussion of the drafts;
 - Online publication of the results from the discussion of the submitted statements.
- The recommendation about starting the imposition of sanctions on officials who do not comply with the provisions of the APIA remains relevant. Information about these sanctions shall be published in the annual report *The State of Administration*.

3. ACCESS TO INFORMATION LEGISLATION

In the last few years no steps were taken towards amendment of the APIA. Its last significant amendments date back to 2008 when the Council of Europe Convention on Access to Official Documents was adopted⁸. After Bulgaria's accession in 2011 to the Open Government Partnership (OGP), in 2012 the government adopted an Action Plan.⁹ There, among other measures, which in many cases do not demonstrate any visible connection with the topic of access to information, is included a point providing for the amendment of the APIA.¹⁰ The goal is “setting uniform parameters for the timely preparation and publication of information by the administration.” As can be seen, the amendment is designed towards improving the publication of up to date information by public administration. If the next government keeps the said measure on its agenda, which should be expected in view of the international character of the OGP initiative, it would be appropriate to review the APIA through the lens of the practice on its implementation by the administrative bodies, of the questions raised by the information seekers, and of the solutions given in case law so far. The issue of publication of data on the internet acquires further importance in light of the undertaken amendment of Directive 2003/98/EC on the re-use of public sector information.

3.1. OBLIGED SUBJECTS

With the provision of Article 3, Paragraph 1 of the APIA, all state bodies and local authorities are required to provide access to public information. The subsequent case law specified that the legislative and the judiciary are also covered. According to paragraph 2 of the same provision, required to provide information are also the so called public law subjects, among which case law has derived the organizations established by law and performing functions by virtue of a law. For example, such entities are the Central Electoral Commission, the National Health Insurance Fund, the National Social Security Institute, the Bulgarian National Bank and others. The APIA's 2008 amendment introduced a new term – “public law organization.” This notion corresponds to “bodies governed by public law, used in the Public Procurement Act, in the directives on public procurement and in Directive 2003/98/EC.

However, an important category of subjects, whose activities affect a significant number of people, remains outside of the scope of the public law organizations category. These are known in everyday language as “the monopolists.” Out of the legally defined terms

⁸ The text of the convention is available at: http://www.aip-bg.org/pdf/coe_convention_access_official_docs.pdf

⁹ For more (only in Bulgarian) : <http://www.strategy.bg/Articles/View.aspx?lang=bg-BG&categoryId=&Id=4&y=&m=&d=>

¹⁰ The Action Plan is available in English at: http://www.opengovpartnership.org/sites/www.opengovpartnership.org/files/country_action_plans/PLAN-BG-ENGLast.doc and for a fuller version only in Bulgarian see: <http://www.strategy.bg/Articles/View.aspx?lang=bg-BG&Id=9>

the closest corresponding term is “organization providing public utilities” (§ 1, item 5 of the Additional Provisions of the Administration Act), “public utilities” meaning “education, health, water supply, sewage, heating, electricity, gas supply, telecommunications, postal or similar services provided to meet social needs, including as business, in relation to the provision of which administrative services may be to carried out “ (§ 1, item 4 of the AP of the Administration Act). Currently, required to provide information under the APIA are those of them that are “public law organizations,” i.e. more than 50% of their income for the previous fiscal year is funded by a public budget,¹¹ or more than half of the members of their management or supervisory body are determined by a contracting authority of public procurement as in Article 7, items 1 and 3 of the Public Procurement Act. In order for the rest to fall under the same legal requirement, a legislative amendment is needed.

3.2. FILING REQUESTS BY ELECTRONIC MEANS (LEGALITY OF THE REQUIREMENT OF AN ELECTRONIC SIGNATURE)

Article 24, Para. 2 of the APIA provides the possibility for lodging requests by electronic means. In these cases, pursuant to the law, the request is considered in written form. In 2000, when this provision was adopted, Internet access and electronic requests, respectively, were far less common than they are today. Thus, the legislator has delegated to the public authorities the power to determine the conditions for the acceptance of such requests. In the review of the institutions’ internal rules in last year report, it was found that in many cases the treatment of electronic requests was provided. However, in dealing with electronic requests arise additional issues related to the procedure on the handling of requests and on the provision of information.

The first of these issues is related to the requirement by some authorities that the filed requests be signed with an electronic signature.¹² This practice runs counter to the law. The requests in written form, and therefore the requests filed by electronic means, fall under the requirements of Art. 25 of the APIA. In Art. 25, Para. 1, items 1–4 there is no requirement at all for the requests to be signed by the sender. In the administrative practice, when dealing with applications on paper, a problem whether the document is signed or not usually does not arise, since the placement of a signature is a simple matter of effort. However, unlike the ordinary written signature, not everybody has an electronic signature. The possibility of acquiring and using one is limited by factors relating to money, knowledge and skills, as well as interest in reducing time and effort. Thus, the requirement for an electronic signature is not a simple technicality but an obstacle leading to a drastic limitation of the range of potential applicants. This not only violates Art. 25 of the APIA, but also the constitutional principle that everyone has the

¹¹ These are the state budget, the budgets of the State Social Security, of the National Health Insurance Fund, the municipal budgets.

¹² This practice has been observed in the AIP annual surveys and also in some cases received for consultation. See supra the results of the 2013 AIP survey.

right to seek information and the authorities have the corresponding obligation to provide access to the documents in their possession.¹³ The same conclusion can be drawn by way of analogy with the organization of access to official documents of the EU institutions contained in Regulation (EC) 1049/2001. According to Art. 6, § 1 of the Regulation applications shall be made in any written form, including electronic form. As in Art. 25, Para. 1 of the APIA there is no requirement for a signature on the application, in Art. 6, § 1 of the Regulation such is not found, either. In the practice on implementation of the Regulation, however, the electronic signature on applications is not required, even though, due to the vast territory of the European Union, almost all requests are received electronically. One possible reason for the difference in the understanding of some Bulgarian institutions is the narrow scope of the term “electronic governance” (“e-government”) referred to in the Electronic Governance Act, combined with the lack of democratic traditions. Access to public information, administrative transparency, citizen participation in the processes of decision making are excluded from the scope of the term “electronic governance,” which is limited only to provision of electronic services.

3.3. PROVIDING INFORMATION BY ELECTRONIC MEANS

The issue on provision of information by electronic means was raised in our practice¹⁴ recently. The officials are basing their claims on Art. 26, Para. 1 of the APIA, which does not explicitly provide for such a form of access. In reality, though, the citizens have the right of access to any public information, and information on electronic medium is public information (§ 1, item 1 of the AP of the APIA). Moreover, Art. 15 and Art. 15a of the APIA explicitly provide for the disclosure of information, and this without a prior request, through publication on the internet. According to the repealed Order no. 10 of the Minister of Finance (promulgated in the SG. 7 of 23.01.2001), the cost for provision of information by electronic mail are set at 0.30 BGN per 1 megabyte. With the newly adopted order of the Minister of Finance no. 1472 of 29.11.2011 (published in the SG. 98 of 13.12.2011), this cost has been canceled, probably due to criticism laid down in AIP’s previous reports. In other words, the administrative practice of providing access by electronic means exists in Bulgaria since 2001. In this respect, the APIA is again analogous to Regulation (EC) 1049/2001. According to Art. 10, § 1 of the Regulation the applicant shall have access to documents either by consulting them on the spot or by receiving an electronic copy, according to the applicant's preference. Analogous is the provision of Art. 26, Para. 1, items 1 and 4 of the APIA according to which the applicant can review the original on the spot or obtain a copy on a technical medium, according to her/his preference (art. 27, Para. 1 of the APIA). The practice on Regulation 1049/2001

¹³ Article 41, Para. 1 of the Constitution, according to the interpretation adopted in Decision no. 7 of 4 June 1996 on const. case no. 7/1996 of the Constitutional Court.

¹⁴ Due to the multiple objections of the administration on this matter following the lodging of requests during the AIP 2013 audit, we published an opinion here (only in Bulgarian) : http://store.aip-bg.org/stanovishta/2013/Forma_e-mail.pdf

often involves sending copies of documents by e-mail. The foregoing shows that once again there are no obstacles to sending the information by e-mail, but the administrative culture of transparency has not yet been built.

3.4. ASSISTING THE APPLICANTS

In the analysis of compliance of the APIA with the Council of Europe Convention on Access to Official Documents, we have indicated that the national law lacks a provision analogous to Art. 5, § 1 of the Convention, according to which the public authority shall help the applicant, as far as reasonably possible, to identify the requested document. In the same time, Art. 28 of the Administrative Procedure Code entitled “Cooperation and Information from Administrative Authorities” provides the administration with the duties to provide information about its competence, time limits, fees due (Art. 28, Para. 1, items 1 and 3) and to assist in the completion of the forms (item 2). It is recommended that the internal rules of the institutions develop the regulation on assistance to the applicants.

3.5. PROACTIVE PUBLICATION OF INFORMATION

The APIA establishes a general obligation for all structures of the executive to disclose information under Art. 15 and Art. 15a. According to the first of these provisions, this is the information on the functions of the particular administration, data volumes and resources, the contact details of the unit responsible for the receipt of applications, the list of the acts issued. To these categories of data, Art. 15a adds the annual reports on received requests and the internal rules on access to public information and the administered public registers. According to Article 15a, this information is to be published on the institutions’ internet sites and according to paragraph 2 of the same provision, they also have to create in there an “Access to Information” subsection.

The general requirements on the content of the public institutions’ internet sites are provided for in the Electronic Governance Act (EGA) of 2007 and the Ordinance on the Electronic Administrative Services, adopted pursuant to Art. 12, Para. 4 of the Act. EGA’s scope covers the activity of the administrative bodies related to work with electronic documents, provision of administrative services electronically and exchange of electronic documents between the administrative bodies. In other words, the legislation embeds the misconception that governance comes down to the provision of services to citizens and excludes transparency, access to public information and public participation in the decision making process. In this respect, the widespread conception in developed democracies is different. The Ordinance regulates the requirements regarding accessibility and usability of the websites, including the formats which must be used for electronic documents (Articles 63-65 and others).

Article 14 of the APIA provides for cases where the institutions should publish information on their own initiative. Unlike the cases of Art. 15 and Art. 15a, the

publication of information under Article 14 is rather of incidental and not of periodic character. This includes information that could prevent a threat to the citizens' life, health or security, or to their property, as well as information which is, or could be, of public interest. This text provides a wide opportunity for institutions to publish, not only in their respective websites, but in all other ways, relatively broadly defined categories of information. The first group covers cases of calamities, accidents and other similar events, as well as information essential to avoid or prevent ensuing negative consequences. In the second group could fall different types of documents of overriding public interest of disclosure. On the latter grounds could be published online the most frequently requested documents from a particular institution. Taking into account namely the public interest on those topics, for example, in February 2013 were published some documents related to the privatization of the electricity distribution companies and the audit report of the Public Financial Inspection Agency's inspection of "CEZ Bulgaria."

Over the years, the issue on clarifying the categories for publication "list of the acts issued within the scope of [the institution's] powers" and "description of the data volumes and resources, used by the respective administration," laid down in Art. 15 of the APIA, has been raised. In 2008 item 3 of the APIA Additional Provision has been amended so that the notion "acts" explicitly covers the statutory, general and individual administrative acts. This clarification was important in view of the norm's ambiguity, its divergent implementation and the preference of some institutions to limit themselves to publishing statutory administrative acts only. Concerning the "data volumes and resources," such definition is not provided in the law. This notion apparently covers databases and registers, such as the Council of Ministers' legal information system containing decisions, transcripts, orders, protocols and decrees, which is practically accessible to the public since 2009. The topic of the implementation of Articles 14-15a of APIA in practice is discussed in detail in the section of the report, dedicated to the results of the institutions' websites audit.

With the development of Internet and proactive transparency, social realities exceeded the limits set by APIA in 2000. For instance, it is obvious that free online access to the entire legal information system of the Council of Ministers is far wider than the legally required public description of data volumes and resources. Development in recent years is observed concerning online public registers and public finances. A specific category of information, for the publication of which a social need clearly emerged, is the contracts between public bodies and commercial companies.

3.6. PUBLIC REGISTERS

The publication of more and more data online is necessary not only because of demand from users, but also in view of the requirements of Directive 2003/98/EC on the re-use of public sector information. Discussed amendments to the document provide for stricter

publication obligations.¹⁵ The 2012 AIP study of public registers showed that more than 600 of them are available online.¹⁶ Nevertheless, there is no authority to monitor and coordinate their functioning. The review of individual registers showed differences regarding the use of file formats - pdf, doc, xls. Also, some registers are mere lists, while others are complex databases. The last category includes major registers such as the trade register, the public procurement register. Access to these is free, unlike access to the property register and the cadastre. Meanwhile, in early 2013 amendments to the Trade Register Act of 2011 were implemented, according to which in order to access the documents therein the use of an electronic signature or digital number, obtained on the spot in the registry offices, is required. Registered access was introduced for the sake of personal data protection regardless of AIP's opinion that the interest of public access is overriding.¹⁷

In this respect, progress on publishing normative acts, as well as case law, is lagging behind. Despite that in 2008 free online access to the State Gazette was guaranteed by law, the release is in .pdf format. At the same time, there is no Internet portal maintained by a public authority, where the consolidated versions of all normative acts together with their amendments are published.

There is no uniformity in the publication of documents by the judiciary. The website of the Supreme Administrative Court continues to be an unattainable model even today, 13 years after its creation. There is no database where the courts practice is published and arranged by topics. Judicial acts motives in certain categories of cases are never published for reasons of protection of privacy or classified information.¹⁸

The lack of adequate publicity of normative acts and case law leads to the unpredictability of law, lack of awareness of the norms' addressees of their rights and obligations, the low level of protection of fundamental rights, nourishing opaque and inconsistent practices in the administration and courts, and a bad investment climate.

3.7. PUBLIC FINANCES

In 2012, the National Assembly started working on the draft and in 2013 it adopted the Public Finances Act (promulgated in the SG no. 15 of 15.02.2013). The overwhelming part of its provisions enter into force on 1 January 2014. It repeals the current Organic Budget Law and Municipal Budgets Law and introduces into Bulgarian national law Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of Member States.

¹⁵ For more information on revision of the PSI Directive:

http://ec.europa.eu/information_society/policy/psi/revision_directive/index_en.htm .

¹⁶ The statistics are available only in Bulgarian at: <http://www.publicregisters.info/stats/> .

¹⁷ Both opinions are available only in Bulgarian at : http://static.aip-bg.org/stanovishta/2010/11_17_ztr.pdf and also at : http://store.aip-bg.org/stanovishta/2010/11_03_official_secret.pdf.

¹⁸ The grounds for these restrictions lay down in Article 64, Paragraphs 1 and 3 of the Judiciary Act.

Along with the regulation of the structure, formulation, adoption, implementation, budget reporting, the new law also regulates its transparency. The various provisions establishing obligations to proactively publish certain types of information are, for the most part, reproducing already existing norms, legislative texts in recent state budget laws and transposition of obligations under Directive 2011/85/EU. A substantially new element in the Bulgarian legal framework, at all, is the provision in the law of an administrative sanction for failure to fulfill obligations for publishing information or documents online. According to the law, “the mechanisms for independent oversight and analysis in view of increasing the transparency of the budget process elements” are part of the budget framework (Article 1 in conjunction with § 1, item 2, letter “f” of the Additional Provisions of the PFA). Article 20, item 2 of the PFA states that public finances shall be managed in compliance with the principles of accountability and responsibility and a little further - in item 7 of the same provision - the legislator has set the principle of transparency covering as fully as possible the entire budget information (“information on macroeconomic and budgetary forecasts, ... data on the ongoing implementation of the consolidated fiscal program, and methodologies / assumptions used in their drafting”).

The first degree budget spending units (in the terminology of the PFA – “first degree authorities managing budgets” or literally “first degree disposers of budgets”) shall publish their approved budgets, quarterly and monthly reports on budget execution. The institutions having chosen the so called program format for their budgets are also required to publish further data - the definitive projects of the program format of their budgets and quarterly, bi-annual and annual reports of expenses by program. The most numerous obligations for publication rest with the Minister of Finance, who should disclose online information on the impact of tax expenditures on budget revenues, official information on the consolidated debt and on the general government guarantees, published by Eurostat quarterly, the spring and autumn macroeconomic forecasts drafted by the ministry, the annually approved by the Council of Ministers medium-term budget forecast for the next three years, the ministry's guidelines on the implementation of the state budget and the accounts for funds from the EU, the approved budget accounting standards, chart of accounts and instructions related to them, and other information. A normative act of the Council of Ministers shall determine the conditions, manner, time limits and extent of information to be published on the System for Electronic Budget Payments (Art. 157).

Municipal administrations and their mayors, in addition to their obligations for proactive publication as first degree authorities managing budgets also have the specific obligations to publish on their websites information on the public consultation with the local community on the draft budget of the municipality, the budget approved by the municipal council, the annual budget execution report and report on the expenditure of funds from the European Union.

A Step forward in the new law is the introduction of a general obligation for publication by all first degree authorities managing budgets and, furthermore, this requirement does not seem to be limited to the executive power only. The obligation for the Ministry of Finance to publish information is also a progress, which stems largely from the Directive 2011/85/EU.

There is the question of the effectiveness of the system for imposing sanctions provided for in the PFA, as the Minister of Finance combines the most numerous proactive publication obligations and the power to impose administrative sanctions. In terms of this competence is raised the issue whether and how far it is acceptable for an executive power body to control the compliance of the legislative and judicial branches with their obligations for proactive publication. In the law, there is no requirement to publish a short version of the state budget, suitable for non-specialists to understand - the so called citizen budget - although in practice the one for 2013 is posted on the website of the Ministry of Finance.¹⁹

3.8. PUBLICITY OF THE CONTRACTS

The amendments to the APIA in 2008 set a presumption of overriding public interest in providing access to contracts between state institutions and private companies. According to § 1, item 5, letter “f” of the AP of the APIA, information on the essential elements of contracts is not, in principle, a trade secret. In practice, however, it is established that the institutions and their contract partners sometimes consider such information as sensitive. The provision of a relatively large number of contracts on the request filed during the AIP 2013 survey shows that the legal provision, according to which this information’s disclosure is of “overriding public interest” is clear and understandable for the administration. At the same time, the contracts that were provided only partially prove that it is not “know-how” or clients lists that are being protected but the private contractor companies, their representatives or the contract price. This information is not only explicitly defined as publicly accessible in the law, but is also disclosed by most of the institutions during the survey.

According to Article 22, item 2 of the Public Procurement Act (PPA), the Public Procurement Register contains information on the assigned contracts and according to Article 22, item 4 – on the executed contracts. According to Article 5, Paragraph 1, item 9 of the Implementation Rules of the PPA, to the Public Procurement Agency and the Official Journal of the EU should be sent information on the concluded public procurement contracts and according to item 15 – copies from the court decisions, establishing the failure to fulfill such contracts. A review of the entries in the Public

¹⁹ The review of the obligations for proactive publication under the PFA is based on the detailed analysis by Stephan Anguelov in AIP’s bulletin, no. 2 (110), available only in Bulgarian at : <http://www.aip-bg.org/publications/Бюлетин/Закон за публичните финанси задълженията за активно публикув/106685/1000915635/>

Procurement Portal shows that they contain information about the price, the subject and the contractor.

Comparing the entries in the Public Procurement Portal and the contracts received by AIP, shows that some of the data is contained in both forms of information, including the price, the subject, the contracting authority and the contractor. At the same time, contracts have a richer content, as they include the entire agreement. Much of the received contracts are .pdf format scans, which authenticates the document, but the processing of the received information is complicated. On the other hand, the information in the register is in a format that allows for easier using of the data.

While many of the administrations have provided a copy of the contract requested, some of them have obliterated certain data. Namely the price (the Ministry of Economics, Energy and Tourism, the Ministry of Finance, the Burgas Regional Administration), the name of the private contractor company (MEET, the Vidin Regional Administration, the Burgas Regional Administration), the private contractor company's representative's name (Basin Directorate Pleven - Danube Region), the personal identification number of the individual representing the contractor (the Veliko Tarnovo Regional Administration). In this last instance, the obliteration has its legal grounds since although the personal identification numbers of individuals appear in some public registers, their provision, unless with a specific objective provided by law, is sanctioned according to the Commission for Protection of Personal Data's practice. At the same time, information about the price, the parties and the subject of the contract is published in the register, making their obliteration unnecessary, letting aside that it is contrary to law.²⁰

In order to achieve greater transparency and uniformity of practices, it is necessary to provide for the publication of the information filed with the Public Procurement Portal also on the institutions' websites.

3.9. INFORMATION RELATED TO PUBLIC PARTICIPATION

The publication of information related to public participation in the decision making process is provided for in several areas. On the one hand, Articles 26-28 of the Law on Normative Acts (LNA) require the publication of the bills (proposals for normative acts) and of the period for their public discussion. On the other hand, a detailed regulation concerning the so called general administrative acts is provided in Articles 65-72 of the Administrative Procedure Code. Furthermore, in different areas there are specific provisions concerning the publication of drafts of documents and their discussion, such being the specific areas of environment, spatial (territory) planning, etc.

According to Article 26, Paragraph 2 of the LNA, projects for normative acts shall be published together with the motives, respectively the report thereto. These must include

²⁰ See more on the received contracts further in report, in the section on cases AIP has consulted.

the reasons for adopting the bill, the objectives, the financial and other resources necessary for the implementation, the expected results of the implementation, an analysis of compliance with EU law (Art. 28, Para. 2 of the LNA). Practice shows that this requirement is often not met, especially by authorities of the executive and local government. There is also the question whether the obligations under Articles 26-28 of the LNA also apply to the amendments of a normative act. Grounds for a debate on such a question are lacking. Every draft of an act amending the acting legislation is also a proposal for a normative act. In its case law, the Supreme Administrative Court is increasingly taking the view that the failure to fulfill a publication requirement leads to illegality, i.e. to the repeal of the adopted in such an infringement act. Meanwhile, the 14 days period provided in the LNA for discussion of drafts of normative acts is too short. It was revised in 2007, whereas from 2003 to 2007 it was one month. Stakeholders often do not know the opinions of other stakeholder organizations and institutions, since there is no obligation for these opinions to be published and there were even cases of refusals for these opinions to be provided. There is no obligation on public authorities to reply in a substantiated manner why they do not accept given suggestions and criticism, as well as for the publication of these responses.

The lack of implementation, poor implementation and the reluctance of institutions to publish entirely the information necessary for the public discussions on drafts of normative acts lead to poor primary and secondary legislation. This is detrimental to certain social groups. Such legislation is not sufficiently well known in advance by the addressees of obligations. It does not establish the conviction that the wider part of society supports it and recognizes it as needed.

3.10. CONTROL AND SANCTIONS

3.10.1. Established models in Europe

In an increasing number of countries, special institutions are established that have control functions on the implementation of the access to information legislation - Information Commissioner, Commission, Ombudsman, "Poverenik." In Europe, such structures are established in the UK, Ireland, Germany, Hungary, Slovenia, Serbia, Macedonia, Croatia, Montenegro. The functions of the Information Commissioner cover examining complaints against refusals, inspections on the implementation of the law, proposals for amending the legislation and more. In some countries, the competences of the Commissioner also include control on personal data protection. In these cases, her/his administration is organized in two substructures which are respectively dealing with the activity in the two areas - access to information and personal data protection. This is the case in the UK, Ireland, Slovenia and Hungary. There are also examples outside of Europe – Canada. Other countries have adopted a model where the control on access to public information is separated from that of personal data protection and these functions are divided into two institutions. The Information Commissioner is

chosen by parliament or the government. On the European Union level, the competence to examine complaints against refusals of access to information under Regulation 1049/2001 belongs to the European Ombudsman. This function of his goes along with the competence to examine complaints of violations of other fundamental rights of European citizens.

3.10.2. The situation in Bulgaria

In Bulgaria, there is no such institution. The inspectorates have general control functions on the implementation of legislation by the ministries' administrations, which is also including the APIA. In principle, there is no obstacle for the national Ombudsman to examine complaints against refusals under the APIA, but this procedure is not explicitly provided by law, thus sending a complaint her/him involves the clear risk of missing the time limit of a judicial challenge. The Ombudsman's acts are essentially recommendatory and therefore, on that basis also, there is no incentive for referral of complaints under the APIA to her/him. Furthermore, these acts are not subject to appeal in court, thus the procedure before her/him does not lead to a judicial remedy.

In the past few years, the capacity of the executive to coordinate and harmonize practices under the APIA weakens. Until 2009, the Minister of State Administration and Administrative Reform was in charge of the adoption of the institutions' annual report under the APIA as part of the annual report under Article 62 of the Administration Act. In 2009, with the closing of this ministry these functions were passed to a directorate in the Council of Ministers and are currently carried out by a department.

Sanctions are to be imposed either by the respective public authority, or by the Ministry of Justice in cases where the APIA violation was carried out by an obliged body that is not part of the government administration.

3.10.3. Problems resulting from current regulations

Monitoring of existing practices shows that the ministries' inspectorates are not particularly active in the controlling of the APIA implementation. Following a complaint in 2011, the Inspectorate of the Ministry of Labour and Social Policy found no violation in that the director of the Social Assistance Agency does not implement a court judgment under the APIA which had come into effect. When the complaint was directed to the General Inspectorate of the Council of Ministers, the answer, received in 2012, was that it has no oversight functions over the activities of the ministry inspectorates, since such are not included in the list of its powers under Article 46a of the Administration Act. It is more than inappropriate that an inspectorate, which has the power to check ministers for conflict of interest (Art. 46a, Para. 2, item 4 of the AA), could not control the ministries inspectorates.

Sanctions under the APIA are not imposed throughout the years, confirming the suspicions of the inspectorates' inaction in this respect since it is namely as a result of their activities that the violations are established. Also inappropriate is the system where the respective authority is competent to impose administrative sanctions for failure to comply with the APIA to its own administration. In the cases where decisions on requests under the APIA are not signed by specially designated officers, but by the minister, the mayor, etc., it turns out that she/he must sanction herself/himself. So far, and as far as we know, there are no sanctions imposed by the Ministry of Justice to the obliged subjects under Art. 3, Para. 2 of the APIA either.

The activities of the national Ombudsman show that he does not receive any complaints for administrative actions or omissions under the APIA. As regards the activities of the "Administrative and regional coordination" department under the chief secretary of the Council of Ministers, it carries out every year the coordination and preparation of the annual report on the state of administration (Article 59, Para. 1, item 6 of the Organic Rules of the Council of Ministers and its administration). At the same time, there is no political assessment of problems encountered in the administration's functioning and any relevant proposals to remedy them. The lack of a coordinated approach in the institutions internal rules under the APIA, which were the subject of comment in AIP's previous annual report, confirms this.

3.11. RESTRICTIONS TO THE RIGHT OF ACCESS TO PUBLIC INFORMATION

Even during the discussion before the adoption of the APIA in 2000, AIP expressed the view that the grounds for restricting the right of access to information should be clearly and fully listed in a single provision. The version suggested by us was not accepted by the legislator and instead was formulated Article 37, Para. 1 of the APIA. This provision is an attempt to list the grounds for refusal, but it is neither exhaustive nor sufficiently clear. Examples of an exhaustive list of grounds for refusal can be seen in Article 3, § 1 of the Council of Europe Convention on Access to Official Documents²¹, Article 4 of Regulation (EC) 1049/2001,²² Article 4 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.²³ In national law, the best example is Article 20 of the Environmental Protection Act (EPA).

Over the years, it was established that the imprecise wording of Article 37 of the APIA affects the practice, especially in cases where a refusal is formulated. For instance, in each annual AIP report, we find cases of refusals based on protection of trade secrets, personal data and third party interests. For years, refusals based on the protection of a

²¹ Available at : http://www.aip-bg.org/pdf/coe_convention_access_official_docs.pdf

²² Available at : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R1049:EN:NOT>

²³ Available at : <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

third party are leading the statistics – both in the AIP report²⁴ and the official report on the state of the administration. It is not entirely clear what is the proportion between these categories, but the review of individual cases, AIP received, shows that behind the “third parties interests” there are mostly hidden personal information and trade secrets. In the international treaties, the EU Regulation and Article 20 of the EPA there is no such a broadly defined ground for restrictions as the protection of the third party.

Furthermore, in the practice we encounter insufficient knowledge of the law, leading to illegal refusals. There are still cases in which consent is sought from a third party which is an obliged body under the APIA. In these cases, consent should not be sought according to Article 31, Para. 5 of the APIA.

Very often there is no data on carrying out of the balance of interests, under Art. 31, Para. 5 of the APIA, in cases where the third party did not agree on the disclosure of information. According to the cases AIP received for consultation, the operation of such an assessment is the exception rather than the rule. The annual percentage of decisions where the overriding public interest of disclosure is taken into account is not great - according to the report on the state of administration in 2010 it is 2.7%, and according to the report for 2011 is less than 2% (168 out of 8,805 cases).

Third party protection and trade secret protection

The replacement of “protection of trade secrets” grounds with “protection of the third parties’ interests” in refusals leads to the widespread practice of seeking consent by the third party (Article 31, Paragraphs 1 and 2 of the APIA). In the absence of explicit consent in such cases, access is denied without assessing the requirements of Art. 17 of the APIA. Thus is ignored the legal provision according to which the restriction concerning the protection of trade secrets is applicable only if the conditions of Art. 17, Para. 2 are met - disclosure of the information should place the third party in a position of unfair competition by another business person. The burden of demonstrating the damage and proving it are assigned to the administrative authority (Art. 17, Para. 3 of the APIA).

Therefore, according to the law, if there is no justification for the existence of a trade secret, there is no reason to seek the consent of the third party. Instead of proceeding in that fashion, though, the administration is widely applying the search of consent under Art. 31 of the APIA and where there is disagreement or lack of consent by the third party it refuses access. Furthermore, the assessment of existence of an overriding public interest, due under the law, is often not carried out.

Access to Public Information and Personal Data Protection

²⁴ See the statistics for 2012 further in the report.

With decision no. 4 of 26 March 2012 on constitutional case no. 14/2011, the Constitutional Court rejected the application for declaring unconstitutional a text from Art. 25, item 3 of the Access and Disclosure of Documents and Announcing Affiliation of Bulgarian Citizens to State Security and the Intelligence Services of the Bulgarian People's Army Act. AIP was constituted and submitted an opinion on the case.²⁵ Adopting many of the arguments delivered in that opinion, the Constitutional Court reiterated the interpretation laid down in its decision no. 7/1996 on constitutional case no. 1/1996 according to which:

In principle, the protection of personal data of the individuals under Art. 3 of the Act [the persons holding public office or performing public activities] is much more reduced in comparison to the protection of other citizens. Examples of this are the annual disclosure in a special register of data on the incomes, property, bank deposits and their receivables or the declaration of other protected data in order to establish a conflict of interest.

Through that interpretation, the constitutional principle was confirmed whereby public figures, which include government authorities, politicians and civil servants, inevitably and knowingly lay themselves open to close scrutiny by both journalists and the public at large.²⁶

Regardless of the indisputable formulation at constitutional level, in the practice of implementation appear cases of inconsistent interpretation of personal data protection as a restriction to the right of access to public information, and in particular of the balance of interests, provided for in these cases in the APIA. On one hand, Art. 37, Para. 1, item 2 states that access to information shall not be granted in case of lack of explicit consent by the third party, except in cases of overriding public interest. As far as the individual is also a “third party,” this provision should be applied in the cases of personal data protection, the cases of existence of an overriding public interest of disclosure being set out in § 1, item 6 of the AP of APIA. On the other hand, the text of Article 2, Para. 4 of the APIA, according to which “this Act shall not apply to access to personal data,” gives reason to assume that the overriding public interest laid down in § 1 of the APIA should not be taken into account in cases of conflict between the right of access to public information and the right to personal data protection.²⁷

In a series of opinions in 2012, the Commission for Personal Data Protection laid down its view that when there is overriding public interest the right of access to public

²⁵ Available only in Bulgarian at : http://store.aip-bg.org/stanovishta/2012/Stanovishte_PDI_20-02-12.pdf

²⁶ The principle is laid down with a similar wording in the decision of the [European Court of Human Rights in the case of Lingens v. Austria, 1986.](#)

²⁷ Court practice in 2012, according to which the restriction relating to personal data protection is subject to assessment for overriding public interest of disclosure, is outlined later in the report. However the opposite interpretation is not lacking either.

information is prevailing the protection of personal data. In these cases, the provision of access to such data is based on Art. 4, Para. 1, item 5 of the Personal Data Protection Act - it is necessary for the accomplishment of a task carried out in the public interest.

3.12. COSTS AND EXPENSES IN COURT CASES ON ACCESS TO PUBLIC INFORMATION

In 2012, citizens and journalists continued to raise the issue with the conviction of the losing applicant to pay the costs on the case - legal counsel fee. In order to accept the request of the defendant for costs, the courts refer to Art. 143, Para. 4 of the APC and Interpretative Decision № 3/13.05.2010 of the SAC on interpretation case no. 5/2009, which is binding for the courts according to Art. 130, Para. 2 of the Judiciary Act.

However, it is accepted in case law that the payment of costs is borne by the initiator of the proceedings when the court rejects the complaint. Circumstances like “undue legal dispute caused”, “conscious aim” of inducing legal dispute or “objective participation in a series of” unfounded lawsuits should not be taken into account.

According to this interpretation, however, it turns out that the purpose of Art. 143, Para. 4 of the APC goes beyond the function to prevent manifestly unfounded complaints. It remains unclear since the payment of legal counsel fee does not actually compensate the administration. Measures should be taken in order to ensure an exception to the burden of paying the costs on complaints the consideration of which is in the public interest.

4. TENDENCIES AND SOLUTIONS IN ONLINE DISCLOSURE OF INFORMATION

4.1. GENERAL REMARKS

Access to Information Programme previous report *Access to Information in Bulgaria 2011* contains detailed analysis of the developments of the standards, the driving forces, the elements and the legislation regulating the online publication of specific categories of information.²⁸ The developments in Bulgaria have also been outlined. Some of the findings signified in the last year's report are valid for this year as well.

The legislation regulating the proactive disclosure of information online has not been amended in 2012²⁹

The Access to Public Information Act (APIA), adopted in 2000, introduced the general obligation for the heads of executive bodies to publish information related to the powers, the structure, the functions, the responsibilities, the list of the acts issued, the information resources, and contact information of the administrative office responsible for the provision of public information (Art. 15). The 2008 APIA amendments complemented the obligation under Art. 15 with the obligation for *Publication in Internet* (Art. 15a, Para. 1) and introduced a new obligation for the maintaining of an *Access to Information* section on the institutional web sites (Art. 15a, Para. 2). The motivation of the legislators behind the introduction of the obligation for an *Access to Information* section apparently was to facilitate the information seekers. In this section, the internal APIA implementation rules, contacts of the information official/department, and a description of the procedure for accessing the public registers maintained by the public body should be disclosed, as well as the annual reports on the APIA implementation, which the heads of the executive bodies should make and send to be included in the annual report *The State of the Administration* adopted by the Council of Ministers and presented to the National Assembly.³⁰

The legal regulation of the active transparency of public bodies is a complex system. In order to evaluate this system, we have to take into account not only the laws creating obligations for online publication of information covering different aspects of government activities, but we also have to consider the obligations under the legal acts of the local

²⁸ http://store.aip-bg.org/publications/ann_rep_eng/2011.pdf

²⁹ Refer to the analysis of the legislation in the first part of the report *Access to Information in Bulgaria 2012*.

³⁰ Pursuant to the *Administration Act*: "Art. 62 (2) (Amended – State Gazette, issue 24/2010) The Prime Minister shall annually, till April 30, present a report on the state of the administration before the Council of Ministers to be adopted by the CoM. The report shall be referred for information to the National Assembly and published on the electronic web site of the Council of Ministers." On June 20, 2012, the Council of Ministers adopted *The State of the Administration* report for 2011: http://www.government.bg/fce/001/0211/files/200612_Admin_Report_PDF.pdf.

government bodies and the secondary legal acts regulating the procedures for publication in the Internet. An important factor for the assessment of the active transparency is also the online availability of a great number of public registers which public bodies should maintain for the purpose of fulfilling their legally prescribed powers and functions. For instance, the obligation of the municipal councils' administrations to publish and announce the acts of the municipal councils via the Internet is provided by the *Local Government and Local Administration Act*.³¹

4.2. CIVIL AUDIT ON THE ONLINE PUBLICATION

AIP has been evaluating the online publication of information by the public bodies for years. The aim of the first such evaluations performed within the period 2006 – 2008 was part of the campaign for regulation of the obligations for online publication of information. The 2008 APIA amendments introduced the obligations for online publication of specific categories of information and AIP evaluations has become a tool for monitoring the implementation of these obligations. That is why we call our assessments civil audit of active transparency. AIP has developed a range of indicators, integrated in our internal information management system, which allows the evaluation of institutional web sites at any time.

For comparison purposes, the audit is performed during a specific period of time. On the base of the results, we formulate recommendations towards to legislative and executive power with regard to proactive disclosure of information.

What were the recommendations in the 2012 annual report?

- To assign to an internal unit the coordination of the process of proactive disclosure of information online;
- To orient the internal record management systems towards the public;
- To precise the procedure for proactive publication of information online and to ensure its timeliness;
- To unify the process of handling electronic requests without contradicting the requirements of the APIA;
- To assign a unit within the administration to be responsible for the oversight of the APIA implementation;
- To outline measures for enhancing financial and budget transparency, including the public procurement contracts.

A positive development with regard to the legislation regulating financial and budget transparency is the adoption of the Public Finance Law in the beginning of 2013. It

³¹ *Local Government and Local Administration Act* : “Art. 22 (2) (New – SG, issue 69/ 2006) The acts of the Municipal Council shall be announced to the population of the municipality within the timeframe stipulated by Para. 1 via the mass media, the Internet site of the municipality, and via other appropriate means, specified by the Regulations under Art. 21, Para. 3.”

regulates the obligations for proactive publication of the budgets and financial reports of the authorities.³²

This is a considerable step forward, whose implementation we will monitor closely.

In 2013, the civil audit covered 490 institutions – executive bodies at a central, regional and local level, independent government bodies and the National Social Security Institute and the National Health Insurance Fund.

Within the period 7 - 25 January 2013, the institutional web sites were evaluated on the base of 40 indicators, and 3 more for the municipalities' web sites. These indicators encompass the standards for active disclosure of information, although the publication on the institution's **own** web site is not always legally bound.

Every year, AIP reviews and updates the indicators for the assessment on the base of several factors:

1. New legal obligations for online publication.
2. More detailed indicators on the base of previous years' observation and experience.
3. Includes indicators on the base of the search for specific categories of information. These categories we determine on the base of systematization and analysis of cases referred to AIP for legal help and consultation and the monitoring of media publications.

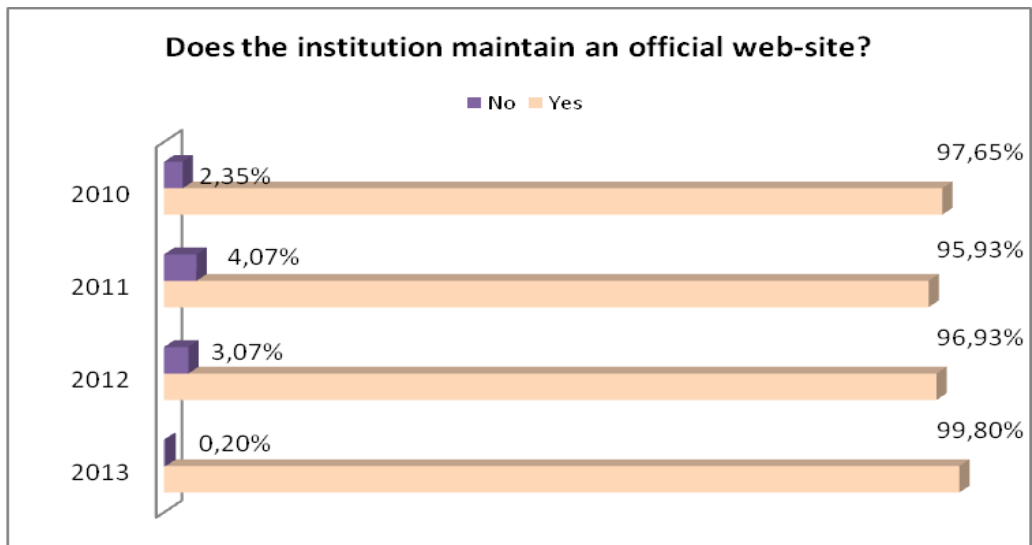
Some indicators evaluate the proactive disclosure on the institution's own web site although not legally bound, but when an obligation exists for publication in a particular centralized register. The publication on the own web site speaks clearly of the practical understanding of the meaning of transparency and not only the fulfillment of an obligation for online disclosure coming from above. This is the situation with the information related to the announcement and assignment of public procurements. Nobody prohibits the authorities to maintain an online register of public procurement tenders and the assigned public procurements, when a big part of that information has to be sent to the Public Procurement Agency. The information about contracted public procurements published in the centralized Public Procurement Register contains data about the contracting authority, the subject of the public procurement, description of the contract, name and address of the executing party, the price, relation to the EU funds, etc.

In 2013, we increased the indicators for the municipalities. The AIP team has assessed the online disclosure of urban development plans and construction permits. We have assessed 489 institutional web sites. As of January 25, the web sites of two municipalities were not found – the Municipality of Simitli and the Municipality of Tsar

³² Public Finance Law (SG issue 15/ February 15, 2013).

Kaloyan. After the press conference we held to present the audit results, we were informed that the Municipality of Simitli had its web site and it was evaluated as of February 27, 2013. The Municipality of Tsar Kaloyan responded to the electronic request we filed and provided access to the requested information.

4.3. RESULTS



The results are uploaded on AIP web site and are visualized by type of institution, by indicators, by ways and time frames of response to the electronic requests filed to 490 institutions.

The indicators were quantitatively assessed according to the significance of the information subject to publication in Internet. The results are organized along several big topics which allow comparison with previous years' results of online publication of:

- Institutional information – legal basis of the institution, functions, services provided, data bases and information resources;
- Organizational structure and contact information;
- Operational information – acts, strategies, plans, activities;
- Financial transparency and integrity related information – budgets and financial reports, contracts, conflict of interests declarations, asset declarations;
- Existence and content of the *Access to Information* sections.

Institutional Information – legal basis of the institution, functions, services provided, data bases and information resources

Heads of executive bodies are obliged to publish online up-to-date information about their powers, functions and the responsibilities of the respective administration. A big part of this information is contained in the legal acts and the regulations of the administration which regulate the establishment and the activities of the respective

institution, complemented with special web site sections where a summary of the functions and responsibilities of the authority are published, as well as the services it provides to citizens and legal entities. With regard to the performing of its functions and fulfilling its responsibilities, the administration also maintains information resources, registers, part of which need to be accessible to the public in order to ensure the freedom of civil and commercial contracting and the exercise of certain rights and regulated activities.

The results based on the assessed indicators show increase in the level of proactive disclosure of legal basis regulating the functions and the responsibilities of the authorities with 3% compared to the 2012 results, with the persistent tendency of the poorest performance by the regional units of the central government authorities and the municipalities.³³

There is a considerable increase in the level of publication of information related to the functions of the authorities – 11%. The description of the services provided by the public body is generally well presented on institutional web sites with 86.30% implementation this year.

No considerable improvement is observed with regard to the obligation for publication of a description of the data bases and information resources this year. The reason, we believe, is the unclear formulation of the obligation for a *description of the data bases and information resources, used by the respective administration*,³⁴ and what exactly should be published and updated. Apparently, this obligation needs more detailed definitions and regulation with regard to the content, the formats, and the standards for proactive disclosure.

In 2013, AIP specified the question about the description of the data bases and the information resources. We assessed if the lists of the registers maintained by the respective authority were published, if the registers themselves are online available, and if a description of the registers is available.

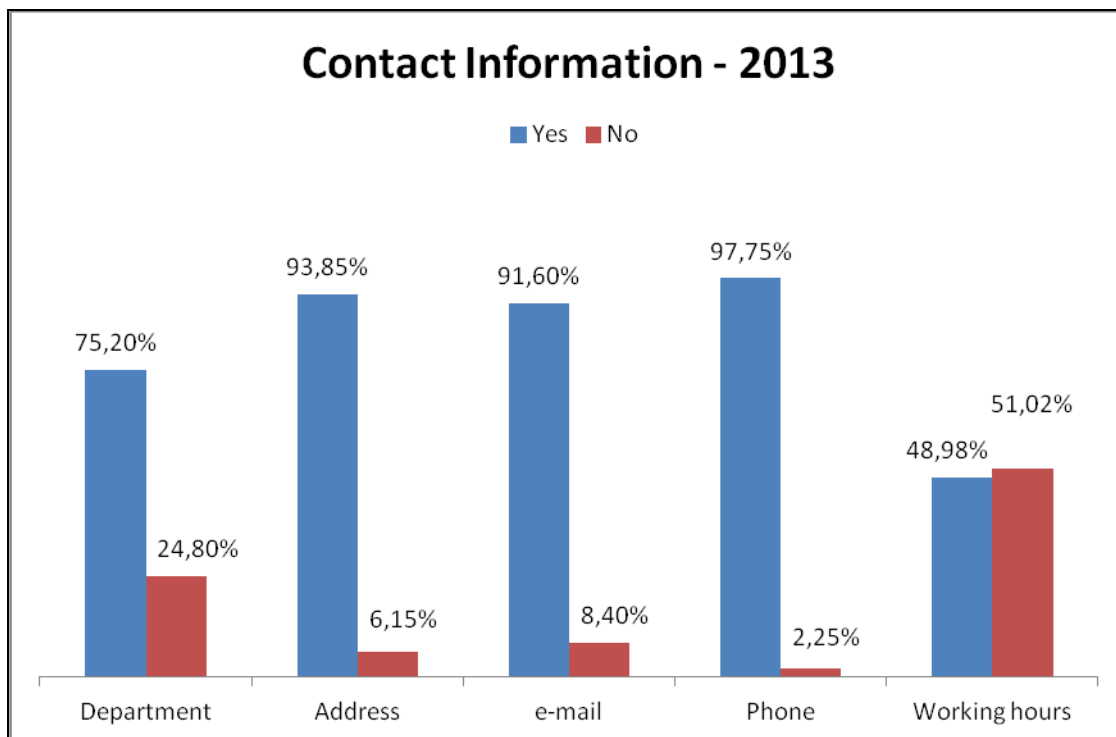
Organizational Structure and Contact Information

Besides the increase in the availability of contact information, we have again observed insufficient level of publication of information about the working hours of the public body.

³³ See Comparative Tables 1 to 10.

³⁴ Art. 15 (1), item 3 of the APIA.

The highest level of implementation is by the municipalities (58%) due to the fact that they work with citizens all the time.



Regarding the availability of information about the structure of the administration, we detect no development. It is, however, worth mentioning that along with the organograms, descriptions of the functions and responsibilities of the directorates and the units within the respective administrative structure appear, as well as the names of the department/unit officials.

Operational Information – acts, strategies, plans, activities and reports

The tendency of increasing disclosure of acts of the public bodies remains stable.³⁵ The overall implementation for 2013 is 84%, the best performance belonging to the central government authorities and the municipalities – 94%.

The tendency of increasing the number of online registers of individual administrative acts also remains stable – 48%, compared to 45% in 2012, and 27% in 2011.

³⁵ According to Bulgarian general administrative law, there are three categories of administrative acts: individual acts are administrative decisions with application to certain individual/individuals; general administrative act is a decision with application to unspecified number of individuals; administrative normative act applies to unspecified number of individuals multiple times i.e. it has the legal character of "rules."

As far as the obligation for publication of the Municipal Council acts is concerned, the level of implementation is very high – 93%.

We believe that the integration of internal information management systems and the attitude of opening the registers of the normative, general, and individual administrative acts of the municipalities to the public is a big step forward to the operational transparency of the public bodies in Bulgaria.

Development plans and strategies have always been actively and well communicated, in contrast to the activities reports of an institution. This tendency is preserved in 2013 as well: 72% of audited public bodies publish their development programs and strategies, and 45% publish activity reports.

Financial and Other Transparency – contracts, budgets and financial reports, conflict of interests declarations

An important element of active transparency is the disclosure of the budget and the financial reports of the authorities. Moreover, the adoption of the budgets is in its essence a consultation process and includes holding of public discussions, especially with regard to the municipal budgets which implies the information of the interested parties well in advance.

The data should be assessed in the context of the time period when the audit was performed – in January, when there is no clearness with regard to the budgets, especially of the municipalities and public bodies different from the central government bodies.

We have observed increase in the financial accountability in comparison to previous years, but the implementation is still very much under 50%.

On the other hand, the contracts of the public bodies remain one of the most sensitive aspects of transparency. In 66% of the evaluated web sites, there is a register of public procurement tenders, but only 10% of the web sites contain information about contracted public procurements.

As regards the disclosure of the declarations under Art. 12 of the *Prevention and Determining of Conflict of Interests Act*, the level of availability of both the lists of officials who have submitted such declarations and the declarations themselves is decreasing despite of the explicit obligation for online publication.³⁶

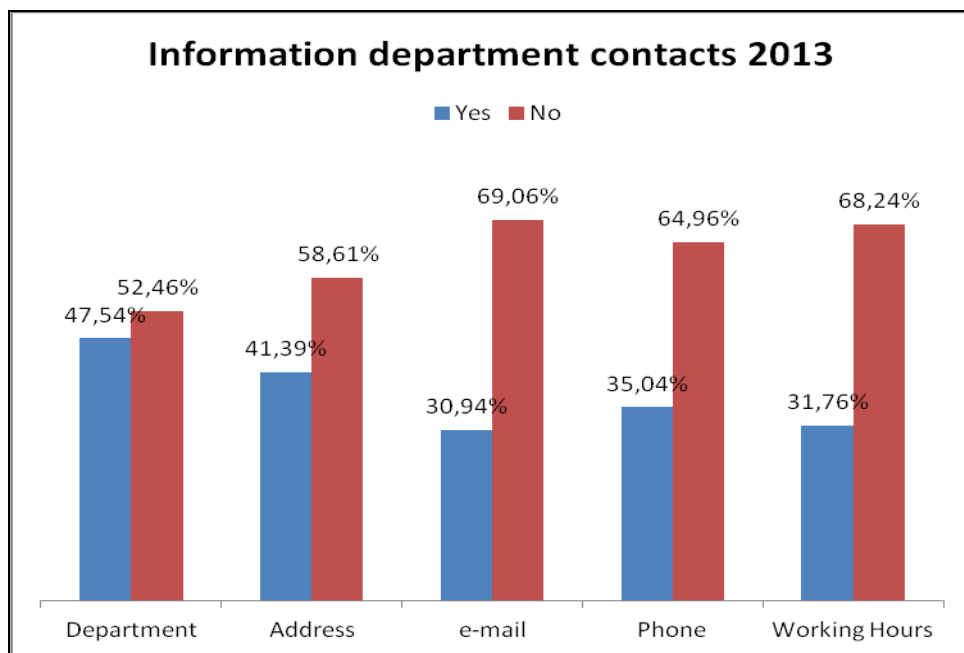
³⁶ See Charts 44 to 47.

Access to Information Section

The obligation for the creation of an *Access to Information* section with a legally prescribed content was introduced with the APIA amendments as of December 2008. The section has the purpose to facilitate and assist requestors or seekers of information by providing clarification on the process within the respective institution and description of the procedure for obtaining access to information, including the procedure for access to the maintained public registers. The section should also contain information about the name of the department responsible under the APIA; the official assigned under the APIA; the address, the phone number, and the working hours of the department. The APIA implementation reports should also be published in the section.

The number of *Access to Information* sections has been increasing – 55% of the institutions have created such sections. However, few have published the information required under the APIA. The implementation of the obligation for publication of a description of the procedure for access to the public registers maintained is very poor – below 10%.³⁷

There are stable tendencies of non-publication of internal APIA implementation rules, the annual APIA implementation reports, contact information of the department responsible for processing APIA requests, the lists of declassified documents, the lists of categories of information classified as *official secret*.



³⁷ See Charts 48 - 60.

Out of the central government authorities, the Council of Ministers, the Ministry of Interior, and the Ministry of Agriculture and Food do not have *Access to Information* sections. The fact that the section can be found in the main menu of only two ministries – the Ministry of Environment and Waters and the Ministry of Justice, while the rest which maintain such a section have placed it under *administrative services* show a particular attitude towards the right of information and defines the position of the administration towards this right and the corresponding duties for its exercise.³⁸

Electronic Requests

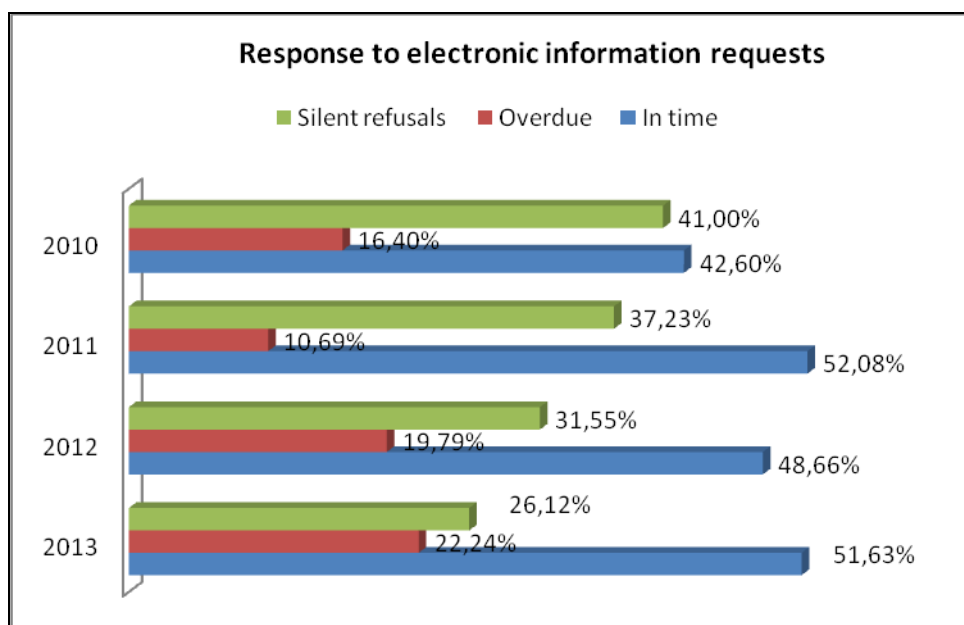
Within the 2013 audit, we filed 490 electronic requests asking for copies of the last contract signed by the respective public body under the Public Procurement Act for 2012. As a rule, these contracts are not published. There is no obligation for their proactive disclosure. There is an obligation, however, to submit a big part of the content of the contract to a centralized register maintained by the Public Procurement Agency which makes certain items of the contracts online available.

The online available information on each signed contract contains data about the contracting authority, the subject matter of the public procurement, description of the contract, name and address of the executing party, price, relation of the procurement to EU funds, etc.

The maintaining of registers of public procurement tenders and contracted procurements on the institution's own web site speaks of a clear understanding of the meaning of transparency and responds to the public interest.

The comparative results of the responds to the requests show considerable decrease of the number of the so called *silent refusals*. The number of decisions within the legally prescribed time frame is comparatively similar during the years.

³⁸ Refer to results by indicators (in Bulgarian): http://www.aip-bg.org/surveys/2013_година/103353/



Detailed results can be seen on AIP web site.³⁹ Moreover, the genuine decisions for granting or refusing access can be reviewed in the section *results by institution*.⁴⁰ Analysis of the responds to the requests can be found in the part *Cases Referred to AIP for Legal Help and Consultation* of the current report.

Active Transparency Rating on the base of the Web Sites Audit Results and the Capacity to Respond to Electronic Access to Information Requests

In 2013 again, AIP made a qualitative assessment of the implementation of the obligations for proactive disclosure of information online. A rating of active transparency was thus created. The maximum score for all institutions was 78.5 and 81.5 for the municipalities due to three additional indicators.

The Rating is uploaded on AIP web site which allows for the visualization of the results by type of public body and shows how the quantitative assessment was accumulated for each institution.⁴¹

The Municipality of Dobrich ranks first for a second year.

³⁹ In Bulgarian: <http://www.aip-bg.org/surveys/db/2013ii/stats.php>

⁴⁰ In Bulgarian: http://www.aip-bg.org/surveys/Резултати_по_институции/206149/

⁴¹ In Bulgarian: <http://www.aip-bg.org/surveys/Рейтинг/200775/>

4.4. FINDINGS AND PROBLEMS

A considerable improvement in the online disclosure of information is observed with regard to the administrative acts of the authorities. The level of implementation with regard to the publication of the municipal councils' acts is good. The active disclosure of budgets, the online availability of registers and public services has been improving.

A great variety in the structure, content and the formats in which the information subject to mandatory online publication is uploaded has been observed.

There is no unification of the institutional web sites, with the exception of those of the Regional Administrations, the Regional Health Inspections, the Regional Inspections on Environment and Waters.

Apparently, few institutions have correlated the process of active disclosure of public information online with the establishment of internal teams whose responsibility is to determine the information mandatory for publication. This conclusion can be also drawn on the basis of the review and analysis of the Internal APIA Implementation Rules of a number of public bodies.

A precision of some of the existing categories of information mandatory for online publication is necessary.

There is no unification of the processing of electronic requests and the provision of information via electronic mail.

The lack of an independent body to coordinate and oversee the proactive disclosure of information online is becoming a main problem for both – the administrations and the citizens.

5. CASES REFERRED TO AIP FOR LEGAL ADVICE AND CONSULTATION

5.1. GENERAL CHARACTERISTICS

Provision of legal help is among the priorities in Access to Information Programme activities. That part of the annual report focuses on the cases referred to us for legal consultation by citizens, journalists, and nongovernmental organizations who have had difficulties exercising their right of access to information. In some of these cases, AIP has provided legal help at the initial phase of the search for information and the legal team has given advice and/or has prepared a request for access to information. In other cases, we have helped after a refusal for provision of information.

(See Appendix 2: *Statistics from the Access to Information Programme Electronic Data Base 2012*).

Number of Cases Referred for Legal Help

The number of cases referred to AIP for legal help within the period January – December 2012 is **311**.⁴² Twenty-six were referred from AIP coordinators in the country. In the rest, the information seekers have requested assistance in our office, by e-mail, or by phone.

Depending on the characteristics and the legal qualification, three types of cases are identified:

- The majority are related to practices of non-fulfillment of the Access to Public Information Act obligations by public bodies – **263** instances;
- Next largest group of cases is related to violations of the right of personal data protection granted by the Personal Data Protection Act – **24** instances;
- In a few cases, we have given legal advice with regard to violation of the right to seek, receive and impart information – **16** instances;
- Cases related to freedom of expression – **4** instance, etc;

Most Active Groups of Information Seekers

AIP experience shows that most frequently the APIA is used by citizens, journalists and nongovernmental organizations (NGOs). In 2012, again the largest number of consultations was provided to citizens who had sought the assistance of AIP - **182** instances. In **66** cases, journalists and AIP coordinators (all of them journalists) from

⁴² The number of consultations is higher – 643 as in some cases more than one consultation was provided.

central and local media asked for legal assistance, while **53** cases were referred to AIP by NGOs.

From Which Public Bodies Do Information Seekers Mainly Request Information?

The number of cases in which information seekers request information from the central executive bodies and the local self-government bodies (mayors and municipal councils) is the largest - **108** and **96** cases respectively.

Less frequently, information was sought from public-law organizations (**20**), regional units of the executive power bodies (22), from the judicial power bodies (**14**), independent government bodies (**14**), etc. (See Appendix 2: *Statistics from the Access to Information Programme Electronic Data Base 2012*).

Most Frequently Used Grounds for Refusal

In 2012, again the number of registered silent refusals is high - **28**. Out of the grounded refusals, the most are related to the third party interests' exemption (Art. 37, Para. 1, Item 2 of the APIA) – **19**; and the personal data protection - **12**. Five are the refusals based on the trade secret exemption and **10** are grounded in the exception provided by Art. 13, Para. 2 of the APIA.⁴³

Specific Characteristics

The number of cases referred for legal help remains stable – around 300. This is valid for 2012 as well. We have, however, observed an increase of the number of consultations in a specific case. In 2012, **643** consultations were given in **311** cases, while in 2011, 330 cases received 579 consultations.

In 2012, the number of NGOs who have addressed AIP for legal advice has increased – in 2011 they were 34, while in 2012 – **53**.

In 2012, a lot of institutions did not respond to access to information requests (the so called silent refusal). The number of refusals grounded on the third party interests is also high. The number of cases referred to AIP by email is also increasing. The number of written consultations provided by e-mail in 2010 was 137, in 2011 they were 219, while in 2012 - **251**.

⁴³ The article provides that access to administrative public information may be restricted if it: 1. relates to the preparatory work of an act by the bodies, and has no significance in itself (opinions and recommendations prepared by or for the body, reports and consultations); 2. contains opinions and statements related to on-going or prospective negotiations to be led by the body or on its behalf, as well as any data relating thereto, and was prepared by the respective bodies' administrations. After the 2008 amendments to the APIA an assessment should be made considering the overriding public interest.

5.2. SPECIFIC EXAMPLES

We hereby will describe some of the most interesting cases, referred to AIP for legal help and consultation. The specific examples illustrate how the APIA is efficiently used by citizens, journalists, and NGOs for making analyses on important public events, for journalistic investigations, or for finding solutions of every-day problems.

5.2.1. INFORMATION ABOUT PUBLIC ISSUES AND EVENTS

Access to information in the energy sector. National Referendum.

Energy related issues are of high public interest and are permanently in the focus of the public debate. Traditionally, the seekers of information in that area during the years were environmental organizations. Their cases were described in previous reports on the access to information in Bulgaria. The review of cases in which information was sought in the energy sector shows persistent unwillingness of every government to provide information, as well as complete lack of transparency of policies in this sector.

What happened with the access to information in the energy sector in 2012?

The traditional seekers of information in the area – the environmental organizations, were joined by business organizations – the Bulgarian Wind Energy Association and the Bulgarian Photovoltaic Association.

In the beginning of 2012, the Bulgarian Wind Energy Association (BWEA) filed two requests for access to information addressed to the State Energy and Water Regulatory Commission (SEWRC) and the Ministry of Economics, Energy and Tourism (MEET). Representing 60 companies in the wind energy sector, the aim of the BWEA was to prepare a report on the current state of the sector and to make it publicly available. With the request, the BWEA wanted to obtain detailed information about preliminary contracts for accession of power production sites from renewable sources; number of concluded preliminary contracts for accession to the power distribution network; geographical distribution of the sites, etc. The SEWRC refused all of the requested information grounding the decision in the provision of Art. 13, Para. 2 of the APIA. The motivation was that the information had no significance of its own. The MEET provided partial access releasing data about the number of signed preliminary contracts. The ministry claimed they did not dispose of information about the geographical distribution of the sites. The refusal of the SEWRC was appealed in the court.

In the autumn of 2012, the Bulgarian Photovoltaic Association (BPA) also tried to obtain information held by the SEWRC. Access was requested to copies of documents filed to the Regulatory Commission by the three power distribution companies in Bulgaria. The SEWRC responded that the subject of the request was unclear. The BPA should have not only listed the requested documents, but also had to describe the information they wanted to receive.

These two cases one more time demonstrate that the interest in the topic is permanent, active and conditioned by the society. The responsible institutions in the sector, however, traditionally remain closed and the decision making process – non-transparent.

Information about the National Referendum for the development of nuclear power in Bulgaria

The energy topic was of particular interest in 2012 mainly due to the organization and holding of the first National Referendum in the democratic history of the country. Bulgarian citizens were consulted about the development of the nuclear power. The procedure for calling a referendum is regulated by the Law on Citizens Direct Participation in the State and Local Government. On March 29, 2012, the parliamentary majority passed a decision for terminating the construction of the Nuclear Power Plant *Belene*. In a response, the opposition drafted and introduced in the parliament a petition for a referendum on the construction of a new nuclear power plant. The final formulation of the question which citizens were to answer *yes* or *no* was: "Should nuclear energy be developed in Bulgaria through the construction of new nuclear power units?" The referendum date was set on 27 January 2013.

The importance of the availability and accessibility of information with regard to referendums on any topic is apparent. Citizens can reasonably answer *yes* or *no* on any kind of a question only if they are aware of the essence of that question, its analysis and expert assessments, which should be publicly available.

A month before the referendum, we reviewed the official web sites of the institutions responsible for the nuclear power, as well as the web site of the Council of Ministers, responsible for the holding of the referendum.

What was published at that moment?

1. A special section *Referendum on the Nuclear Energy* was found on the web site of the Council of Ministers. It contained the so called information list, prepared within the authority given to the CoM by Art. 15 of the Law on Citizens Direct Participation in the State and Local Government.
2. A link to the *Operational Model of the HSBC for Belene* was published in section *Energy* of the Ministry of Economics, Energy and Tourism. However, a presentation in English opened without translation in Bulgarian.
3. The richest information we found was on the web site of the Nuclear Regulatory Agency. Materials related to the licensing of the NPP *Belene* and results from stress tests were published.

We found no economic analysis or forecasts.

Due to the scarce availability of public information, AIP filed two requests for access to information – to the Ministry of Economics, Energy and Tourism (MEET) and to the National Assembly. We wanted to know where in the Internet is published the information which should have been prepared and served as a basis for the decision to initiate the construction of a nuclear power plant and for the debate on such a decision and where it is physically available for reading.

The response of the parliament revealed that they did not have such documentation, while the MEET responded that the only assessments for nuclear safety, the social-economic effect and the management of spent nuclear fuel and radioactive waste dated back to 2005. More importantly, however, as the ministry informed us, they were once online available but are not any more. The only available document was a copy of the *Strategy for Managing the Radioactive Waste till 2030*.

Based on the above, we can justly conclude that the available and disclosed public information by the competent state authorities was extremely insufficient for the citizens to make an informed decision on the referendum question.

5.2.2. ACCESS TO INFORMATION AND JUDICIARY

Transparent Judicial Appointments Initiative

The issue about transparency of judicial appointments was part of the public life in 2012 also in relation to the preparation and running of elections for new members of the Supreme Judicial Council (SJC). The low level of public trust in the judiciary and the EU critics were some of the reasons which motivated a group of nongovernmental organizations to initiate a campaign for greater transparency and reforms in the judicial system and transparency of the elections candidates for members of the Inspectorate of the SJC and the SJC. Thus, under the pressure of the nongovernmental sector, new rules were crafted and more transparent elections were held.

Among the initiatives was the so called civil monitoring of the judicial appointments performed via the web based platform *Transparent Judicial Appointments Initiative*. The Internet site developed and maintained by the Bulgarian Institute for Legal Initiatives (BILI) consolidated public information scattered in different sources about the candidates for administrative-management positions in the branches of the judicial power. For each candidate for a key position in the judiciary, a standardized profile was created summarizing all available information about them serving as a basis for an objective and motivated decision. For instance, the profiles contain data about the asset and conflict of interests declarations, information from the personnel file, additional information obtained under the APIA, even information about assets of relatives of the candidate.

The issue about the transparency of information related to the election of inspectors in the Supreme Judicial Council's Inspectorate, as well as information about the work of the Inspectorate itself, was raised before the court as well. A request was filed by the BILI for a statement, prepared by the Inspectorate acting on a signal for inspection on a judge, later nominated by the National Assembly for Inspector with the Inspectorate. Access to the requested information was refused on the ground of the third party's interest exemption. The Administrative Court Sofia City repealed the refusal. The court held that there was overriding public interest in the disclosure of that information which would increase the Inspectorate's transparency at a time when it was especially necessary because the judiciary was subject to increased public attention.

The Ministry of Interior refused information about the award of the new Prosecutor General

After journalistic investigations in 2011 revealed disturbing practices of the Ministry of Interior (Moi) accepting private donations, in 2012 the ministry has become in the focus of the public debate again – this time in relation to the election of the new Prosecutor General. The reason was allegations that the candidate for the position Sotir Tsatsarov had received an award from the Moi – a gun, in his capacity of Chairperson of the District Court – Plovdiv, although under the Judicial Power Act magistrates may be awarded only by the Supreme Judicial Council (SJC). Tsatsarov told about the award from the ministry during his hearing before the SJC but later the minister of the interior refused to give any details. In November 2012, the BILI filed a request to the Moi asking if Sotir Tsatsarov had received an award under Art. 216 of the Ministry of Interior Act in his capacity of Chairperson of the District Court – Plovdiv. The time frame for response to the request was extended in order to obtain Tsatsarov's consent. After that the Minister of Interior refused to provide access on the ground that “in its essence the information constituted personal data of Sotir Tsatsarov.”

With the assistance of AIP, the refusal of the minister was challenged before the court. The case with the gifted gun raises again the question where does the limits of relations between the executive and the judicial power lie and shows in practice how the refusal of information may harm only the institutions.

5.2.3. BREAKTHROUGHS

Seeking information from monopolists/companies providing public utilities

Seeking information from the so called monopolists has always been of serious public interest. There is a development during the last years in view of the new possibilities for seeking information from such companies. Before the latest amendments in the Access to Public Information in 2008, obtaining such kind of information was almost impossible due to the lack of legal regulations to cover these companies as bodies obliged under the law. The 2008 amendments to the APIA extended the scope of the obliged bodies

adding to the *public-law entities* the *public-law organizations*. As a result of several specific cases in 2012, the question was raised if heating companies were obliged bodies, more precisely, the Sofia Central Heating Company “Toplofikatsiya Sofia” JSC.

In the case of the citizen Yulian Tsankov, he addressed us in seeking information from “Toplofikatsiya Sofia” JSC about the formation of the delivery price of heating energy for a certain period of time. With the assistance of AIP, the citizen filed a request to the company. “Toplofikatsiya Sofia” JSC refused access grounding the refusal on the statement that it was a company and was not obliged to provide information. As a result of the litigation initiated by the citizen, the court held that “Toplofikatsiya Sofia” JSC was an obliged body in its capacity of public-law organization under the APIA and ruled that the executive director should decide on the access to information request. The court decision was followed by other cases of seeking information from such type of companies in the country.

Transparency of Public Officials' Remunerations and Bonuses

The remunerations of public officials have often been subject of interest to journalists and citizens. In 2012, the public interest focused on this topic after it was revealed that officials from state institutions received bonuses for 2011 in the form of *additional material stimulus* despite the officially announced government position that there was not budget for such.

The lack of transparency about the amount of the received bonuses and the criteria for their distribution resulted in serious debates and triggered the interest of citizens, journalists, and politicians to obtain specific answers.

It is certain that both the discussions and the actions undertaken to give answers to the unclear questions preconditioned future stable practices of transparency of information.

The public pressure forced the administration to release a big part of the missing information. For instance, the Ministry of Foreign Affairs provided complete access to the bonuses paid to the ministerial officials besides their remunerations. Also, it became clear that in some institutions unscrupulously big amounts of bonuses were distributed and the recipients had to leave their positions. Other officials at high positions were fired after they refused to follow the prime minister's recommendation to transfer the bonuses in a special donation account.

At the same time, the Commission for Personal Data Protection was addressed with several demands for official statement on the question if the information about the received remunerations and bonuses was personal with regard to public officials. In one of those cases, the Commission was addressed by members of the parliament who were asking if there was a violation of the personal data protection if the requested

information explicitly excluded the names of the officials, as that was used as ground for refusal of information by a number of ministries.

In its Statement No. 1094/12.03.2012, the Commission held that the information about bonuses received in 2011 in addition to the main remunerations of the ministerial officials constituted personal data only if the information may identify a particular physical person. According to the Commission, in such cases, a possible condition for permissibility of processing the information by dissemination and provision of the data is necessary for the accomplishment of a task carried out in the public interest.

One of the most important steps towards the resolution of the debate on the transparency of the information related to the bonuses of the administration was made by the court. During the year, the court ruled on several cases of refusals of such type of information.

In one of those cases, a request was filed by the journalist Dinka Hristova from the *Sega* daily. She requested information if bonuses were distributed within the Ministry of Labor and Social Policy and on what criteria. Access was denied on the grounds that the requested information constituted personal data and the consent of the third parties was necessary for the disclosure. The Administrative Court Sofia City repealed the refusal holding that there is overriding public interest in the disclosure of the information about the amount and type of bonuses distributed within the institution and it should not be refused. The Supreme Administrative Court upheld the arguments of the first instance court with a decision No. 178/08.01.2013.

5.2.4. CHANGE OF PRACTICES

In several cases from 2012, due to timely signals from information seekers about wrongdoings in the work of the institutions, changes of information provision practices were achieved. We present two cases from the City of Varna which demonstrate how the active civil position and the good knowledge of rights can often be beneficial.

The Municipality of Varna ceased to require the APIA requestors to provide personal identification number

In March, while filing an information request to the Municipality of Varna about the work of the municipal police, the citizen Nikolay Tsvetkov realized that the personal identification number of customers of any municipal services, but also of Access to Public Information Act requestors, was required. The reason was the integration of a new software requiring a personal identification number at the entering of any document. Tsvetkov refused to provide his identification number for the registering of the request, quoting the provisions of the APIA according to which only the names, the address, and the description of the requested information were required. The municipal official refused to register the request, but kindly advised the citizen to send the request by post

because thus he would avoid the requirement to give his personal identification number. AIP was informed about the incident and AIP coordinator in Varna – the journalist Krastina Marinova, checked up the case by attempting to file a request herself. The municipal official refused to register the request without a personal identification number again. Marinova was persistent and as a result of a conversation with the head of the department, her request was accepted without a personal identification number. Later, the municipality changed the practice and stopped requiring personal identification numbers from access to information requestors.

0.09 BGN for a page instead of 2.5 BGN

The second case is related to a practice in the Regional Directorate of the National Construction Control – Varna to collect fees for the provision of information different from the stipulated in the APIA. We were again informed about this practice by Nikolay Tsvetkov who was asked to pay a fee too high for information provided under the APIA – 2.5 BGN for a copy of a page. For comparison, pursuant to Order No. 1472/2011 which determines the fees for disclosure of public information – a copy of a page is 0.09 BGN. The explanation of the Regional Directorate for the higher fee was that the fees were determined under the regulation of Tariff No. 14. This Tariff is related to the provision of information as part of the administrative services and is about the fees collected by the Ministry of Regional Development and Public Works and by the Regional Governors and its implementation in relation to information requested under the APIA was not appropriate. After conversations and clarifications made by AIP, the Regional Directorate of the National Construction Control reconsidered their position.

5.2.5. GOOD PRACTICES IN PROACTIVE DISCLOSURE

For the 13 years of the APIA, the implementation practices have considerably developed. The institutions have acquired the attitude of not only responding to information requests, but also of proactive disclosure of public information. A considerably positive development is the initiative of some institutions to publish online documents for which there is no explicit legal obligation.

Publication of contracts

There is no explicit legal provision which binds the state bodies to publish their contracts. Nevertheless, some heads of public bodies have realized the high public interest in such type of information and started to disclose these documents. Positive examples in this regard are given by the Municipality of Dobrich which published some of its signed contracts. The same has done the Control-Technical Inspection of the Ministry of Agriculture and Food. The Municipality of Momchilgrad have published the contracts for financial aid under different European project.

Publication of urban development plans

Another positive development in the proactive disclosure is the publication of the urban development plans by some municipalities. Currently, these are the municipalities of Bansko, Batak, Belovo, Varna, Dolni Chiflik, Kostinbrod, Maritsa, Pernik, Pleven, Plovdiv, Sofia Municipality, Tundzha, and Yambol.

In 2012, amendments to the Town and Country Planning Act were introduced which created the obligation for the municipal administrations to publish in their Internet sites the drafts of urban development plans and their amendments. Most of the municipalities have not done this yet, probably because the obligation is new.

Publication of construction permits

Lastly, as a positive practices of proactive disclosure of information, we will signify the publication in the Internet of the issued construction permits by some municipalities. The data from our audit on the web sites of the institutions show that this was done by 16 municipalities (out of a total of 264).

5.2.6 CASES WHICH SHALL NOT HAPPEN

We are still witnessing cases characteristic for the first years of the law implementation. The appropriate application of the provisions of the APIA is a difficult task for some administrations even in not so complicated cases. During the past year, we have assisted information seekers who faced problems, illustrating that some harmful practices exist.

Kancho Bonev in a fight with the administration

With fight and arrest ended Kancho Bonev's request for access to information. Kancho Bonev is deputy-chairperson of the United Civil Association, which is very active in the protests against construction works in the Sea Garden in the City of Varna. His story begins with a request filed to the Regional Governor, who responded to three out of four questions set forth in the request and referred the fourth question to the competent authority – the *Regional Geodesy, Cartography and Cadaster Service* in Varna. This last question was about Order No. PД-20-03-1/30.01.2009 related to the changing of the status of the land of the Sea Garden. Bonev received a decision granting him access to the requested information. When going to the *Cadastre Service* to obtain the information, however, Bonev was given only part of it. So, he decided to signify that he was actually granted partial access to the information in the protocol which was to be signed by the requestor and the providing authority. The Head of the *Cadastre Service* declined to countersign the protocol with the objection in it. She also declined to provide complete access to the information. After that development, the citizen tried to leave the building with the protocol containing only his signature. The verbal fight between Bonev and the head of the *Cadastre Service* ended with a physical fight with the security guard

of the institution and charges for a document theft. The medical examination of Bonev found that the citizen had nasal hemorrhages, bruises at the jaw, the eyebrows and on one of the thighs. He was then taken to the closest police station where he was arrested for hooliganism by the prosecutor on duty while the officials from the *Cadastre Services* were released. In the meanwhile, the Regional Court of Varna stopped the proceedings against Kancho Bonev and sent it to the Prosecutor's Office for investigation of crime under Art. 325 of the Criminal Code.

Refusals of the territorial directorates to provide information

In 2012, we were asked for legal assistance in cases in which the regional units of central agencies refused to provide information despite the explicit provision of Art. 3, Para. 1 of the APIA which obligates the territorial units to provide information on their own. We could not draw the conclusion that this is a regular practice on the base of the cases we received. However, it is a fact that such cases exist.

An environmentalist from the city of Varna filed a request to the Regional Food Safety Directorate. The citizen demanded access to copies of finding protocols issued by the directorate as a result of inspections carried out in the territory of Varna. The directorate refused to provide access although they did not oppose that the information should be provided. They referred the request to the central body in Sofia – the Bulgarian Food Safety Agency (BFSA). The central agency granted full access, requested the documents from the regional directorate in Varna and invited the citizen to obtain them on spot in Sofia. The agency explained that this was the procedure regulated by the Internal APIA implementation rules of the BFSA.

The AIP coordinator in Montana Liubomir Yordanov also reported similar cases. For two years, the territorial structure of the Executive Agency for Hail Suppression has refused to provide to journalists information about the shootings they do against hail clouds, the spent rockets, the caused damage to agriculture, and financial resources allocated to them. The questions to the management of the polygons were transferred to the press center of the Ministry of Agriculture and Food which most frequently answers in writing that "sufficient funds are provided, necessary actions undertaken, and a certain acres of land were protected."

At the end of March 2012, in the Regional Directorate of the National Construction Control – Vratsa, received an order that prohibits the structure to provide information to the media. The order was signed by the Minister of Regional Development and Public Works Lilyana Pavlova, who ordered the reporters to get the data they require only from the press center or from the official web site of the ministry.

We have repeatedly noted that such practices are not only in violation of Art. 3, para. 1 of the APIA, but they actually hinder the work of the administrations which refer documents to each other instead of deciding quickly and efficiently on the request.

In conclusion, we recommend to the central executive authorities with regional structures to explicitly include in their internal rules on access to information a clear procedure for regional units to independently provide access to information.

5.3. PERSONAL DATA PROTECTION

In 2012, AIP continued receiving for consultation cases concerning violations of the right to protection of personal data, a part of the citizens' privacy. Let us mention some of the emblematic cases that caused an active public reaction. The first two cases show attempts by personal data administrators to process a larger amount of personal data than actually needed for accomplishing the stated purposes, thus infringing the principle of proportionality of data processing laid down in Article 2, paragraph 2, item 3 of the Personal Data Protection Act (PDPA).

Registers of children between 0 and 7

"Public transportation subscription cards for babies too" – similar humorous titles appeared on the pages of the print and electronic media in the late summer in 2012. At the same time a parent from Plovdiv who was asked for copies of personal documents (identity cards, birth certificate and photo of the child), as a condition for the issuance of a free public transport card for his two-year old child, turned to AIP for legal advice. The question which raised this case is why for the issuing of such cards that only certify, but do not create the right to free public transport, should be established new registers containing annually updated personal data on parents and children. This story started on 21 December 2011 when the Council of Ministers (CoM) adopted Decree no. 352 amending Decree no. 66 of 1991 on setting minimum amounts of the reductions of public transport prices on automobile transport for certain groups of citizens. As a result of these amendments, mandatory issuance of free subscription cards for public transportation to persons between 0 and 7 years old was introduced. The organization of the issuance was to be carried out by each municipality following the Ministry of Transport guidelines. Since no guidelines were published till mid 2012, the municipalities created their own regulations on the issuing of free public transport cards for the children between 0 and 7. Thus it turned out that in some municipalities such as Varna and Plovdiv in implementation of this objective, special new registers have been established for processing of personal data, which should be updated annually.

The AIP team considers that the described case constitutes a violation of the principles of proportionality and expediency of data processing set out in the PDPA. Pursuant to Article 2, paragraph 2 of the PDPA, any action of data processing should be carried out in accordance with the above principles. In this case, in order to respect the principles of the PDPA, the concerned individuals should only prove their right once by producing a proper reference document.

In practice there were established new, completely unnecessary registers of personal data of individuals. We consider and recommend that this practice be stopped and the created registers - destroyed.

Personal data registers for the purposes of parking in Sofia

A similar problem in the implementation of the PDPA – personal data processing not proportional to the stated purposes – emerged concerning the 2012 amendments of the Ordinance on traffic organization on the Sofia Municipality territory adopted by the Sofia Municipal Council. Annex no. 15 (to Article 50a, paragraph 6) of the ordinance determining the “Terms and conditions for issuing a vignette sticker for locally paid parking of vehicles of owners of distinct residential properties falling within the zones of hourly paid parking.” According to the adopted earlier this year amendments, the property owners in the paid parking zones wishing to receive a parking sticker had to file an application, enclosing a copy of an identity card, a copy of the tax paid on the vehicle, a copy of the paid civil responsibility insurance, a copy of a proof of ownership of the property and a copy of a document of payment of a utility bill.

After a heated public debate on the subject, the ordinance and Annex no. 15 were amended, the requirement of copies of the documents was revoked and the number of required documents was significantly diminished.

Currently in order to issue the necessary vignette sticker for parking should be provided only for reference documents (and not copies to be left) certifying ownership of the vehicle and the property.

The police requested personal data of drug addicts

In the end of 2012, several media reported that by an official letter the Sofia Directorate of Interior (SDI) has requested from several health facilities lists containing the three names and personal identification numbers of all drug addicted citizens included in the special methadone programs. The first publication on the case is in the internet edition “e-vestnik”, where a facsimile of the letter signed by a chief of sector in the SDI was also published. The request for provision of the personal data lists is based on Article 159 of the Criminal Procedure Code.⁴⁴ The factual grounds of the request is that the SDI is investigating a series of burglaries in Sofia pharmacies committed by unknown persons, where besides money from the pharmacies had also disappeared drugs. This is why according to the police all drug addicts constitute a class of potential suspects.

⁴⁴ According to this provision “at the request of the court or the bodies conducting pretrial investigations proceedings, all institutions, legal entities, officials and citizens must preserve and hand over these objects, papers, computerized data, including on traffic, which may be relevant to the case”.

The case provoked an instant reaction from journalists and human rights organizations, because obviously a specific group of people could not be presumed as collectively “guilty” only because of their specific health status. Immediately after the publication in the media, AIP published a statement that the actions of SDI constitute a breach of the fundamental principles of the right of protection of citizens personal data as a part of the constitutionally guaranteed right of everyone to privacy. The request for providing lists of persons included in methadone programs violates specific statutory guarantees of personal data protection. The Personal Data Protection Act provides a special, higher protection of health related data. Article 5 of the PDPA prohibits processing (respectively provision to third parties) of personal data, related to the persons’ health. Exceptions to this prohibition are provided for, but they are exhaustively listed in Article 5 of the PDPA and the purposes of criminal proceedings are not amongst them.

The case constitutes also a breach of Article 157, paragraph 1 of the Ministry of Interior Act prohibiting collecting information on citizens based solely on racial or ethnic origin, political, religious or philosophical convictions, membership in political parties, organizations, associations with religious, philosophical, political or trade union purposes, as well as on health or sexual life. In this case there is a discriminatory attitude towards people, suspected as a group of committing a crime solely on the basis of their health status - drug dependence.

Doctors of medicine working in the said methadone programs turned to AIP for legal advice. A motivated refusal for provision of the requested personal data was prepared for the SDI director.

Personal data protection in the use of Special Surveillance Means and traffic data

In 2012, AIP consulted cases related to breaches of the right of personal data protection in the sphere of the use of special surveillance means and traffic data surveillance by the competent authorities. This practice shows, firstly, that there is a broad interpretation of the Electronic Communications Act by the Ministry of Interior bodies, aiming at access to traffic data, and, secondly, that there is no possibility for citizens to have access to any whatsoever information whether special surveillance means have been used against them. In the autumn of 2012 AIP together with attorney-at-law Mihail Ekimdjev and the Association for European Integration and Human Rights filed a complaint with the European Court on Human Rights which was against the whole system of surveillance and wiretapping provided for by the Special Surveillance Means Act (SSMA) and the Electronic Communications Act (ECA).

AIP’s practice in this area is also confirmed by the conclusions made in the 2011 Annual report on the activity of the subcommittee to the Legal Affairs Committee of the National Assembly which carries out the parliamentary oversight and monitoring under Article 34b

of the Special Surveillance Means Act and Article 261b of the Electronic Communications Act (ECA).

The report was published in July on the National Assembly's webpage. It contains aggregated information of the inspections made that show disturbing data. A decrease in the total number of requests for the use of SSMs was reported, but this decrease is due to the newly established vicious practice of combining multiple means of special surveillance in a single request. Regarding the Ministry of Interior bodies the number of requests for the use of SSM has increased. In 2011 an increase of 26% compared to 2010 was reported. The number of people subjected to SSMs increases. In 2011, special surveillance means were applied to 7,881 Bulgarian citizens. This is an increase of 30% compared to 2010. The application of wiretapping as an operative method also grows by 20% compared to 2010.

Based on the inspections results the special subcommittee made the following conclusions which AIP finds deeply disturbing from the viewpoint of the right to privacy:

1. The use of SSMs by competent authorities is not being applied as "extraordinary" means only in cases where all other methods and means of operative research activity and investigations are exhausted. On the contrary, the investigating authorities use SSMs primarily as the most convenient method of gathering information.
2. The scope of investigating authorities and officials authorized to request the use of SSMs and traffic data is too wide. Serious preconditions for violating the rights and freedoms of citizens are created.
3. There is no sufficiently effective control by the judiciary. The oversight activity carried out by the parliamentary subcommittee leads to the conclusion that the refusals for the use of SSMs issued by district courts are not the rule but rather the exception (0,85% of all requests). It is necessary to increase the controlling role of the court and to provide for ongoing and ex post judicial overview of the information collected through SSMs and used by investigating authorities.

In addition to the parliamentary subcommittee conclusions AIP also expresses concern over the ever more frequently observed bypassing of the provided in the ECA judicial procedure of allowing access to traffic data. Next, in the ECA framework lacks a mechanism of informing citizens after a certain period of time and under certain conditions about the effectuated access to their traffic data. Therefore and in the view of achieving an adequate protection of citizens rights, AIP recommends that the legislator adopts the absolutely essential amendments to both laws – the SSMA and the ECA.

5.4. ACCESS TO INFORMATION AND CONTRACTS – RESPONSES TO REQUEST FILED WITHIN THE 2013 AUDIT

The contracting process between state bodies and private persons has always been a topic of particular public interest and the contracts themselves subjects to access to information requests. During the years of APIA implementation, the practices of refusing access to copies of contracts signed between public bodies and private companies has been stable. Of course, in the cases when the contracts are signed under the procedure of the Public Procurement Act (PPA), the citizens have access to the information subject to publication in the web site of the Public Procurement Agency.

The Public Procurement Register available on the Public Procurement Agency web site contains data about all public procurements contracted under the PPA. The data includes the subject of the procurement, the contracting authority, the executing party, the price, the deadlines for execution, the dates of signing. The 2008 APIA amendments guaranteed the minimum publicity of all types of contracts signed by state bodies, public-law entities, and public-law organizations.

Within the 2013 audit on the public bodies' web sites, AIP filed identical electronic access to information requests to all institutions covered by the audit. The subject of all requests was the same – we sought to obtain a copy of the last public procurement contract signed by the respective institution under the procedures of the PPA in 2012. The purpose was to check the attitude of the institutions towards releasing the entire contracts, information from which is available in an online public register on the web site of the Public Procurement Agency.

236 institutions granted full access to the requested information, while 57 – partial. We received explicit refusals from 50 administrations.

We will point out some interesting moments from the audit, which are not apparent from the statistics.

Comparatively small municipalities with not so well developed web sites responded quickly, providing copies of the requested contracts by e-mail without any formalities.

At the same time, some central government authorities, which should have well developed APIA implementation practices, demanded clarifications on the subject of the requests and responded in longer period of time. For comparison, the Municipality of Nevestino provided access to the contract in 6 days after the filing of the request, while the Executive Agency *Electronic Communication Networks and Information Systems* responded after the legally prescribed timeframes, by ordinary post and required the requestor to prove that she had representative authority in the Access to Information Programme. Finally, the Executive Agency explicitly stated that the provision of information by e-mail and in electronic form was not stipulated by the law.

The statistics show that in 57 cases partial access was granted. There is no, however, special statistics that would show what parts of the contracts were blanked. Most often, those were data about the executing companies, the price of the contracts, and in some cases even the date of the signing of the contract. This is strange as all these data are published in the Internet and can be found on the Public Procurement Agency web site.

Lastly, we would like to point out as a positive element that the majority of the institutions did not require payment of fees for the electronic provision of information. Payment of fees was required in only 30 cases. It is worth saying that initially more institutions required payment of fees. In response, AIP sent its official statement justifying the right of free access to information by electronic mail (In Bulgarian: http://store.aip-bg.org/stanovishta/2013/Forma_e-mail.pdf).

The communication with the Ministry of Environment and Waters (MOEW) is also interesting. The officials from the MOEW consulted the Ministry of Finance in order to decide if fees are due for the electronic provision of information. Apparently, the Ministry of Finance assumed that for the provision of information under the APIA via electronic mail, the requestors owe no payment of costs since we have received the requested contract from the MOEW free by e-mail.

Generally, the provision practices under the Access to Public Information Act have been developing in a positive direction. Public officials are aware of the legal procedures and try not to formalize the process. Often, access to information officials contacted us by phone if they had doubts about the subject of the request or needed other clarifications. This is a good and effective method to clear out vagueness and eventually provide the requested information. The stable practice of non-disclosure of public bodies' contracts mentioned in the beginning has apparently been left out. And although there are still some refusals, public officials more and more often decide in favour of the access to information.

6. LITIGATION

Statistics

AIP has continued to provide legal assistance to citizens, nongovernmental organizations and journalists, bringing cases against denials of access to information to the court. In 2012, the legal team prepared 69 complaints and written defenses on behalf of information seekers (45 – on cases brought by citizens, 10 - by non-governmental organizations, 14 – by journalists).

AIP legal team prepared 50 complaints. Before a first instance court – 29 (Administrative court - Sofia city – 16, Administrative court - Sofia region – 4, other administrative courts – 9); cassation appeals against decisions (before the Supreme Administrative Court) – 15 and 4 appeals against court rulings.

Out of the 29 complaints filed with a first instance court, 23 were against explicit refusals of access to information and 6 were against silent refusals.

AIP provided court representation in 74 cases in which access to information had been denied. The legal team prepared 19 written defenses in court cases supported by the organization.

In 2012 were delivered 81 court decisions and rulings in cases supported by AIP (Supreme Administrative Court – 33, Administrative court - Sofia city – 32, Administrative court - Sofia region – 2, administrative courts in the country – 14). In 56 cases, the court ruled in favor of the information requestors, while in 25 – in favor of the public authorities.

The concept of “public information”

The issue of the nature of the information was a subject of debate in several court cases supported by AIP where the administration's refusals were motivated with the allegation that the information does not constitute public information under the APIA and therefore it should not be provided.

By a decision of the 5 January 2012, the Supreme Administrative Court (SAC) upheld a decision of the ACSC repealing the refusal by the Bulgarian National Radio's director to provide information about the number, brands and models of vehicles owned by the BNR. In the text of the decision, the Justices indicated that this information will undoubtedly give the applicant the opportunity to form her/his own opinion about the activity of the BNR related to the acquisition of property by funds from the state budget.⁴⁵

⁴⁵ Decision no. 170/05.01.2012 of the SAC, Fifth Division, on administrative case no. 16146/2011.

By a decision of the 17 January 2012, the SAC repealed a decision of the Administrative court – Sliven, as well as the refusal by the manager of “ViK” – Sliven (the water and sewerage supplier company for Sliven) to provide copies of the minutes of general assemblies held by the company. In the text of the decision, the Justices indicated that the requested minutes are official public information as they contain information on the company’s activities for a certain period of time and the information seeker will clearly be able to form his own opinion about the activities of the obliged body out of these minutes.⁴⁶

By a decision of the 13 February 2012, the SAC confirmed a decision of the ACSC repealing the refusal by the Ministry of justice to provide access to the personal prison file of the last prisoner executed in Bulgaria. The Court held that this information is official public information under the APIA, since from the orders attached to the file, the initial and current reports, the psychological conclusions, risk assessments and other documents prepared during and related to the person's stay in prison until the execution of his sentence, may be inferred and people may form their own opinions about the activities of the obliged under the law subjects – the officials of the General Directorate “Execution of Sentences”.⁴⁷

By a decision of the 19 March 2012, the Administrative Court Sofia City (ACSC) repealed a refusal by the Ministry of Finance to provide access to declarations of independent MPs to direct their full subsidy from the budget to a particular political party. According to the court this information is undoubtedly public, because it is related to the political life of the country and provides an opportunity for citizens to form an opinion about the activities of the entities participating in the political process.⁴⁸

By a decision of the 5 June 2012, the Administrative court – Sofia region (ACSR) repealed a refusal by the mayor of Elin Pelin Municipality to provide the entire administrative file on approving the detailed spatial development plan (DSDP) for designation of a real-estate for the expansion of the airfield in the village of Lesnovo, including a request to assess the need for an environmental impact assessment, management and control of the environment assessment, a declared and duly approved noise map of the site and more. In its judgment, the court held that the requested information is public under the APIA because it concerns public life in the village and affects the legal rights of each of its inhabitants. The court further notes that the development of a DSDP is a process related to the issuance of an administrative act and not to administrative services to citizens.⁴⁹ The ACSR took the same stance in a judgment of 2 July 2012 on another refusal of Elin Pelin’s mayor to disclose information

⁴⁶ Decision no. 881/17.01.2012 r. of the SAC, Fifth Division, on administrative case no. 3126/2011.

⁴⁷ Decision no. 2082/13.02.2012 of the SAC, Fifth Division, on administrative case no. 3992/2011.

⁴⁸ Decision no. 1442/19.03.2012 of the ACSC, Second Division, 34th panel, on administrative case no. 6243/2011.

⁴⁹ Decision no. 448/05.06.2012 of the ACSR, Third panel, on administrative case no. 248/2012.

on the expansion of Lesnovo's airfield. The refusal was again motivated with the assertion that the information is not public because it is related to the provision of administrative services to the citizens and therefore the APIA cannot be applied.⁵⁰

Overriding public interest

During 2012, in several cases supported by AIP, different courts held that there was an overriding public interest in providing access to information and on that ground repealed refusals of the administration.

By a decision of the 12 March 2012, the ACSC repealed a refusal by the director of General Directorate "Execution of Sentences" to provide information on the directors of the Sofia prison for the period 1980 -1990, as well as information on four individuals sentenced to death and executed for their participation in the so called "Renaissance process".⁵¹ The information was requested by the BBT TV journalist Svetoslava Tadarukova in connection with the preparation of a documentary film on the "Renaissance process." The court held that the use of this information for the creation of a film about a significant event in Bulgaria's recent history defines also the existence of an overriding public interest in disclosure of the information.⁵²

By a decision of the 6 April 2012, the ACSC repealed a refusal by the director of the National Customs Agency to provide information whether there are excise customs warehouses other than those of "Lukoil Bulgaria", where measuring instruments under Ordinance № 3 of 19.02.2012 "on the specific requirements and the control exercised by the customs authorities on the measurement of excisable goods" are not installed; which companies operate those warehouses; the list of companies and number of points without installed measuring instruments. The court held that the requested information directly affects the transparency and accountability of the National Customs Agency, and therefore there is an overriding public interest in its provision.⁵³

By a decision of the 19 April 2012, the ACSC repealed a refusal by the director of the National Center for Information and Documentation to provide information related to the university diploma of the former executive director of the State Fund "Agriculture." The court held that in view of facts reported by the media that the former director's diploma is fake, there is an overriding public interest in the provision of this information.⁵⁴

By a decision of the 19 June 2012, the ACSC repealed a refusal by the Supreme Judicial Council's Inspectorate to provide access to an opinion, prepared by the Inspectorate acting on a signal for inspection on a judge, later nominated by the National

⁵⁰ Decision no. 540/02.07.2012 of the ACSR, Fifth panel, on administrative case no. 249/2012.

⁵¹ Or "Revival process" – persecutions against the Bulgarian Turkish and Muslim minorities in the 1970s and 80s.

⁵² Decision no. 1324/12.03.2012 of the ACSC, First Division, 5th panel, on administrative case no. 9777/2011.

⁵³ Decision no. 1885/06.04.2012 of the ACSC, Second Division, 29th panel, on administrative case no. 9957/2011.

⁵⁴ Decision no. 2072/19.04.2012 of the ACSC, Second Division, 28th panel, on administrative case no. 633/2012.

Assembly for Inspector with the Inspectorate. The court held that disclosure of this public information would increase the Inspectorate's transparency and this at a time when it is especially necessary because the judiciary is subject to increased public attention.⁵⁵

By a decision of the 18 June 2012, the SAC upheld a decision of the Administrative court - Smolyan repealing the refusal by the mayor of Smolyan Municipality to provide information on the price of two contracts on domestic waste management. The court held that concerning the price of contracts concluded by obliged subjects under the APIA, the legislator had introduced a presumption of the existence of overriding public interest in its disclosure. Therefore, the requester does not have to prove the existence of overriding public interest for the provision of access to this information. On the contrary, the administrative body, alleging otherwise, should prove it.⁵⁶

By a decision of the 29 October 2012, the SAC repealed a decision of the ACSC, as well as a refusal by the Ministry of Physical Education and Sports to provide information on all its contracts with the Bulgarian Ski Federation in the period January 2007 – May 2011. The court held that the Additional Provisions of the APIA laid down a presumption of overriding public interest in disclosure of the contracts concluded by obliged subjects under the law. Therefore, it is not the requestor who should demonstrate the existence of overriding public interest, but the institution that must prove the absence of such.⁵⁷

Broader range of obliged subjects

In 2012, in case law was again observed broadening of the number of obliged subjects under the APIA.

By a decision of the 14 March 2012, the ACSC repealed a refusal by the director of the Sofia Public Electrical Transport Company JSC to provide information about the purchase and sale of three mourning trains. The court held that the company is a public law organization within the meaning of §1, item 4, letter “b” of the AP of the APIA, because it is established to satisfy a public interest – providing the population of the capital city with public transport (particularly electrical - trams and trolleybuses). Furthermore, more than the half of the members of its management or oversight body are appointed by an authority under Article 7, item 1 or 3 of the Public Procurement Act (PPA), which in this case is the Sofia Municipality.⁵⁸

By a decision of the 14 May 2012, the ACSC repealed a refusal by the Sofia Central Heating Company (“Toplofikatsiya Sofia” JSC) to provide information to a requester on the formation of the delivery price of heating energy for the building he lives in. The court

⁵⁵ Decision no. 4207/19.07.2012 of the ACSC, Second Division, 27th panel, on administrative case no. 3311/2012

⁵⁶ Decision no. 8706/18.06.2012 of the SAC, Fifth Division, on administrative case no. 9760/2011

⁵⁷ Decision no. 13492/29.10.2012 of the SAC, Fifth Division, on a. d. no. 15594/2011

⁵⁸ Decision no. 1379/14.03.2012 of the ACSC, Second Division, 30th panel, on a. d. no. 8142/2011

held that Sofia Municipality (SM) is the sole owner of the SCHC's capital and a public procurement authority under Article 7 of the PPA. In this capacity, the SM determines the management and oversight bodies of the company and exercise management control over it. These conditions are sufficient to determine the SCHC as a public law organization within the meaning of § 1, item 4 of the AP of the APIA. It is not necessary to examine whether the company has received income from the municipal or state budget. Even if it only operates with its own revenue, it is an obliged body under the APIA.⁵⁹

Preparatory documents

By a decision of the 30 January 2012, the Administrative court - Haskovo repealed a refusal by the mayor of Harmanli Municipality to provide a copy of the report on an inspection by the Public Financial Inspection Agency (PFIA). The court held that the Harmanli Municipality did not prove that the requested information is related to the preparatory work on acts of the administrative bodies, and has no significance in itself, nor did it prove that the information contains opinions and statements related to on-going or prospective negotiations to be led by the administrative body or on its behalf, as well as any data relating thereto.⁶⁰

By a decision of the 14 May 2012, the ACSC repealed a refusal by the Sofia Municipality to provide information on a report on a project for the realization of green spaces in Sofia's Vazrazhdane park. The court held that the preparatory documents restriction is only applicable if there is a final act issued by the administrative authority, because in these cases the public can obtain information from that final act. The court indicated that access to the whole report cannot be denied on the grounds of preparatory documents since besides the opinions and recommendations it contains findings with completely independent significance because they reflect the situation at a given time and are not subject to change.⁶¹

Personal data

By a decision of the 24 February 2012, the SAC repealed a refusal by the chairman of the Communications Regulation Commission (CRC) to provide information whether the person appointed as chief secretary had the necessary professional experience for occupying this position. The court panel indicated that the duration of professional work experience is not related to privacy and family life, but is an objectively existing fact. In this sense, access to the requested information does not affect personal data because the applicant did ask about the chief secretary's professional experience in general but whether she/he had the professional experience required under the rules. Therefore, no

⁵⁹ Decision no. 2598/14.05.2012 of the ACSC, Second Division, 38th panel, on a. d. no. 7193/2011

⁶⁰ Decision of the 30.01.2012 r. of the Administrative court - Haskovo, on a. d. no. 778/2011

⁶¹ Decision no. 940/22.02.2012 of the ACSC, Second Division, 22nd panel, on a. d. no. 8937/2011

personal data are concerned but rather access to public information, enabling the applicant to form an opinion about the activities of the obliged subject and, more specifically, whether the rules for appointment of commission staff are observed by the chairman of the CRC.⁶²

By a decision of the 29 October 2012, the SAC upheld a decision of the ACSC repealing the refusal by the Ministry of Justice to provide information about the names and positions of the committee members who had approved non profit legal entities (NGOs) to be subsidized from the 2010 state budget. The court held that the names and positions held by civil servants are not personal data. The Justices referred to the Constitutional Court jurisprudence according to which the protection of personal data of persons holding government position is significantly lower compared to the protection of personal data of other citizens.⁶³

Protection of third party interests

By a decision of the 28 June 2012, the Administrative court - Pleven repealed a refusal by the chief secretary of the Pleven Municipality to provide information on the remuneration of the municipal companies' management. The court held that the requested information concerns the personal remuneration of the managers of municipal companies, which is why the municipality should conduct the procedure for seeking consent from those individuals, and not justify its refusal with the necessity of obtaining consent without it actually being sought.⁶⁴

Classified information – official secret

By a decision of the 18 October 2012, the SAC repealed a decision of the ACSC, as well as a refusal by the Aviosquad 28 (the government airline operator) to provide information about expenses on the Prime Minister's air travel in the country for the period 2009 – 2010. The court held that the information did not fall in the lists of categories of *official secret* for the sectors of transport and communications, established by the Minister of Communications and Transport. In addition, the information requested relates only to the expenses made and not to the destination and time of the flights in order to assume that access would adversely affect a state interest. Information on the costs incurred for flights of the Prime Minister could not be classified information as they are expenses from the state budget the execution of which is reported annually and publicly.⁶⁵

⁶² Decision no. 2726/24.02.2012 of the SAC, Fifth Division, on a. d. no. 9865/2011

⁶³ Decision no. 13502/29.10.2012 of the SAC, Fifth Division, on a. d. no. 8102/2011

⁶⁴ Decision no. 427/28.06.2012 of the Administrative court – Pleven, First Division, on a. d. no. 490/2012

⁶⁵ Decision no. 12949/18.10.2012 of the SAC, Fifth Division, on a. d. no. 12420/2011

Access to information – access to documents

Although in recent years sustainable case law has been established that under the APIA both access to information and access to documents may be requested, because the latter represent information but recorded in a specific form, in 2012 again the court had to repeal refusals of the administration alleging that under the APIA may be requested information, but not documents.

By a decision of the 3 April 2012, the ACSC repealed a refusal by the Ministry of Economy, Energy and Tourism (MEET) to provide information concerning a ministry's opinion according to which the actions of the physicist Georgi Kotev and the Association of free speech "Anna Politkovskaya" cost the state budget 2 million BGN, spent on maintaining the positive image of the Bulgarian nuclear energy industry. According to the court panel, the physical bearer of the information, in this case the respective document – a letter from the director of Directorate "Energy industry security" in the MEET – is not something requested for its material substrate, but for the information it contains.⁶⁶

By a decision of the 28 December 2012, the ACSC repealed a refusal by the National Construction Control Directorate to provide information on the removal of several illegal constructions. The court held that under the APIA may be requested access to specific documents since they are information carriers.⁶⁷

Silent refusals

Jurisprudence repealing silent refusals under the APIA continues to be extremely durable. According to this case law, the only recognized by the APIA possibility of proceeding by an obliged body, upon receipt of a valid application for access to information, is to deliver a motivated decision for granting or refusing to provide access by notifying the applicant in writing of its decision.

By a decision of the 13 January 2012, the SAC repealed a silent refusal by the Ministry of Regional Development and Public Works to provide information about a report on an inspection carried out on the activity of "ViK" – Sliven (the water and sewerage supplier). The court held the case law on repealing silent refusals by the administration is constant and in this case there is no reason to depart from it.⁶⁸

By a decision of the 10 February 2012, the SAC upheld the decision of the Administrative court – Pazardzhik repealing the silent refusal by the mayor of Pazardzhik

⁶⁶ Decision no. 1832/03.04.2012 of the ACSC, Second Division, 37th panel, on a. d. no. 3488/2012.

⁶⁷ Decision no. 7346/28.12. of the ACSC, Second Division, 30th panel, on a. d. no. 8686/2012.

⁶⁸ Decision no. 702/13.01.2012 of the SAC, Fifth Division, on a. d. no. 267/2011.

Municipality to provide information on contracts concluded by the municipality for the provision of services and goods for the period 2007 – 2010.⁶⁹

By a decision of the 23 February 2012, the ACSC repealed a silent refusal by the governor of the National Social Security Institute (NSSI) to provide information on the lump sum, paid to NSSI employees, beside their basic contractual remunerations, as supplementary remunerations (bonuses for Christmas, Easter, etc.) for the period 2008 – 2010. The court held that a silent refusal on an access to information request is unlawful and on these grounds alone it is subject to repeal.⁷⁰

By a decision of the 11 May 2012, the Administrative court – Haskovo repealed a silent refusal by the mayor of Harmanli Municipality to provide information about the amounts of sums (fees, travel, stay and other expenses) paid by the municipality for legal services to law offices for the period 2009 – 2012, as well as about court cases, where the municipality has used the services of attorneys for the same period. The court stated that when an obliged body under the APIA fails to fulfill its obligation to act by an explicit and reasoned decision on a request for access to information, it breaches the requirements on the form of the individual administrative act, and on that ground alone its silent refusal is subject to repeal.⁷¹

By a decision of the 7 November 2012, the ACSC repealed a silent refusal by the Prosecutor's Office to provide information about which questions are answered by the Prosecutor General and which questions are answered by other prosecutors in his stead. Information was also requested whether the Prosecutor General has received a signal by the same applicant on legal violations related to the sale transaction of the notorious "First Alley" in the Sea Garden of the City of Varna and what measures will he take upon the signal. The court held that a silent refusal under the APIA is unlawful and on that ground alone it is subject to repeal.⁷²

By a decision of the 19 November 2012, the ACSC repealed a silent refusal by the Ministry of Physical Education and Sports to provide the criteria and methodology for state financial support to the sports clubs. The court panel stated that the silent refusal is not provided for under the APIA and the administrative authority was due to pronounce its decision on the request for access to information. According to the court this omission cannot be remedied by exposing the reasons for refusal in the trial phase.⁷³

⁶⁹ Decision no. 2077/10.02.2012 of the SAC, Fifth Division, on a. d. no. 4763/2011.

⁷⁰ Decision no. 971/23.02.2012 of the ACSC, First Division, 12th panel, on a. d. no. 4593/2011.

⁷¹ Decision no. 90/11.05.2012 of the Administrative court - Haskovo, on a. d. no. 62/2012.

⁷² Decision no. 5946/07.11.2012 of the ACSC, First Division, 12th panel, on a. d. no. 8703/2011.

⁷³ Decision no. 6447/29.11.2012 of the ACSC, Second Division, 33rd panel, on a. d. no. 7222/2012.

Court decisions implementation

In 2012, we observed a significant number of cases where access to information has been provided after a court had repealed the administration's refusal.

The Ministry of Regional Development and Public Works provided to Yuriy Ivanov (Association "Public barometer" - Sliven) a report on an inspection undertaken by the Ministry Inspectorate on the activities of "ViK" – Sliven (the water and sewage supplier) for the period 2005 – 2010, in relation to a signal on irregularities in the conduct of the public procurement procedure on the water meters supply.

The National Center for Information and Documentation provided to the "168 hours" newspaper access to the information on recognizing the foreign university degree of the former executive director of the State Fund "Agriculture" Kalina Ilieva.

The National Social Security Institute provided to Ivan Djabirov access to the information on sums paid to employees of the institute as supplementary remuneration (bonuses).

The Sofia Municipality provided to Mila Trifonova access to the information related with a project for the realization of green spaces in Sofia's Vazrazhdane park.

The Smolyan Municipality provided to Zarko Marinov ("Otzvuk" newspaper) information on the prices of two municipal contracts on domestic waste management.

The Ministry of Physical Education and Sports provided to the Balkani Wildlife Society information on all its contracts concluded with the Bulgarian Ski Federation for the period 2007 – 2011. The information was originally requested under the form of an abstract (number and date of conclusion, price and subject of the contracts) but after the refusal's repeal the ministry provided copies of the contracts.

The Ministry of Justice provided to the "Klassa" ("Class") newspaper information on the names and positions of the committee members who had approved the nonprofit legal entities (NGOs) to be subsidized from the 2010 state budget.

APPENDIX

APPENDIX 1

Comparative Tables from AIP Audits on Institutional Web Sites 2010 – 2013 and 2013 Results by Type of Public Body

Institutional information - Legal basis of the institution, functions, public services provided, data bases and information resources

Chart 1. Is the legal basis for the powers of the institution available?

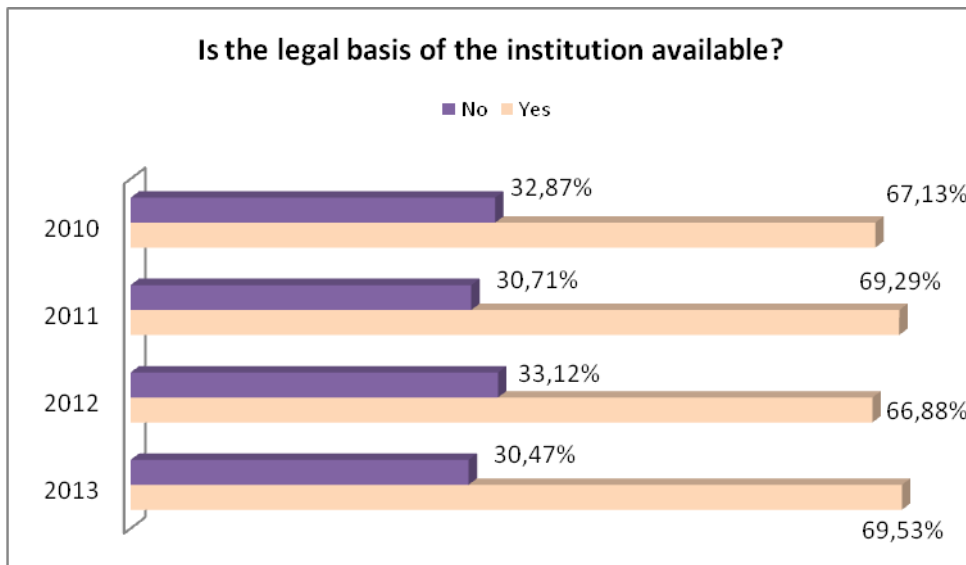


Chart 2. Is the legal basis for the powers of the institution available? (by type of public body – 2013)

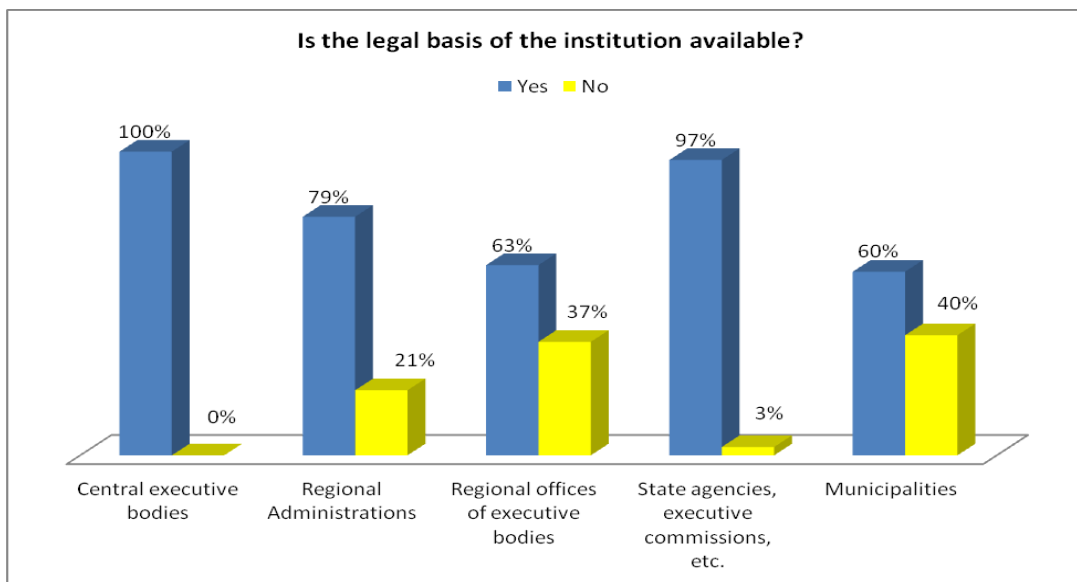


Chart 3. Are the functions of the institution published?

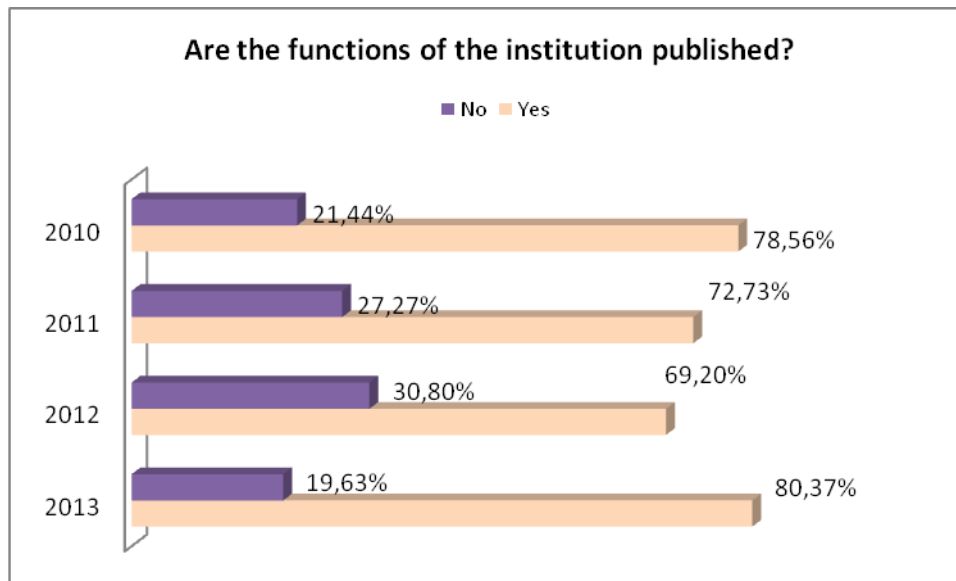


Chart 4. Are the functions of the institution published? (by type of public body – 2013)

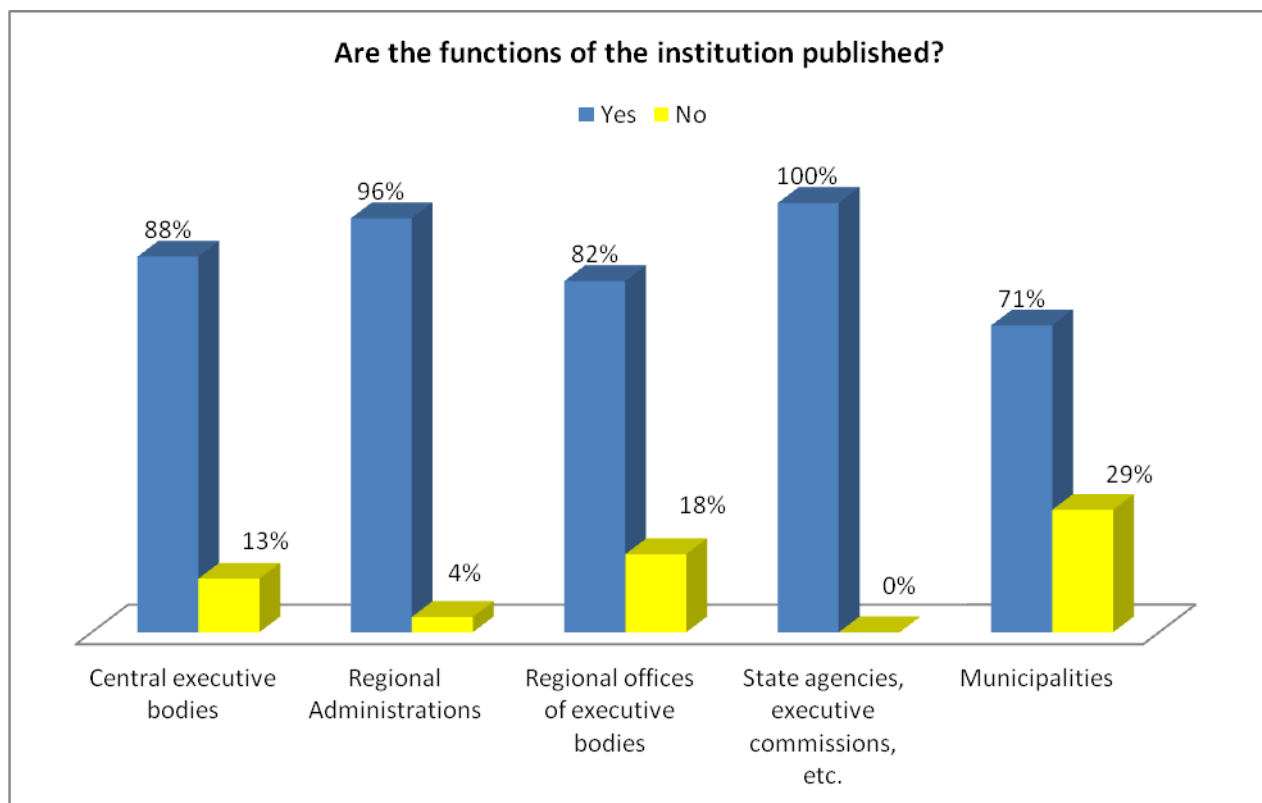


Chart 5. Is a description of the public services provided by the institution published?

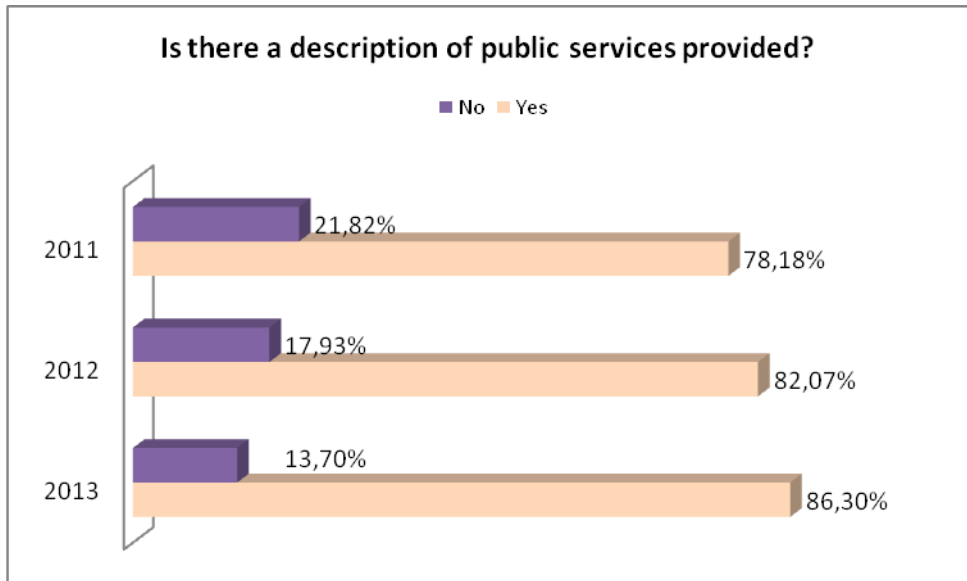


Chart 6. Is a description of the public services provided by the institution published? (by type of public body – 2013)

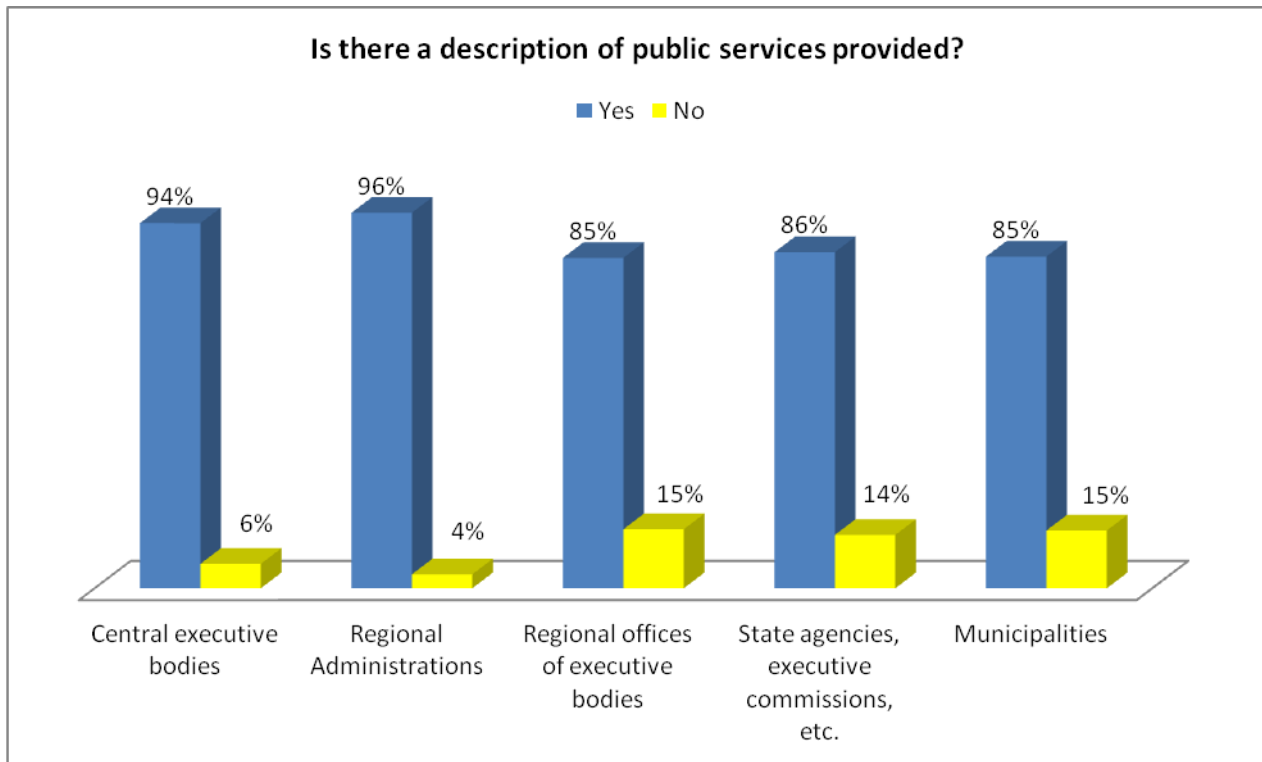


Chart 7. Are information resources and data bases described?

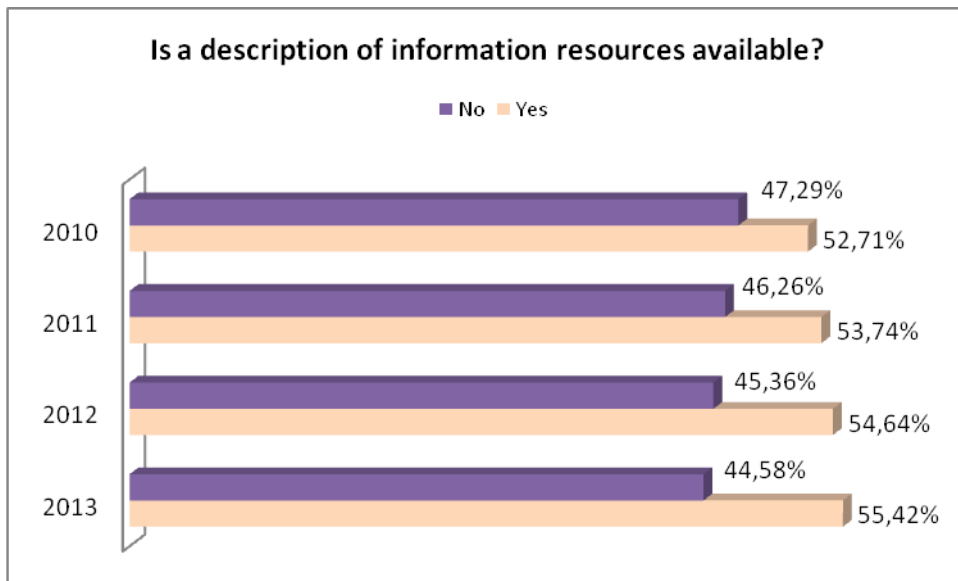


Chart 8. Are there lists of public registers maintained by the institution? (by type of public body – 2013)

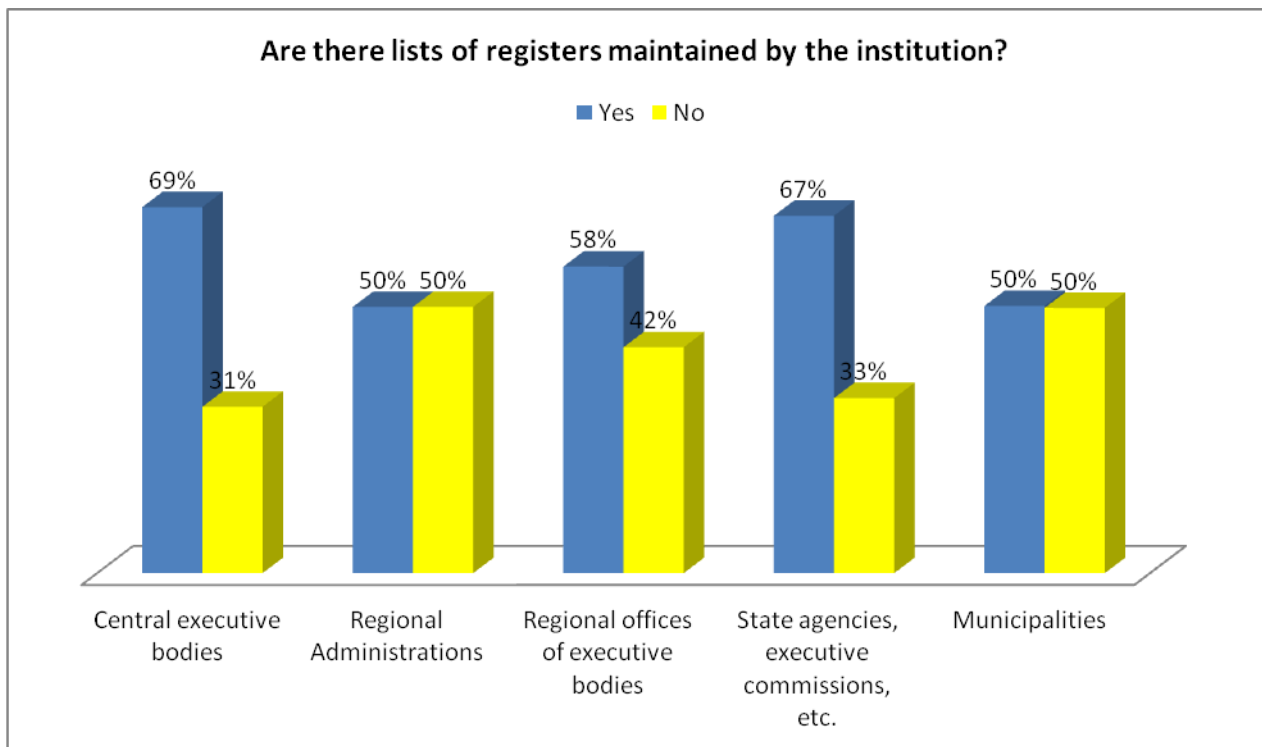


Chart 9. Are the public registers maintained by the institution available? (by type of public body – 2013)

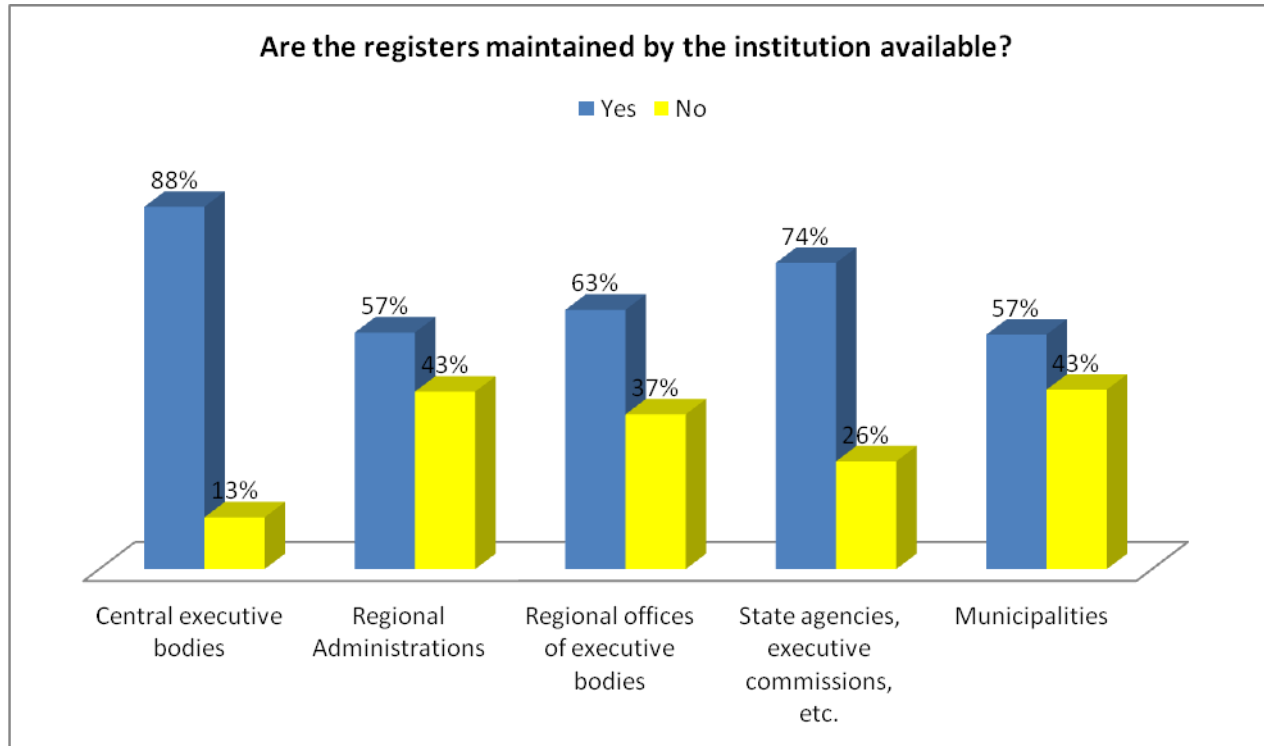
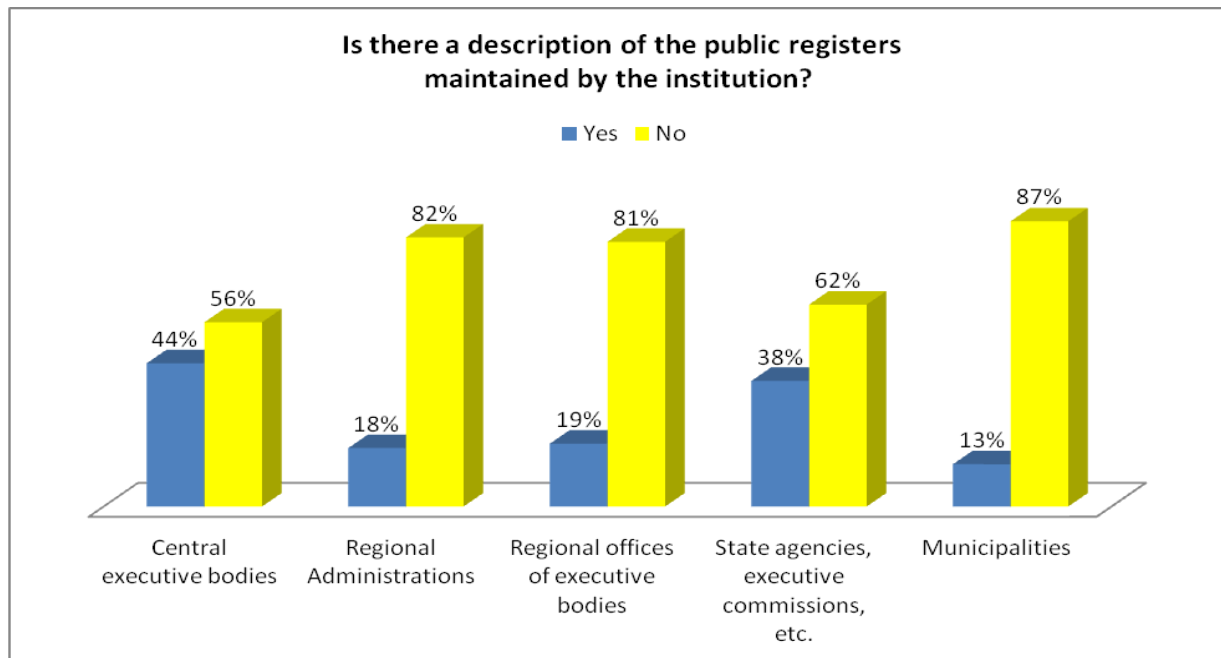


Chart 10. Is there a description of the public registers maintained by the institution (by type of public body – 2013)



Organizational structure and contact information

Chart 11. Is the structure of the administration published?

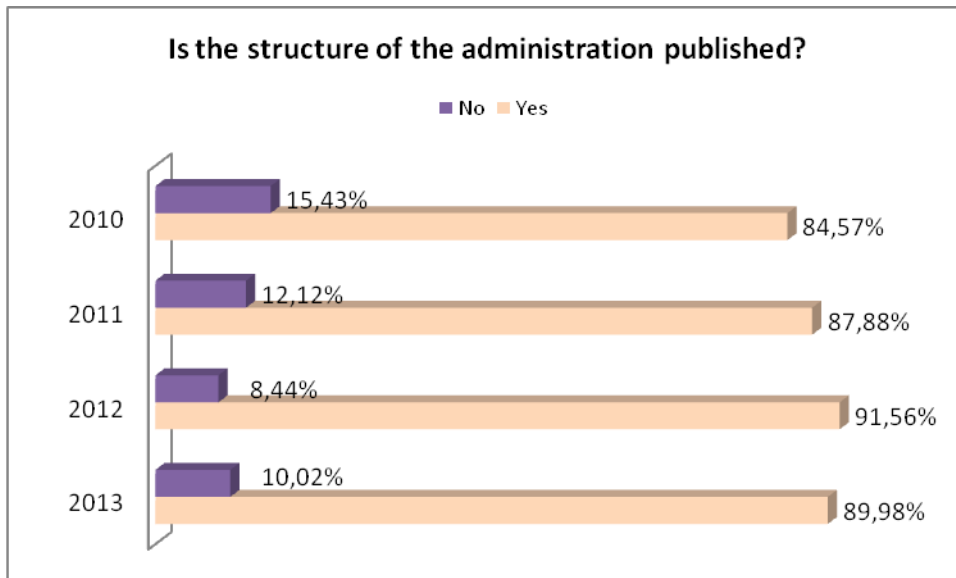
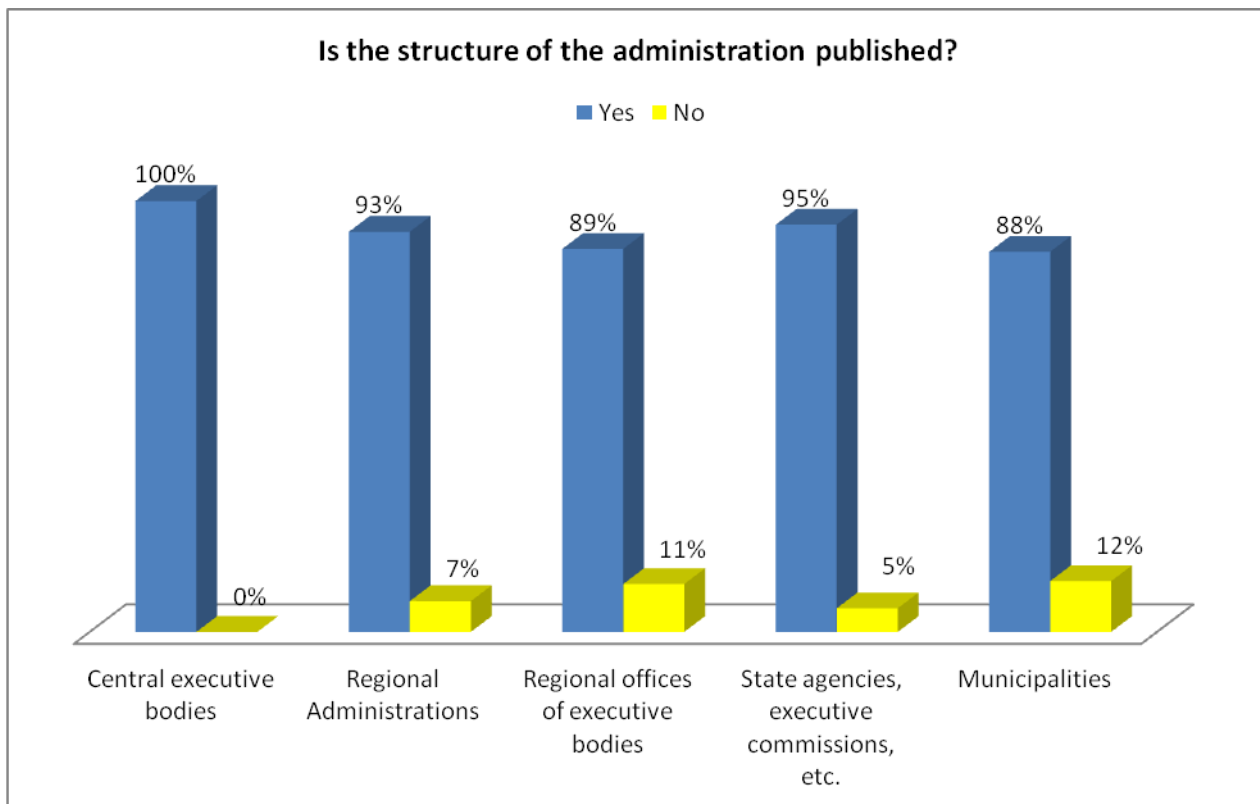


Chart 12. Is the structure of the administration published? (by type of public body – 2013)



Contact information for citizens

Chart 13. Name of the contact department?

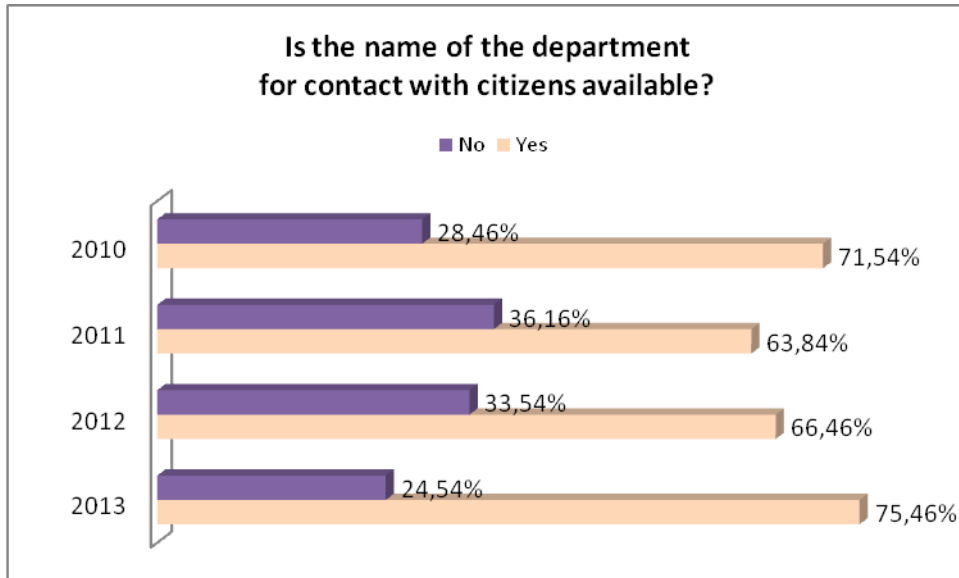


Chart 14. Name of the contact department? (by type of public body – 2013)

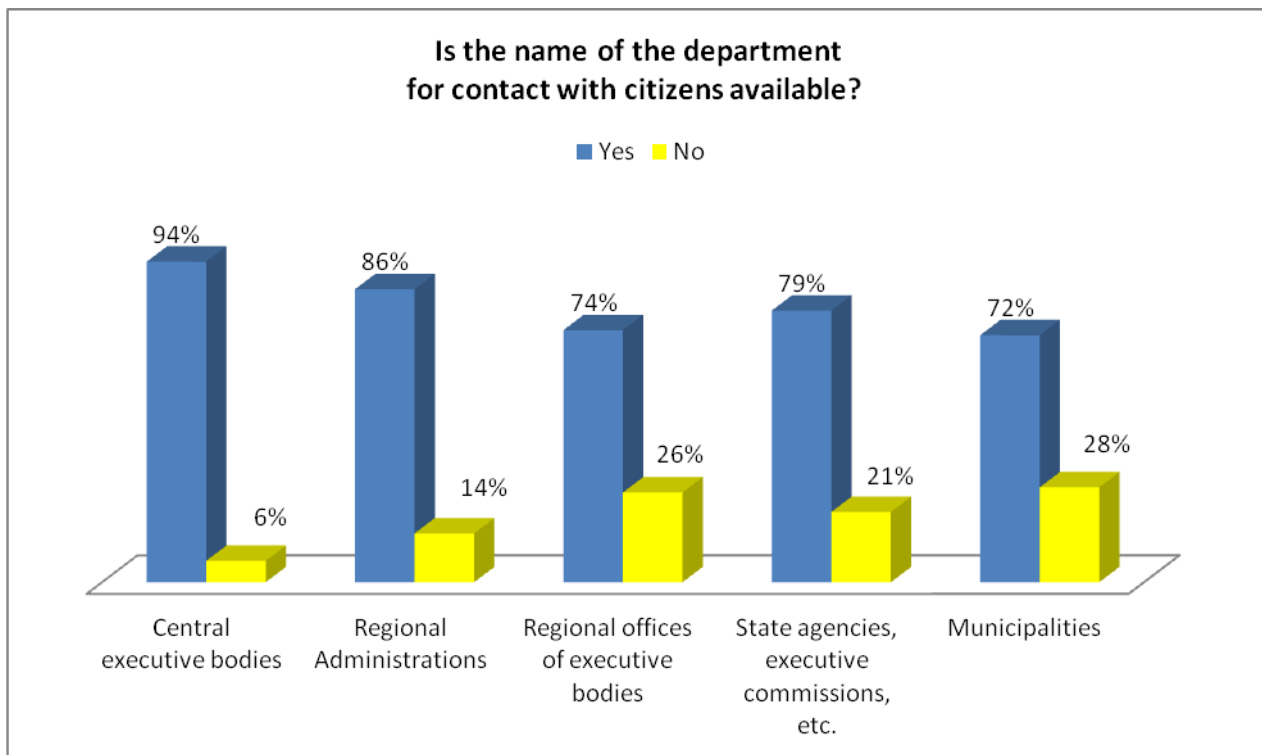


Chart 15. Address of the contact department?

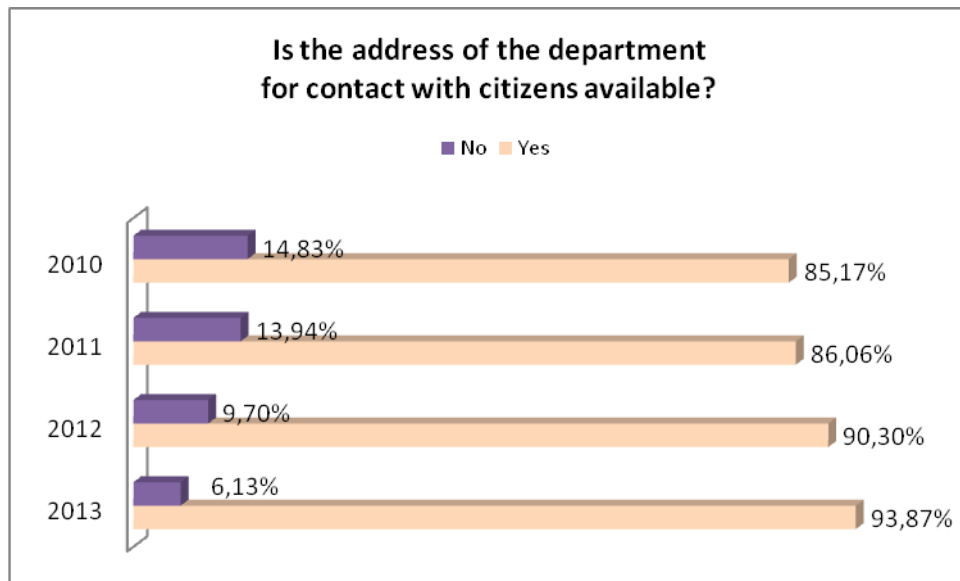


Chart 16. Address of the contact department? (by type of public body – 2013)

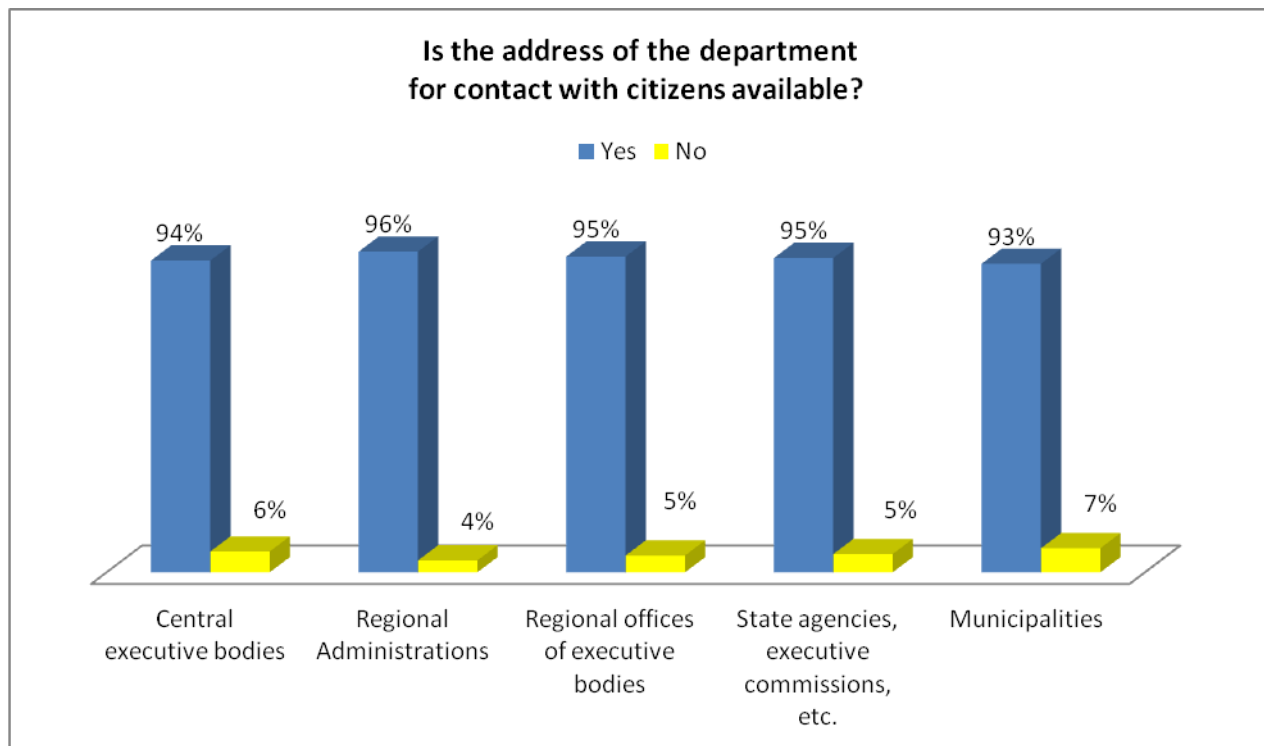


Chart 17. Contact phone number?

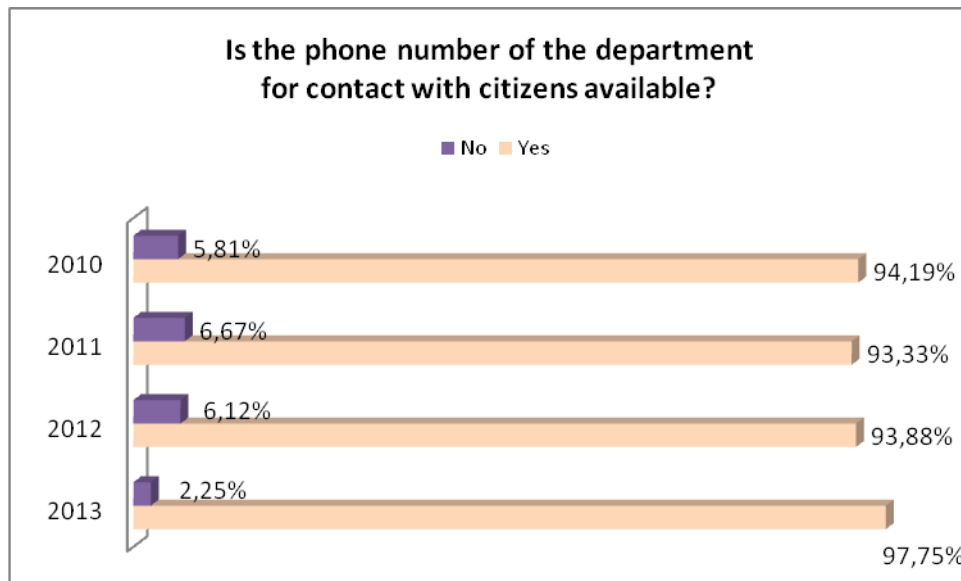


Chart 18. Contact phone number? (by type of public body – 2013)

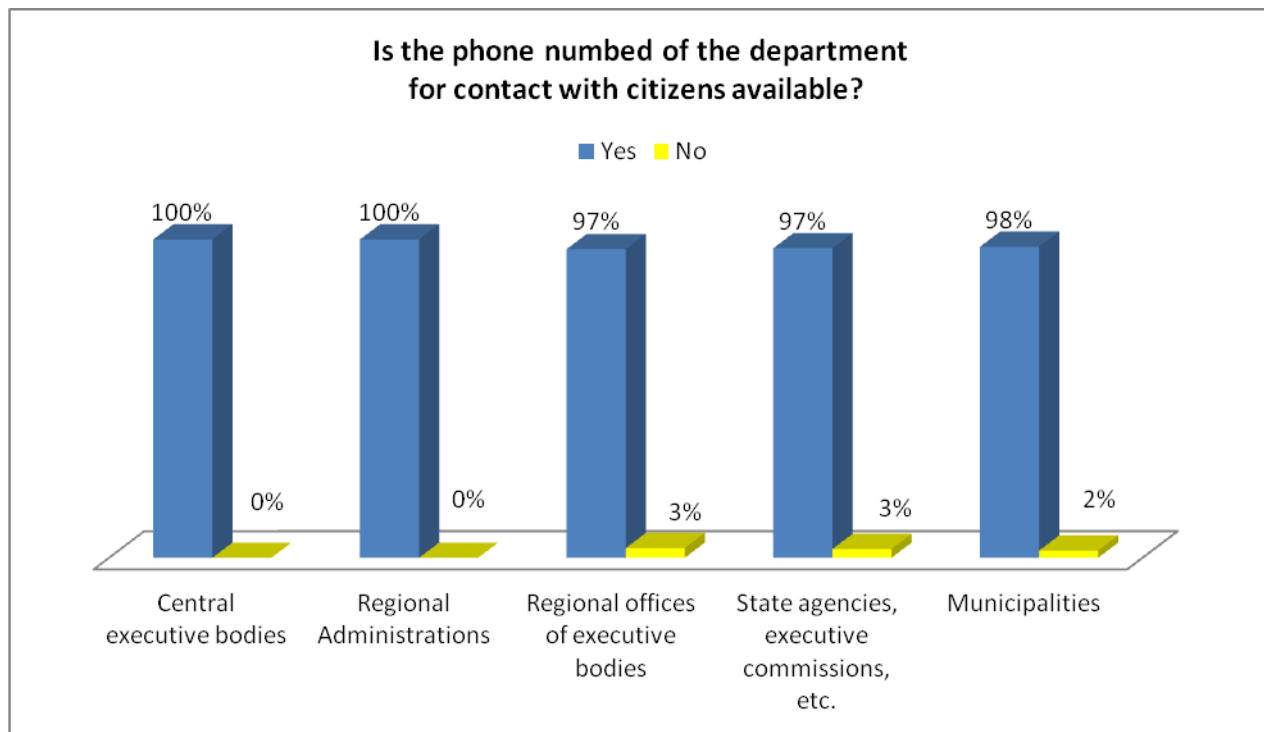


Chart 19. Working hours of the contact department?

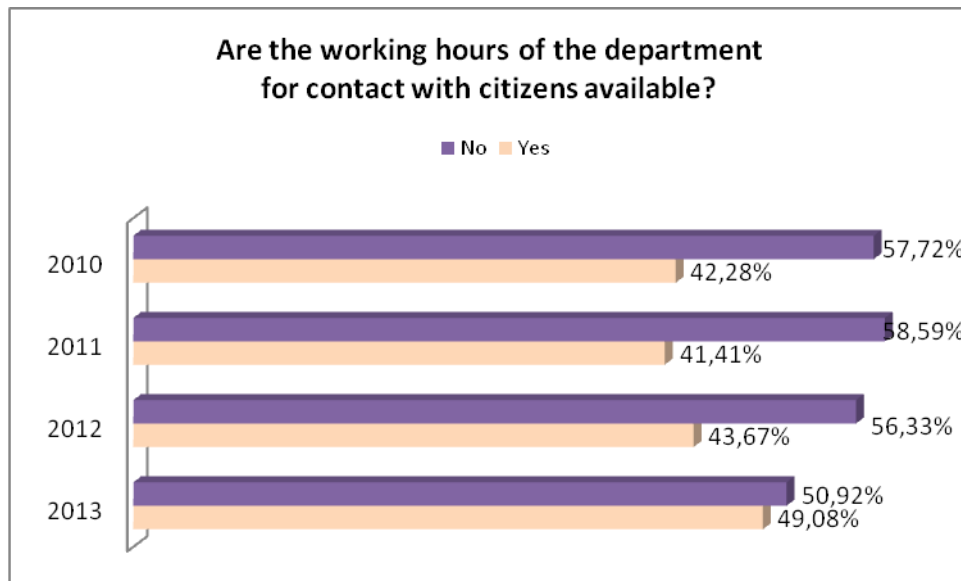
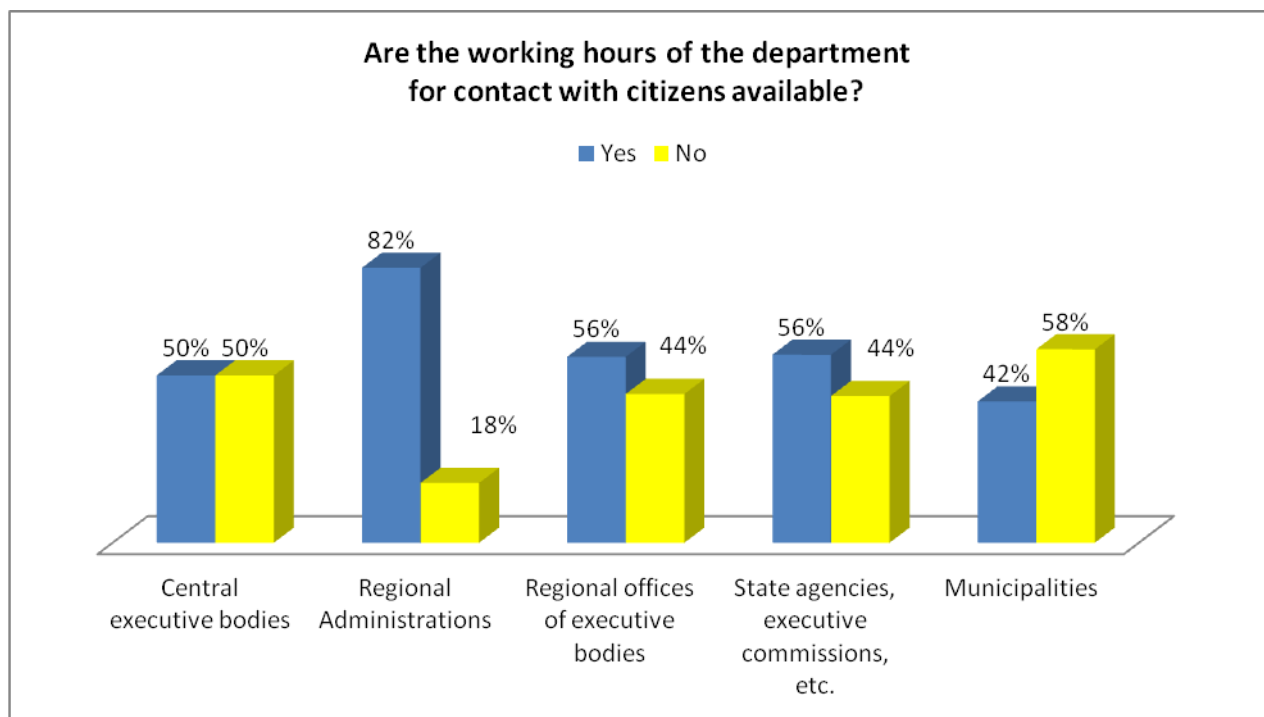


Chart 20. Working hours of the contact department? (by type of public body – 2013)



Operational Information – acts,⁷⁴ strategies and plans, activities and activity reports

Chart 21. Is there a list of normative acts?

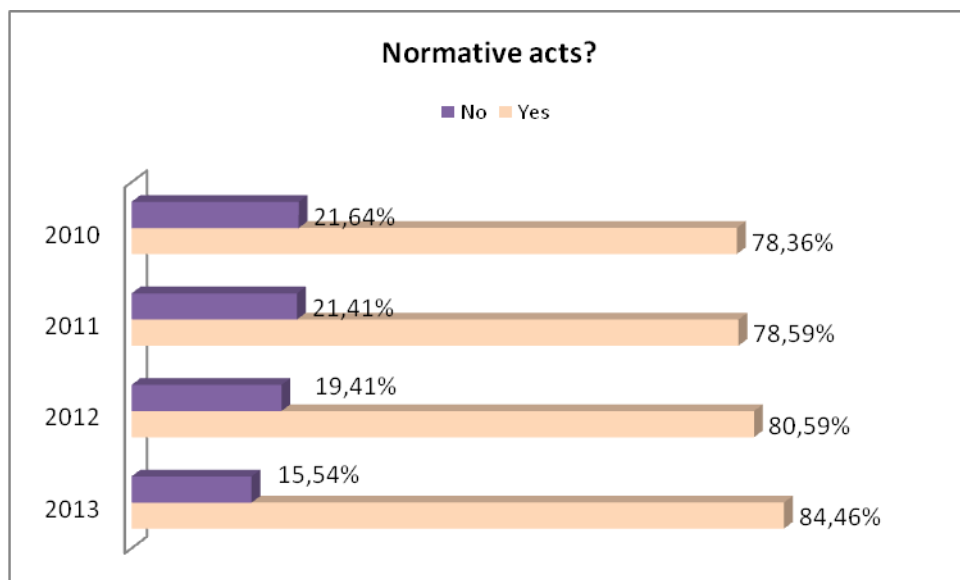
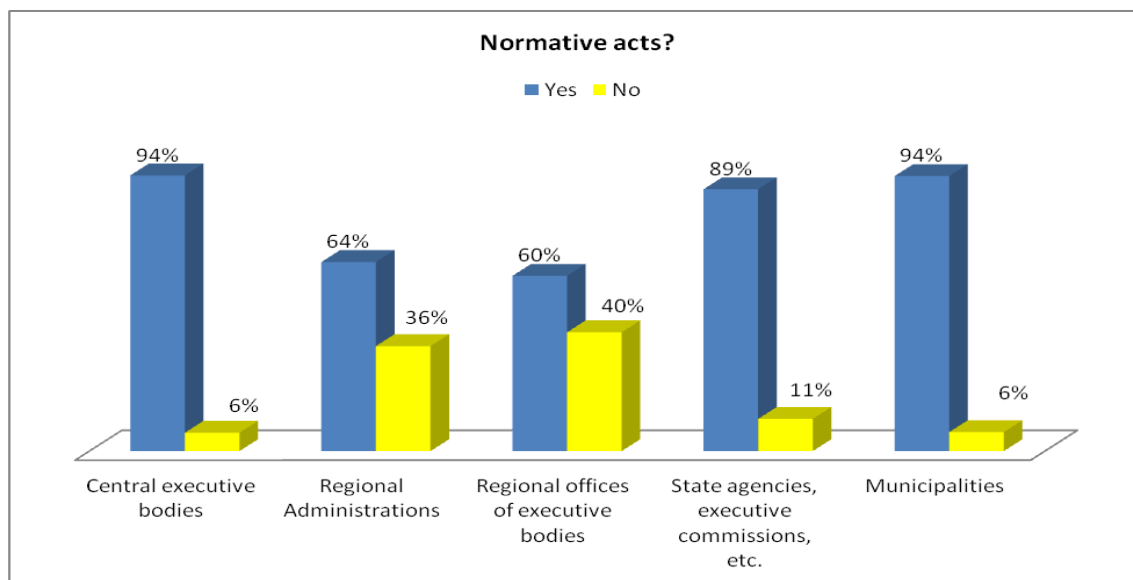


Chart 22. Is there a list of normative acts? (by type of public body – 2013)



⁷⁴ According to Bulgarian general administrative law there are three categories of administrative acts: individual acts are administrative decisions with application to certain individual/individuals; general administrative act is a decision with application to unspecified number of individuals; administrative normative act applies to unspecified number of individuals multiple times i.e. it has the legal character of "rules".

Chart 23. Is there a list of individual administrative acts?

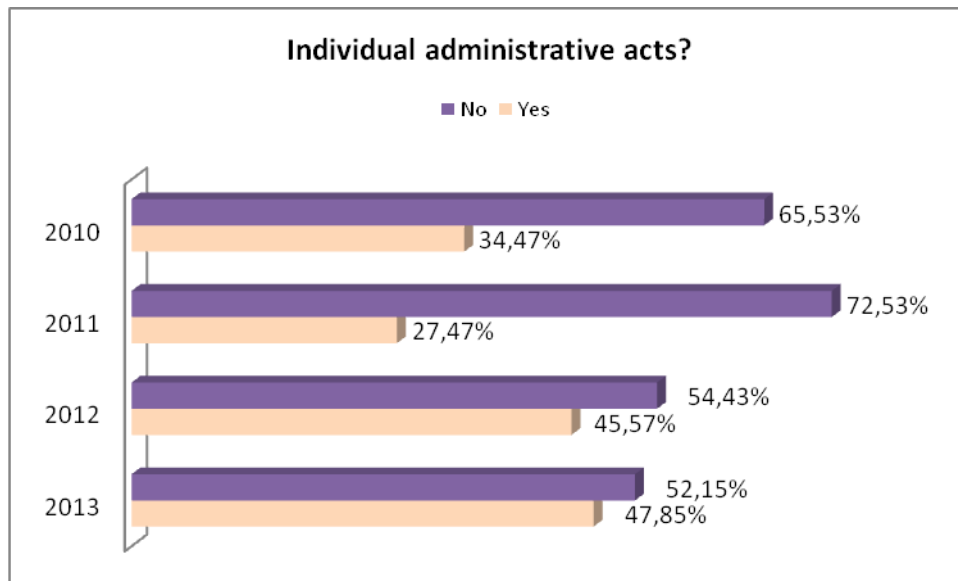


Chart 24. Is there a list of individual administrative acts? (by type of public body – 2013)

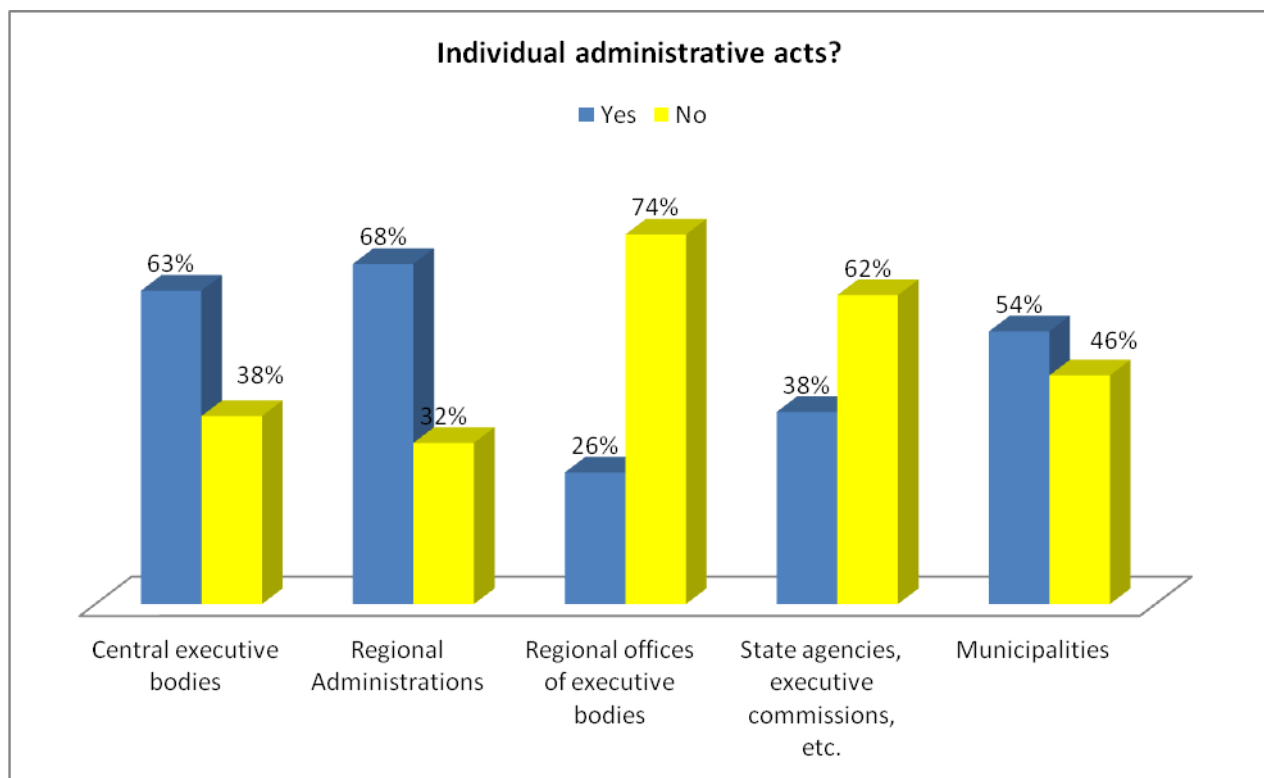


Chart 25. Are the decisions of the municipal council published? (only for municipalities – 2011 - 2013)

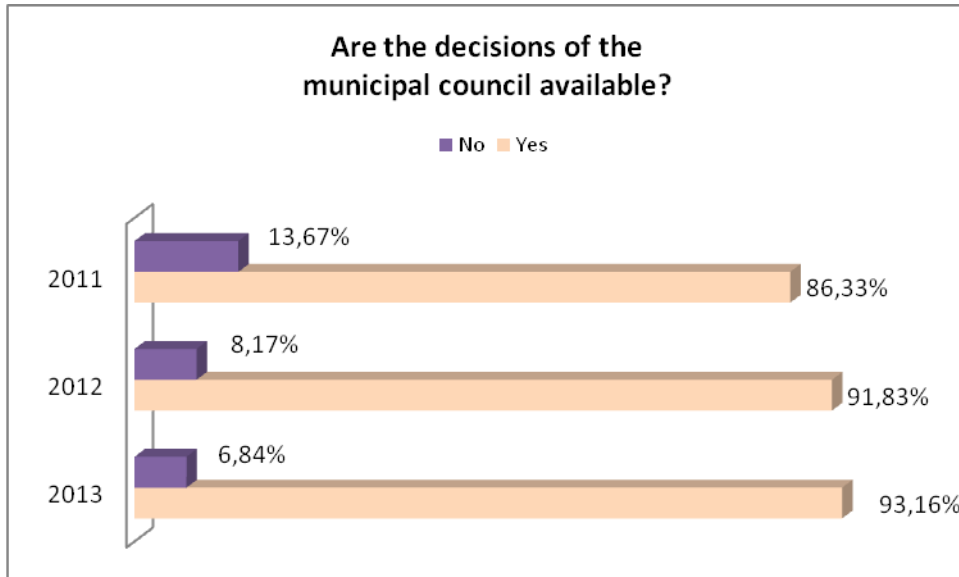


Chart 26. Are development programs and strategies published?

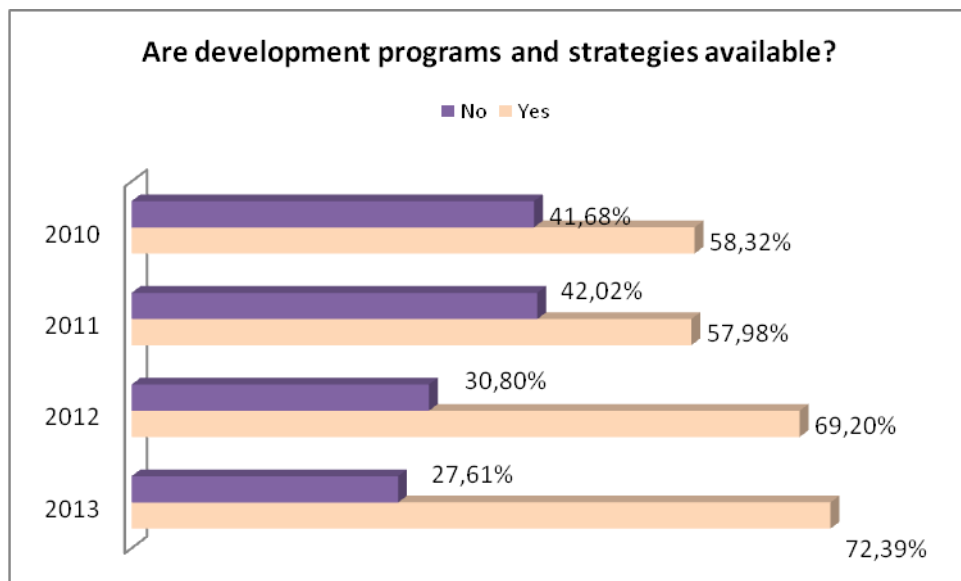


Chart 27. Are development programs and strategies published? (by type of public body – 2013)

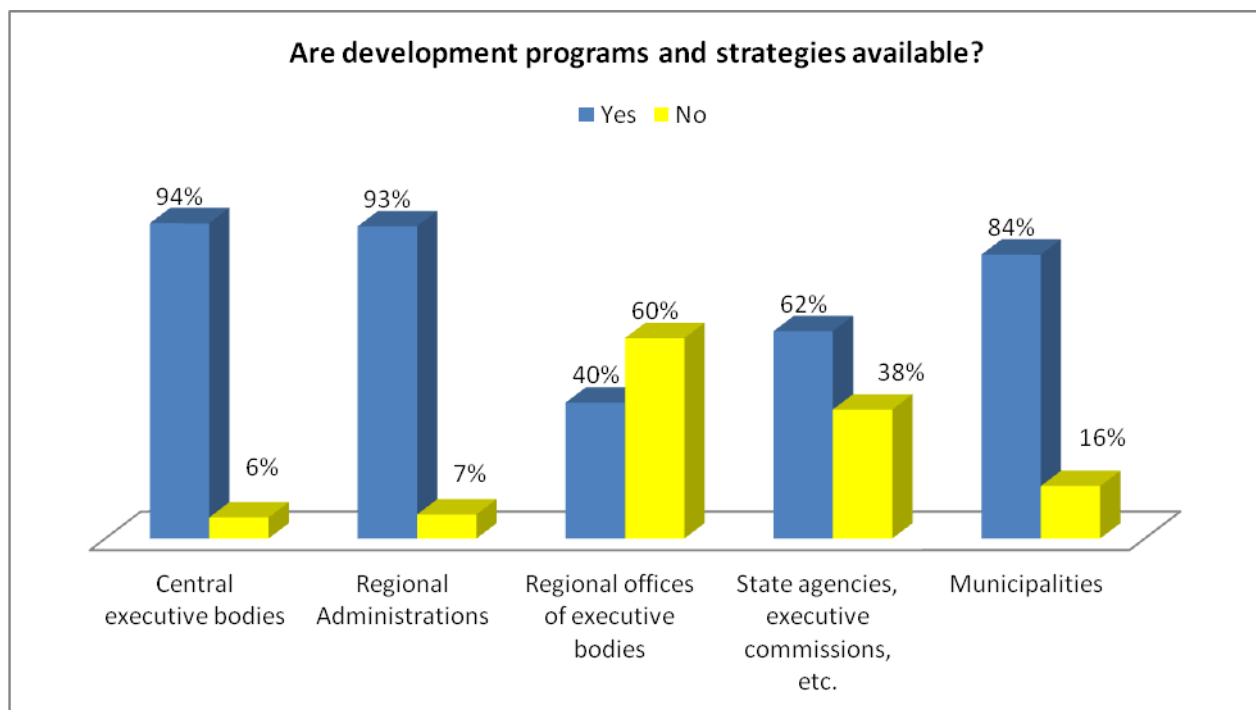


Chart 28. Are activity reports of the institution published?

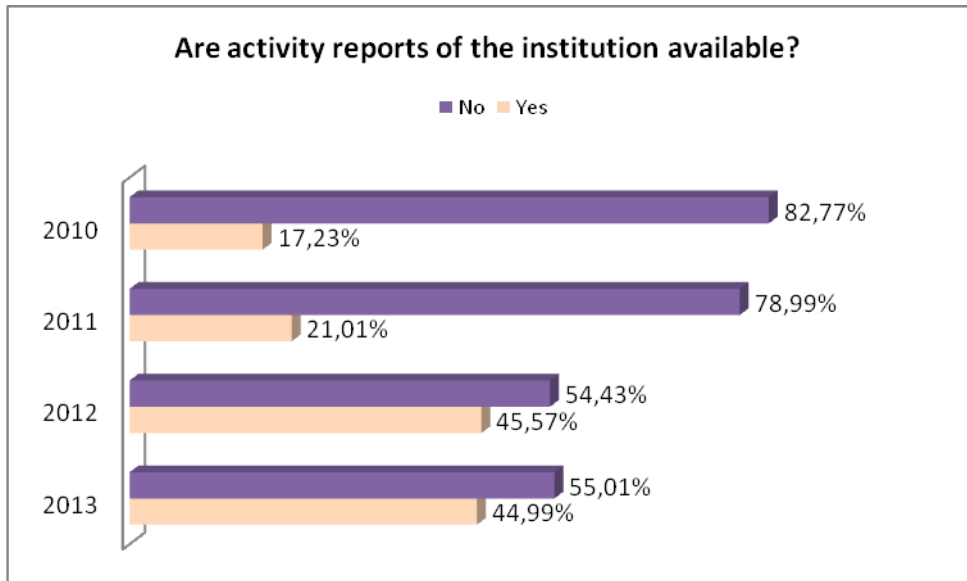


Chart 29. Are activity reports of the institution published? (by type of public body – 2013)

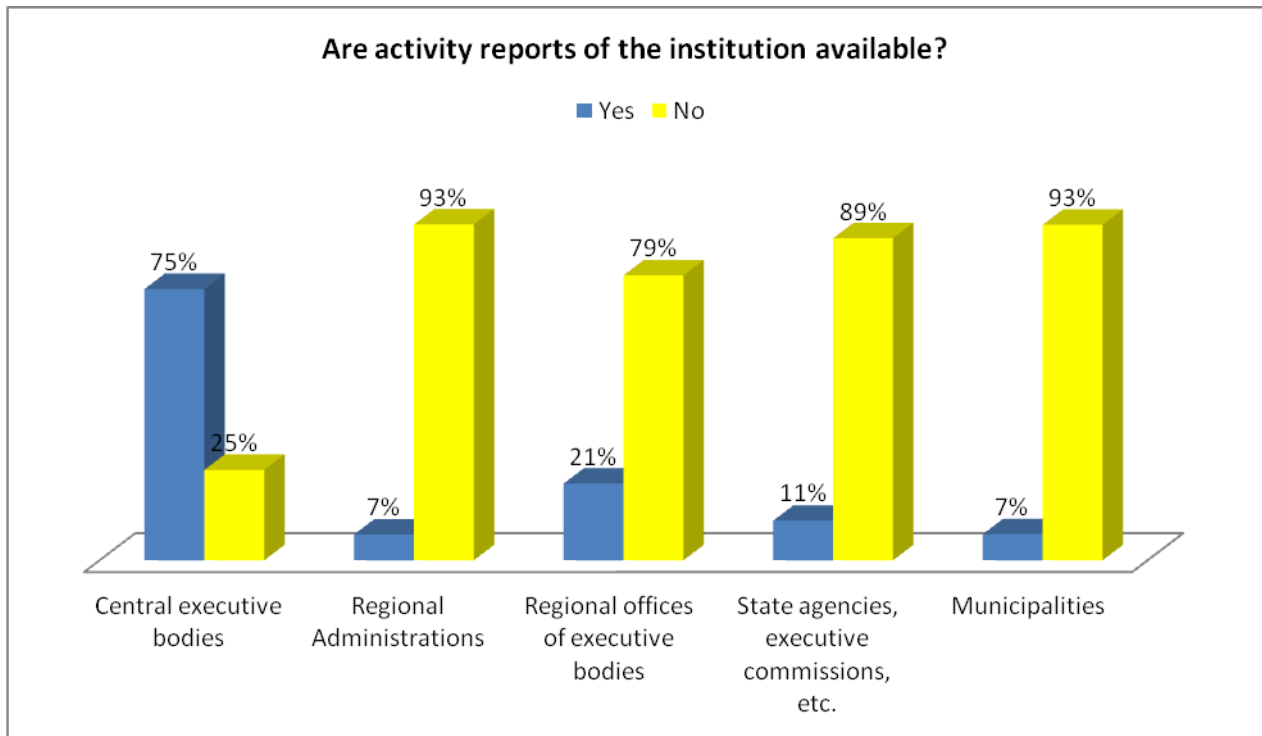


Chart 30. Are drafts of regulations published?

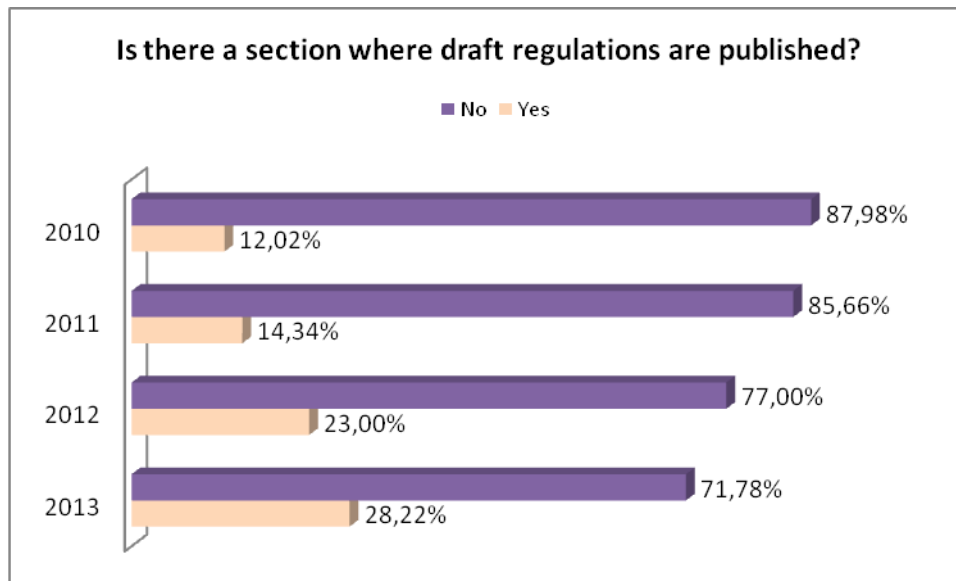
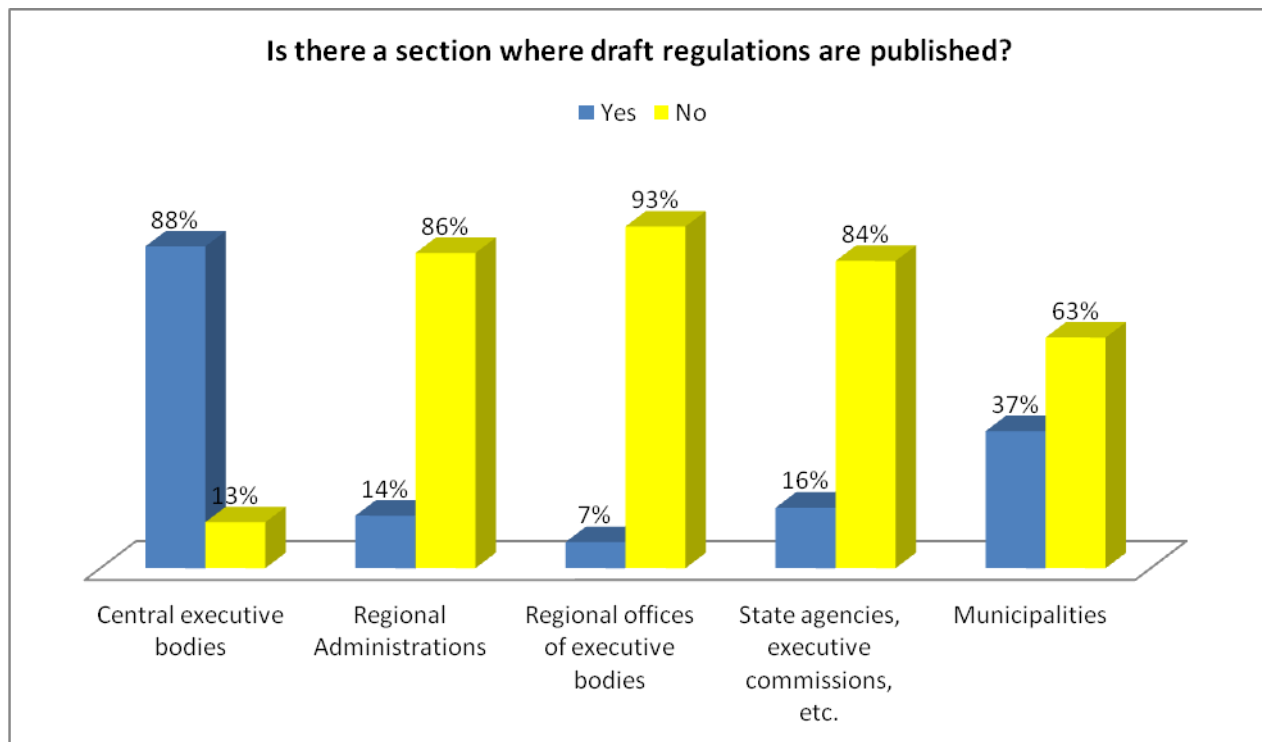


Chart 31. Are drafts of regulations published? (by type of public body – 2013)



Financial and other transparency – budgets, financial reports, contracts, conflict of interests declarations

Chart 32. Is the budget of the institution published?

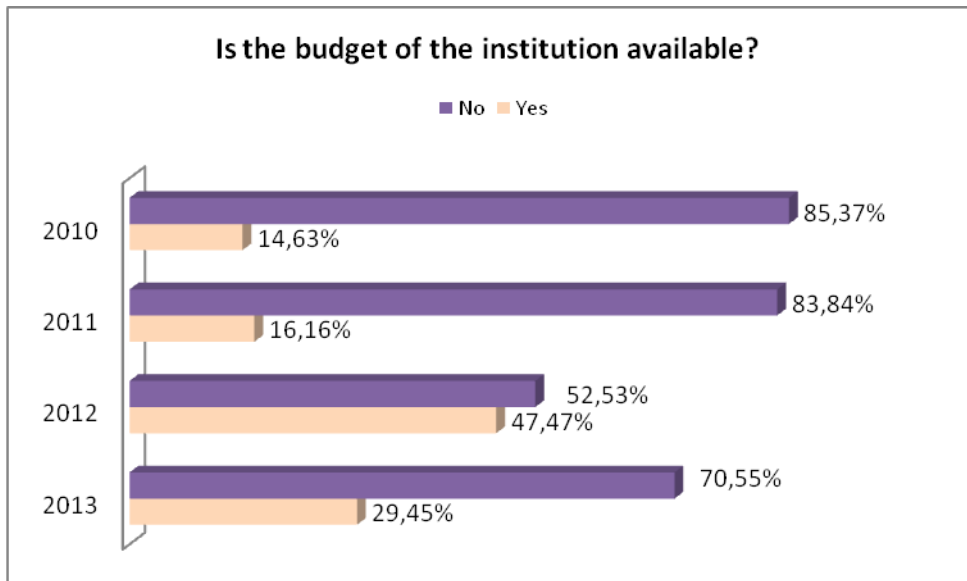


Chart 33. Is the budget of the institution published? (by type of public body – 2013)

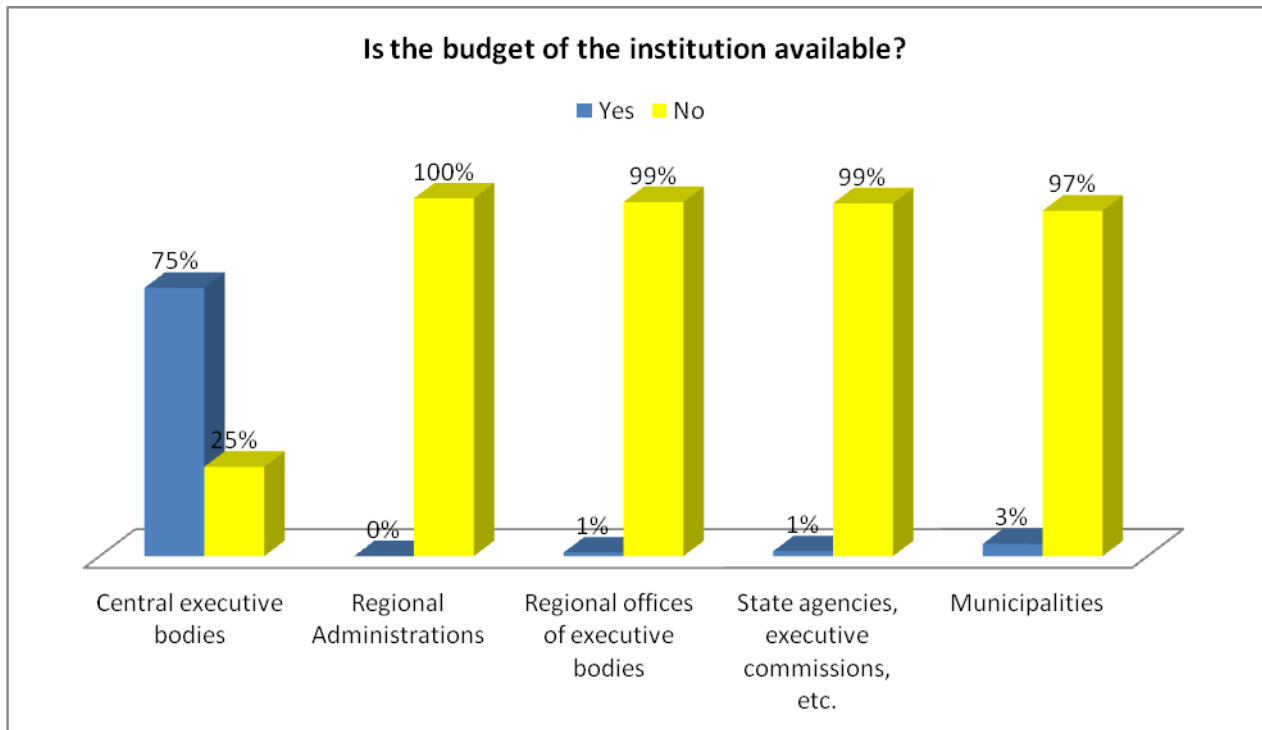


Chart 34. Are financial reports of the institution published?

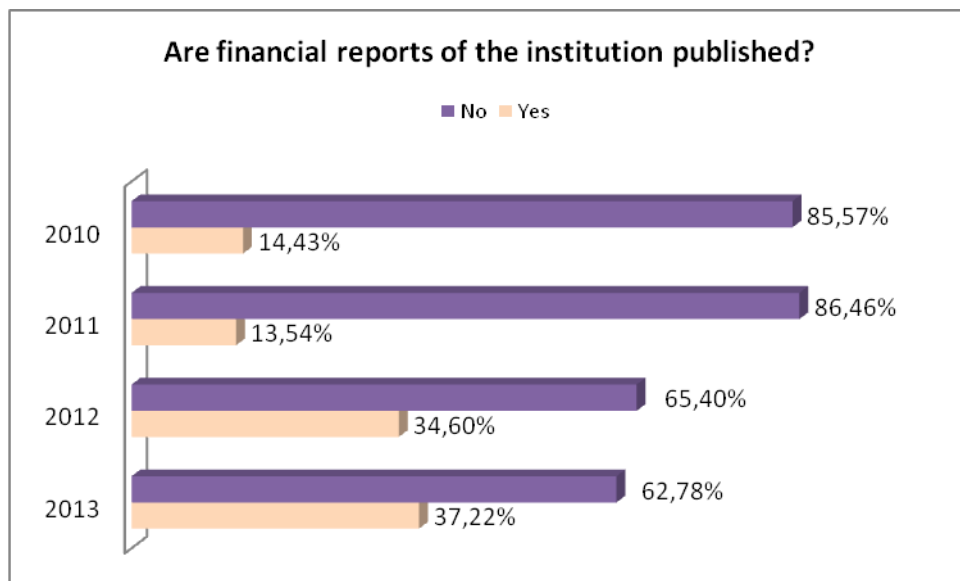


Chart 35. Are financial reports of the institution published? (by type of public body – 2013)

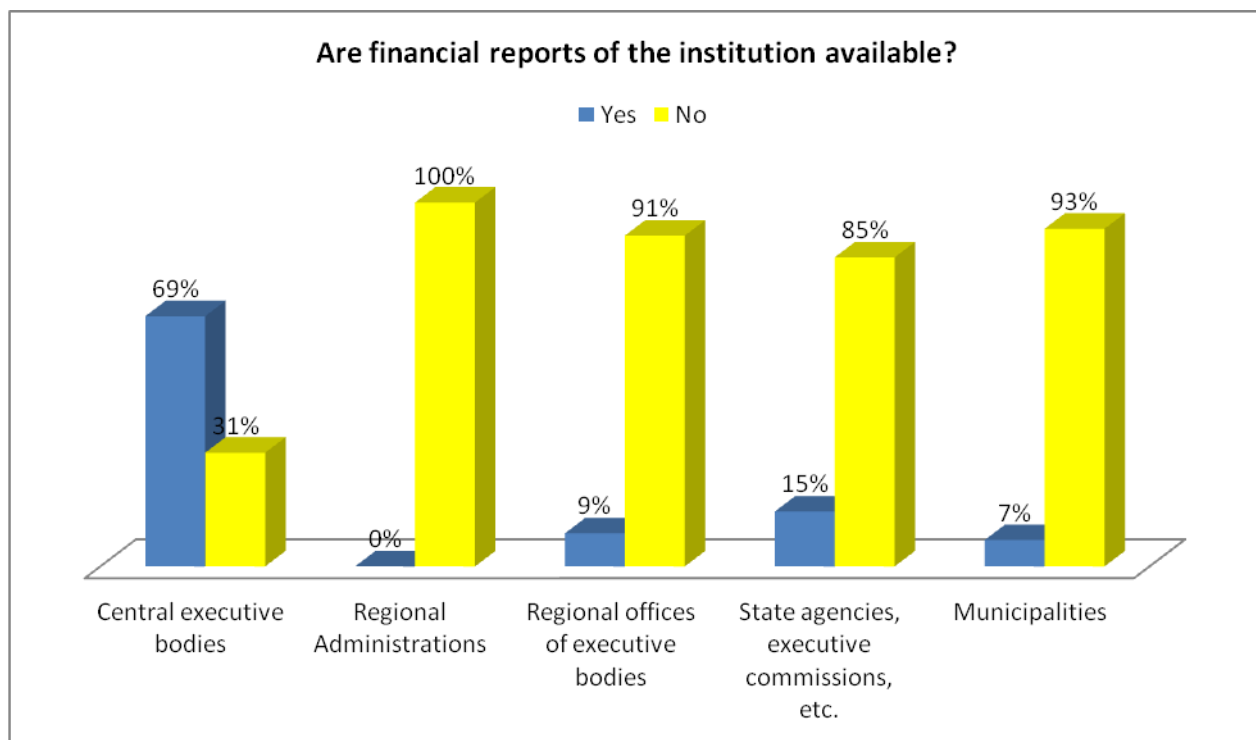


Chart 36. Is there a register of the public procurement tenders of the institution?

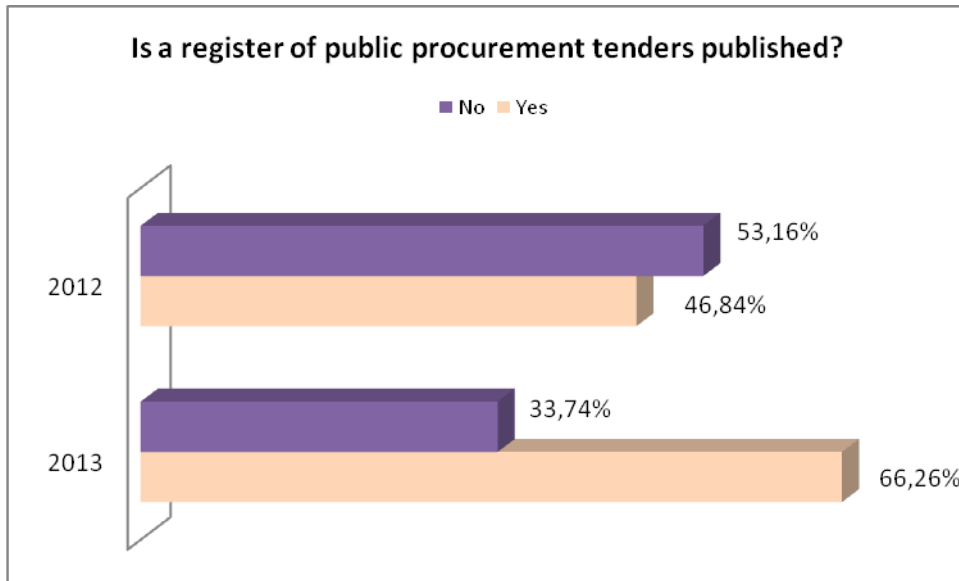


Chart 37. Is there a register of the public procurement tenders of the institution? (by type of public body – 2013)

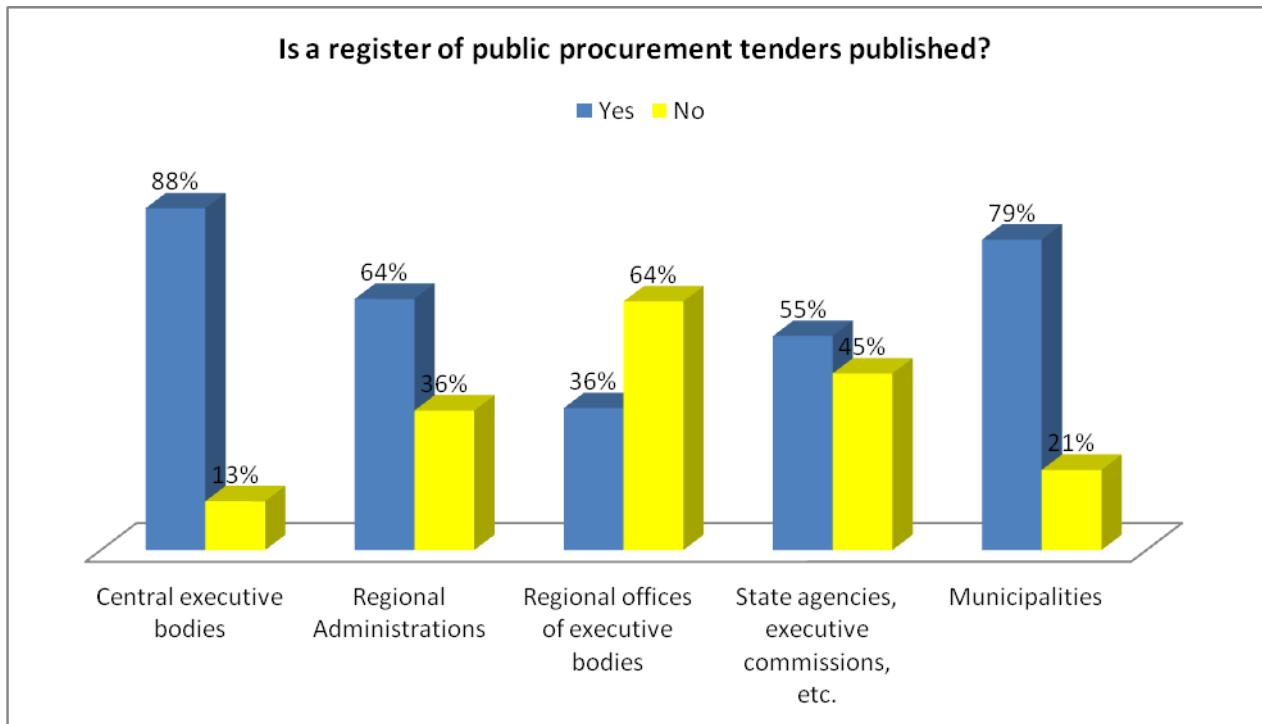


Chart 38. Is there a register of contracted public procurements?

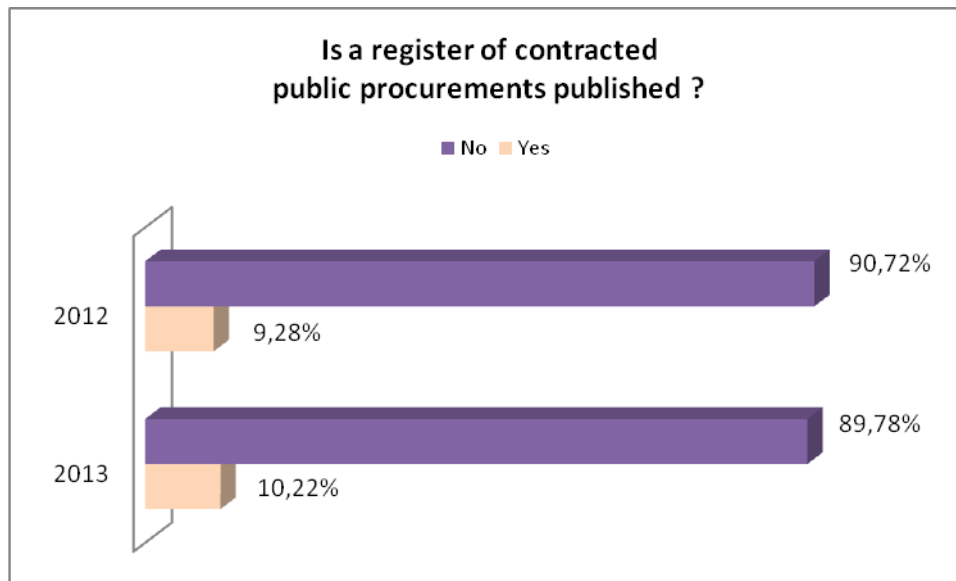


Chart 39. Is there a register of contracted public procurements? (by type of public body – 2013)

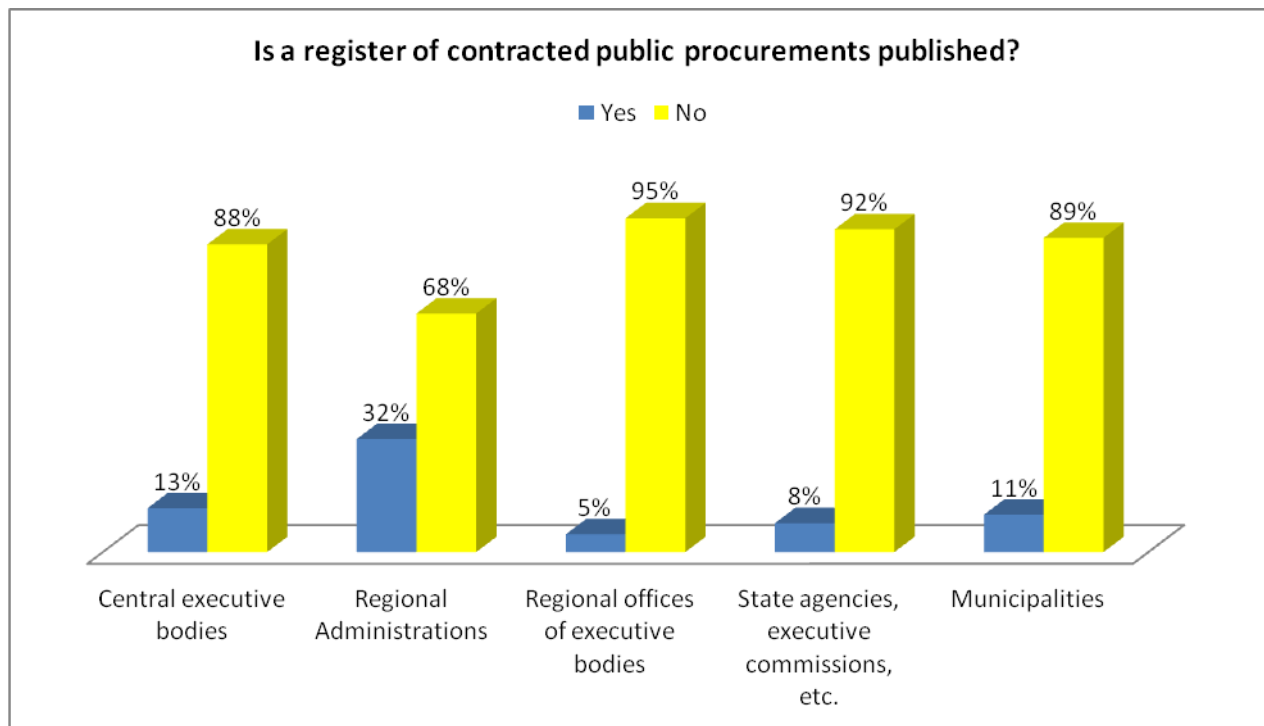


Chart 40. Are contracts of the institution published?

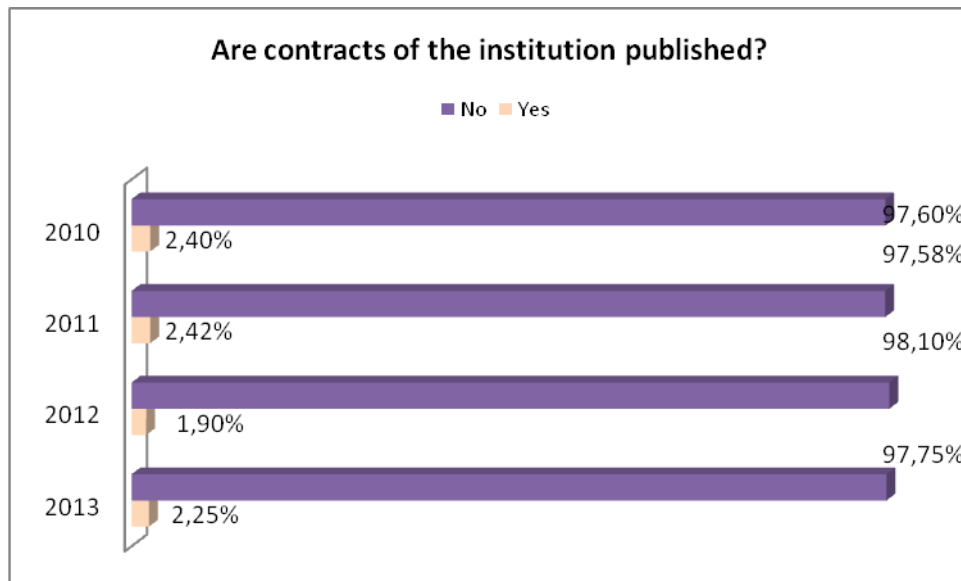


Chart 41. Are contracts of the institution published? (by type of public body – 2013)

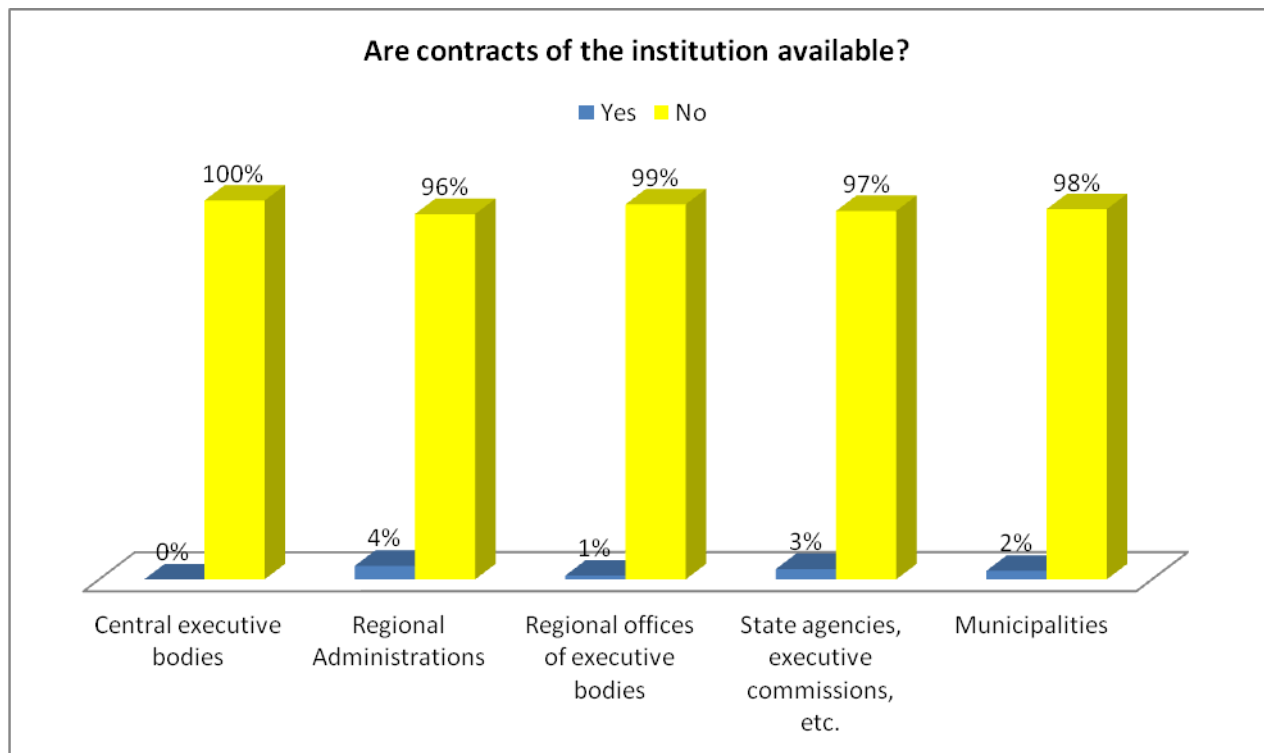


Chart 42. Are conflict of interests declarations published?

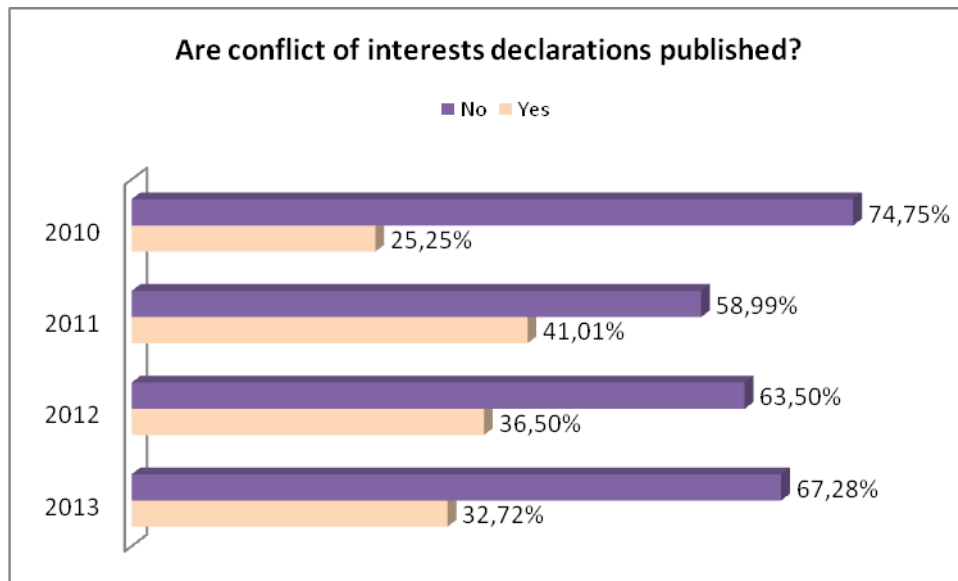


Chart 43. Are conflict of interests declarations published? (by type of public body – 2013)

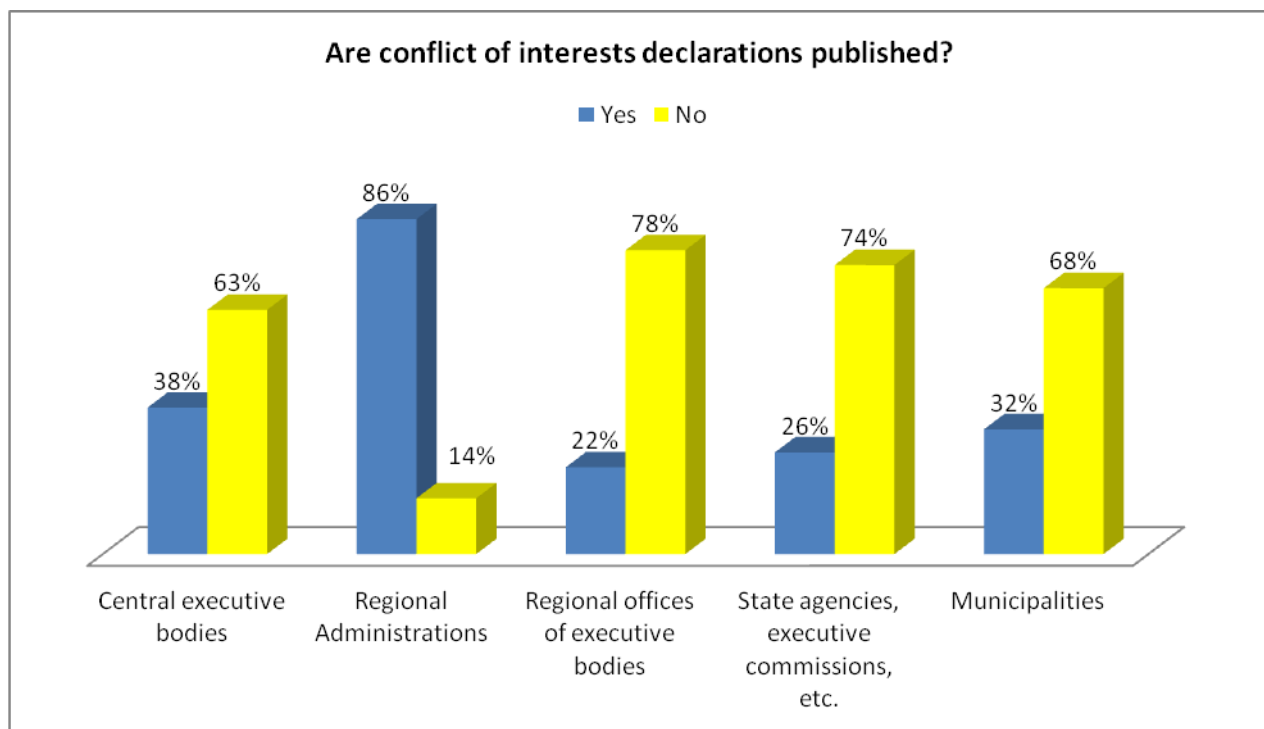


Chart 44. Are lists of public officials who submitted conflict of interests declarations published?

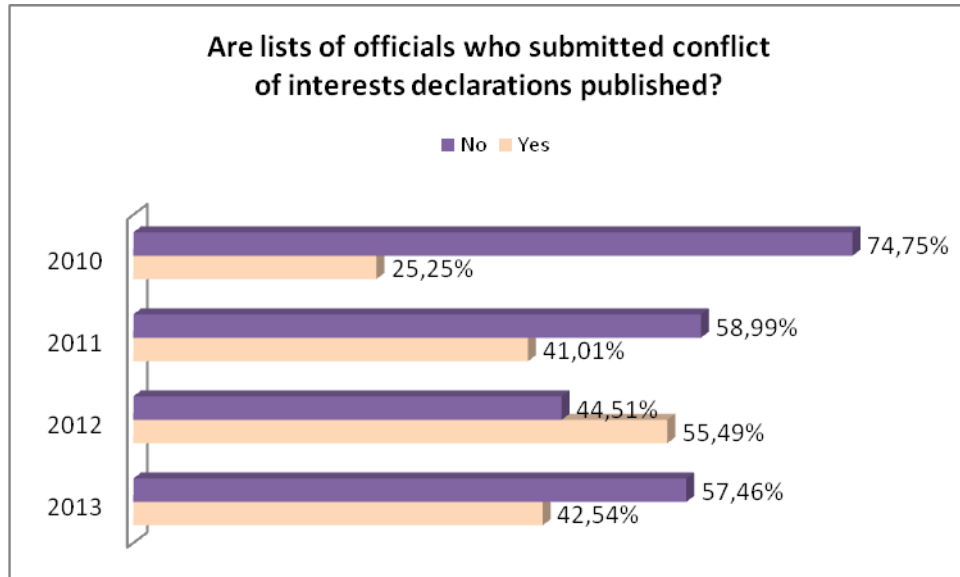
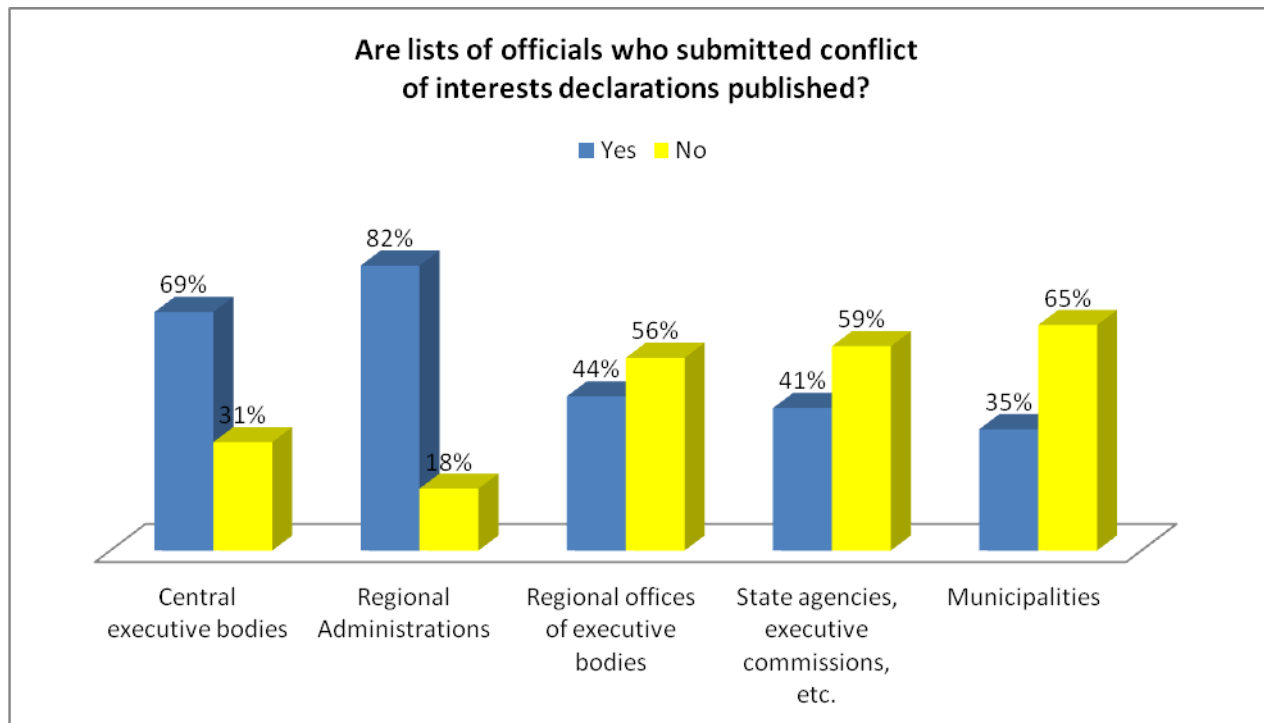


Chart 45. Are lists of public officials who submitted conflict of interests declarations published? (by type of public body – 2013)



Access to Information Sections – information about the right to information and how to exercise it, including contact information

Chart 46. Is there an *Access to Information* section?

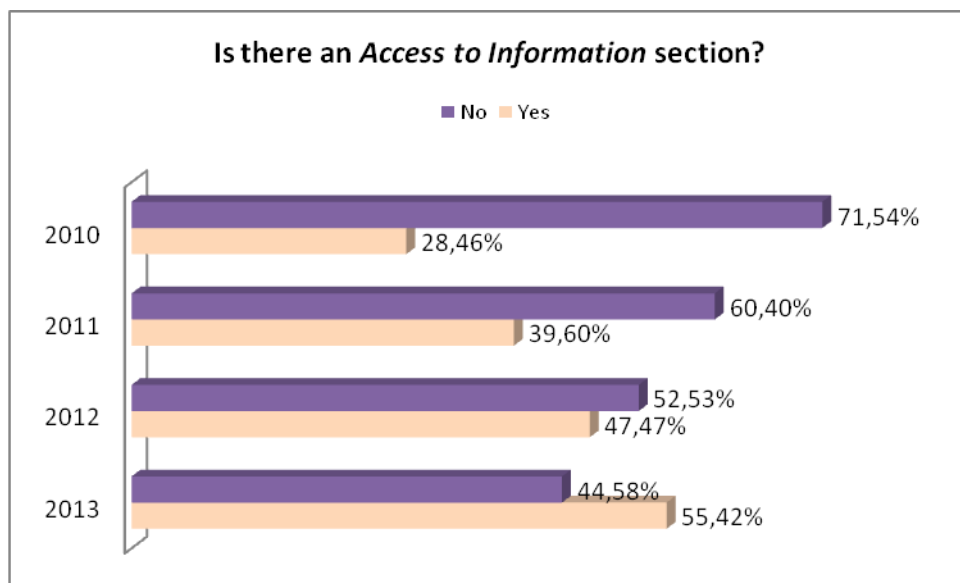


Chart 47. Is there an *Access to Information* section? (by type of public body – 2013)

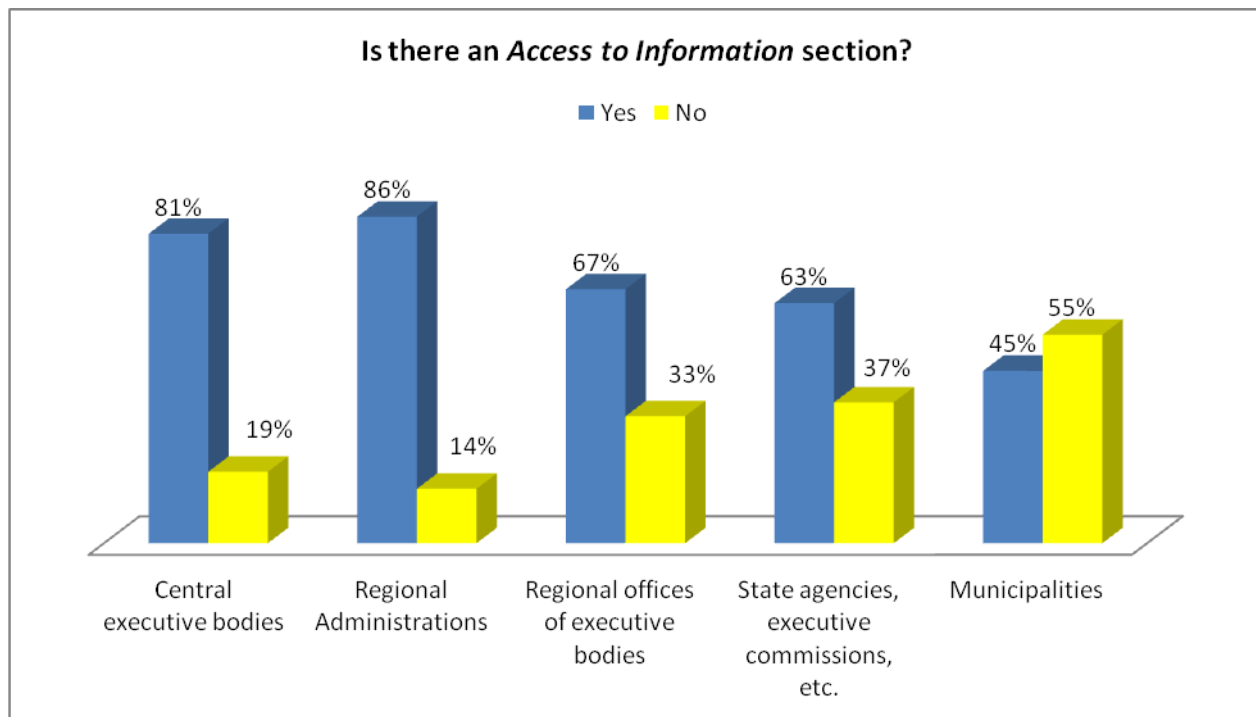


Chart 48. Are Internal Access to Public Information Act (APIA) Implementation Rules published?

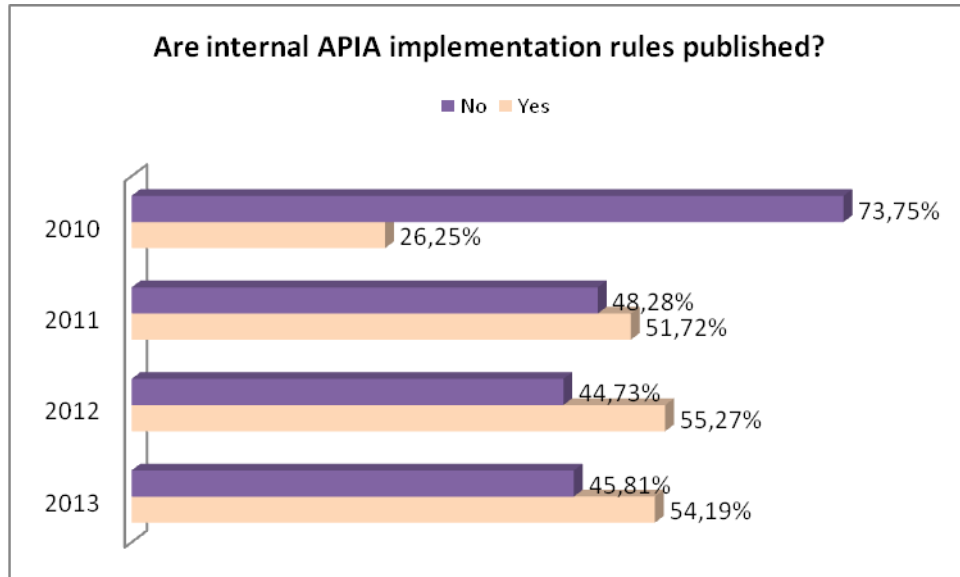


Chart 49. Are Internal APIA Implementation Rules published? (by type of public body – 2013)

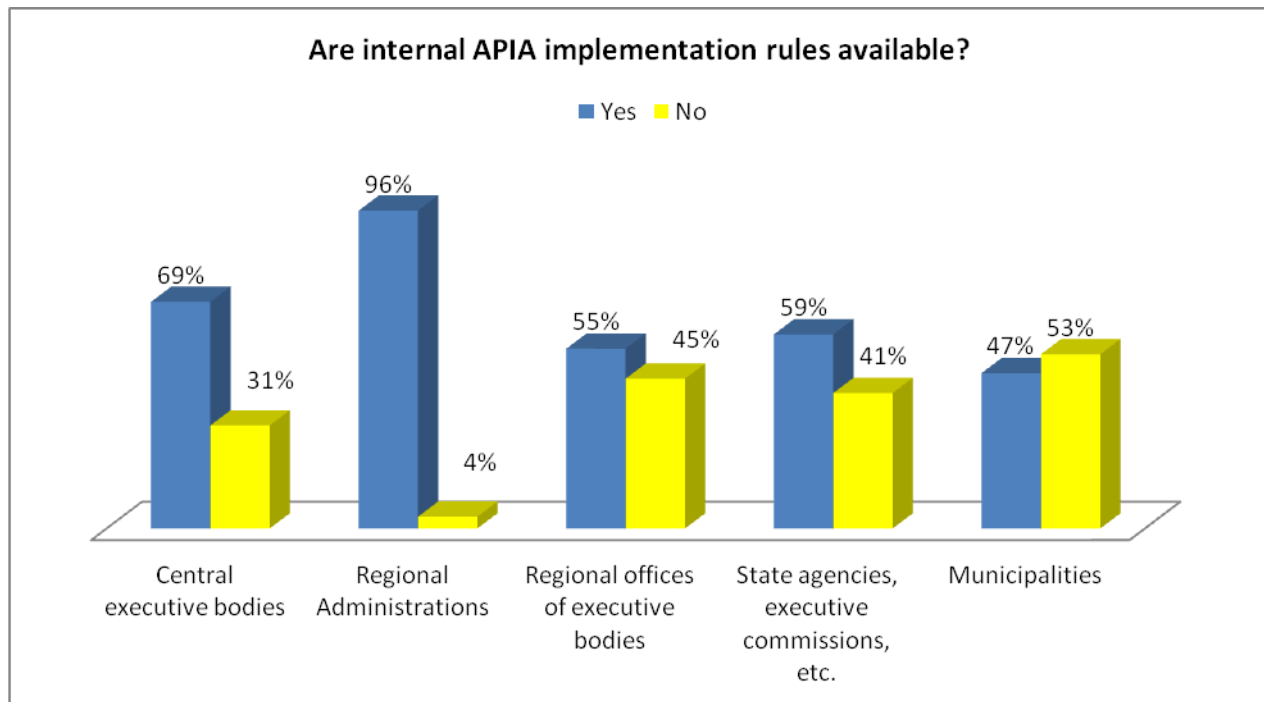


Chart 50. Is there a description of the procedure for access to public registers maintained by the institution?

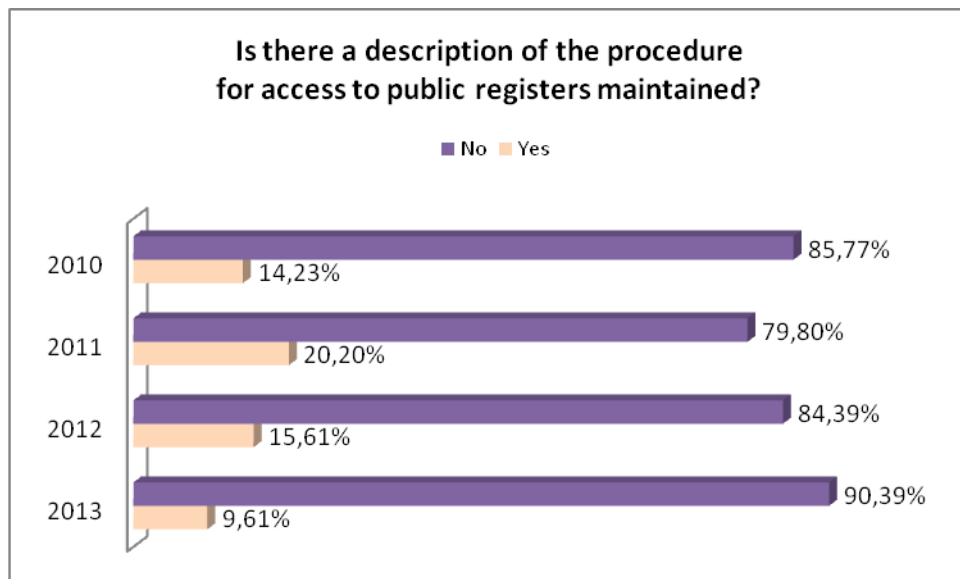
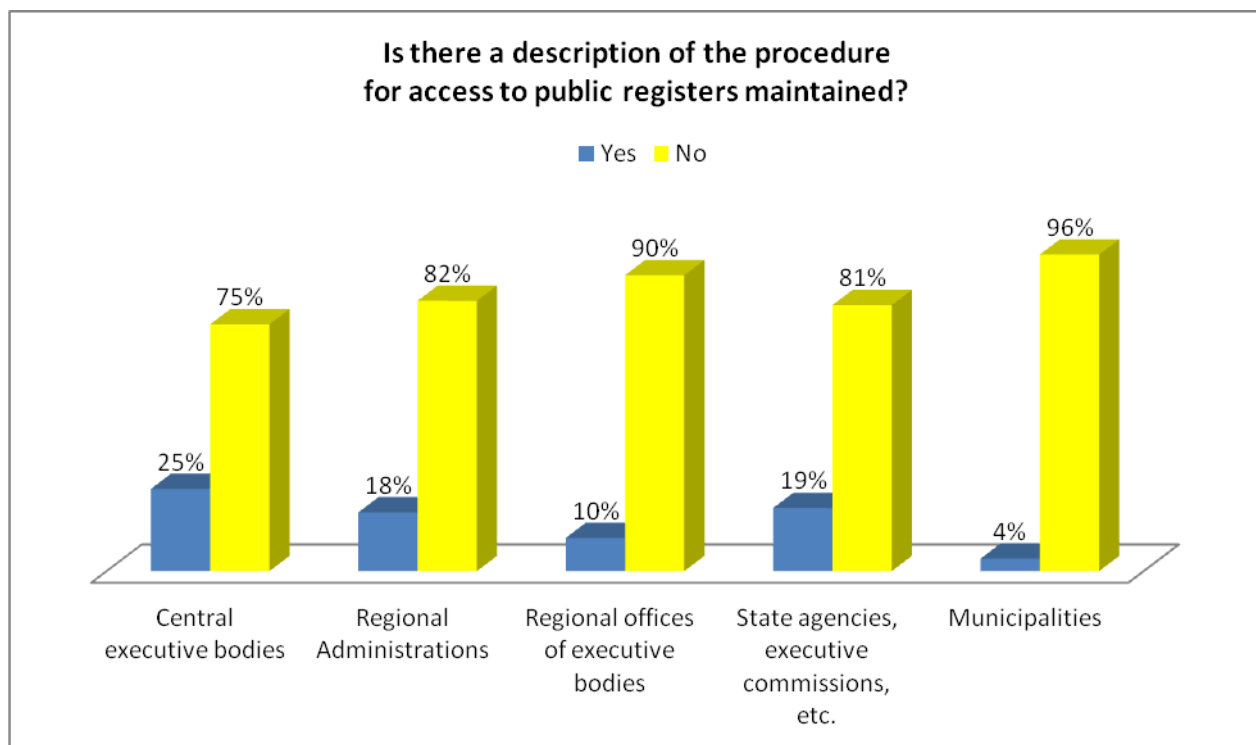


Chart 51. Is there a description of the procedure for access to public registers maintained by the institution? (by type of public body – 2013)



Annual Report on Registered Requests, Decisions for Refusal and Grounds for Refusals

Chart 52. Is the APIA implementation report published?

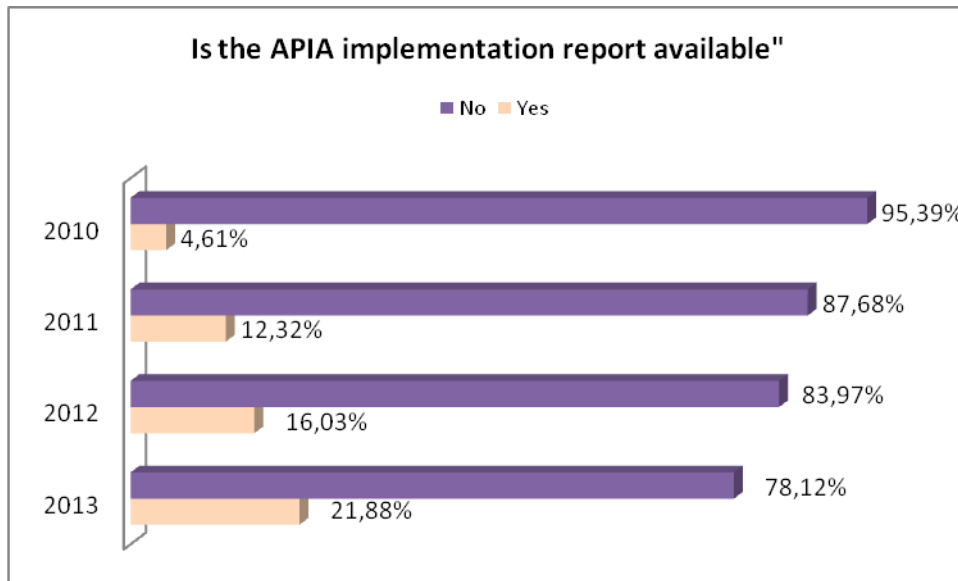


Chart 53. Is the APIA implementation report published? (by type of public body – 2013)

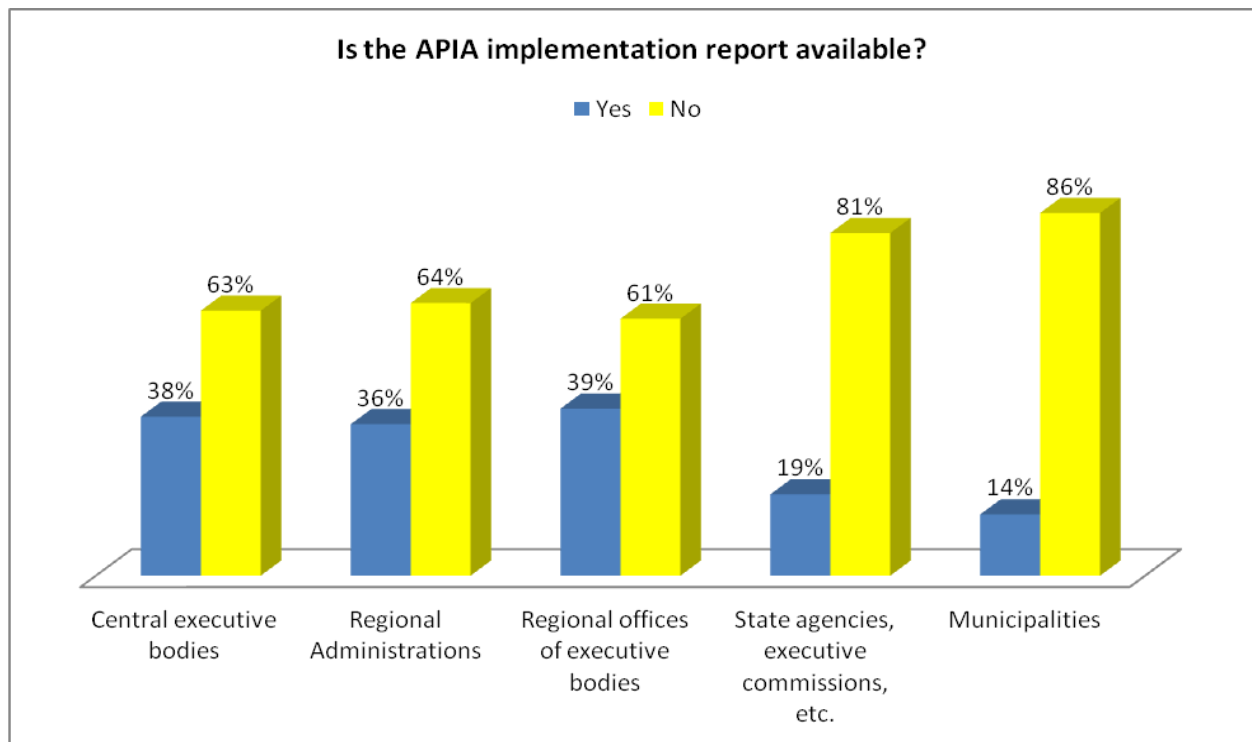


Chart 54. Does the APIA implementation report contain data about registered requests?

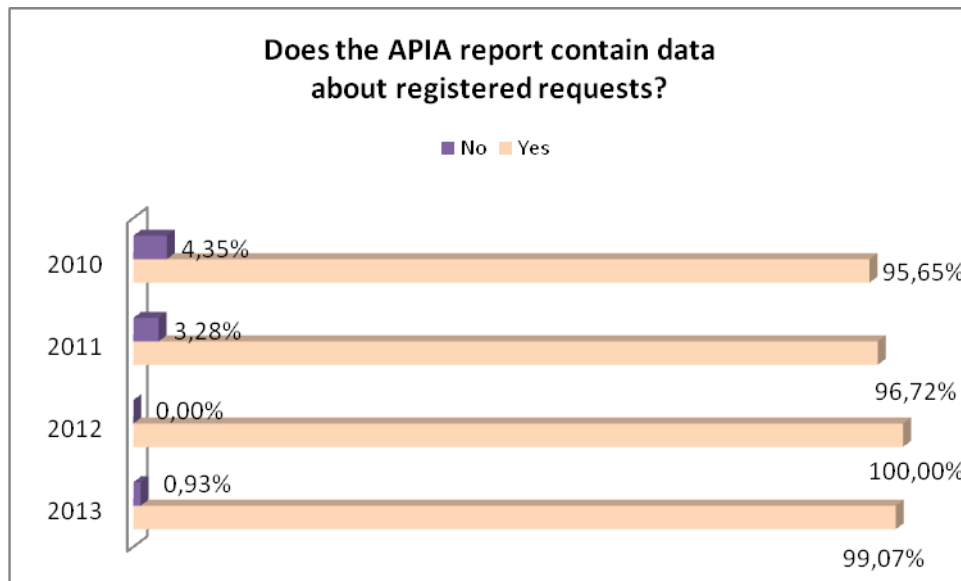


Chart 55. Does the APIA implementation report contain data about registered requests? (by type of public body – 2013)

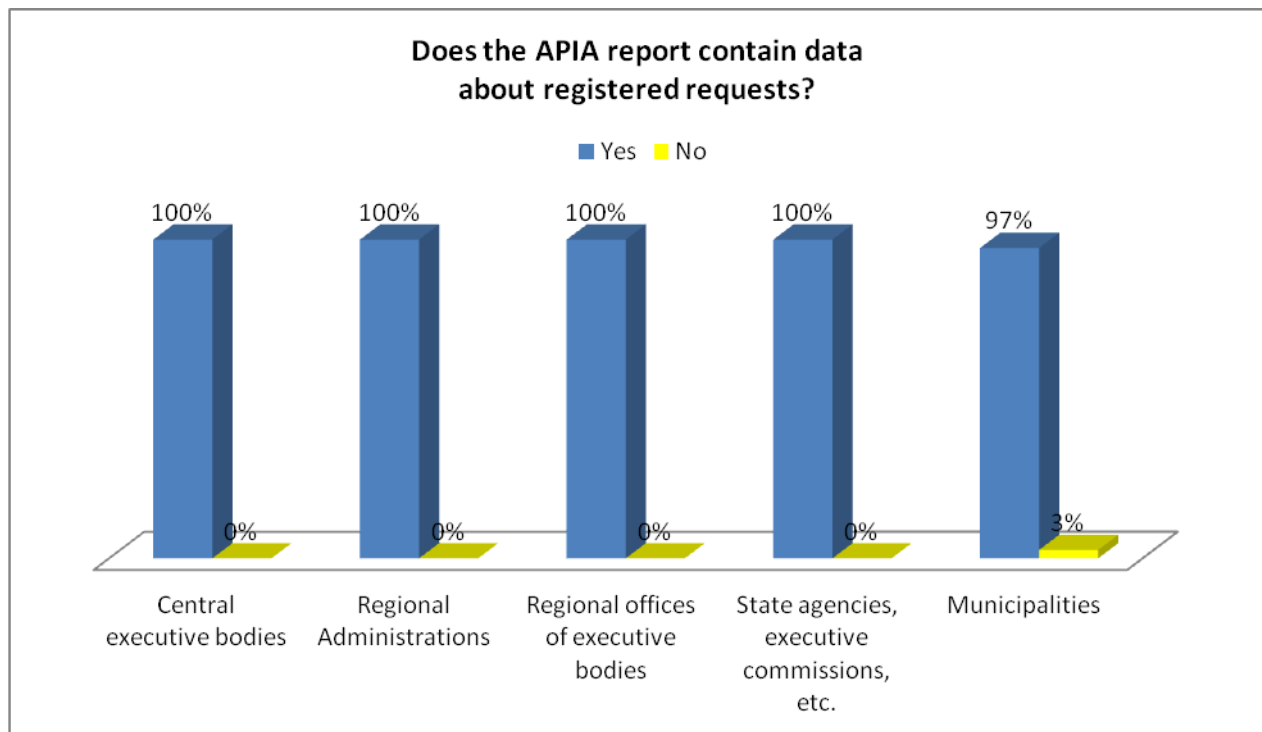


Chart 56. Does the APIA implementation report contain data about refusals on information requests?

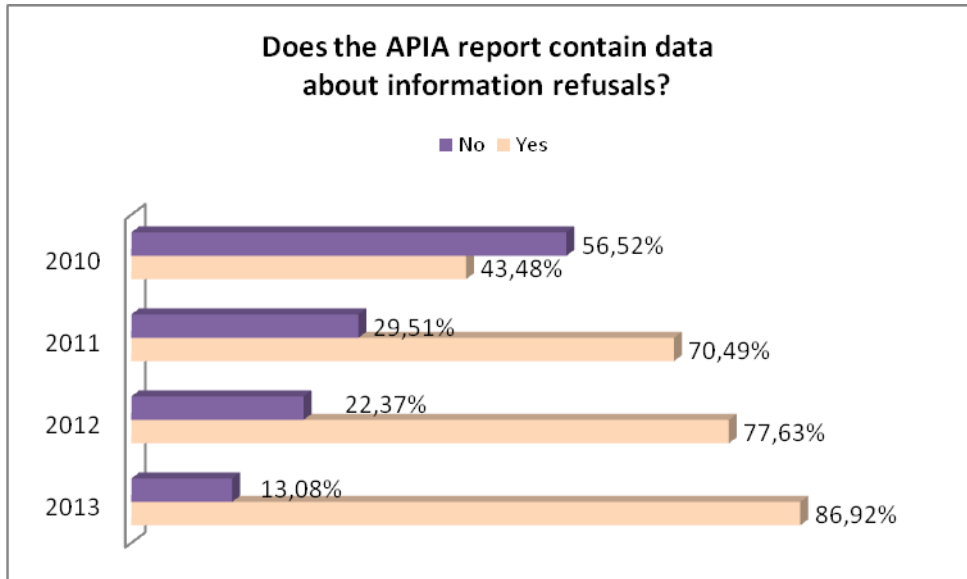


Chart 57. Does the APIA implementation report contain data about refusals on information requests? (by type of public body – 2013)

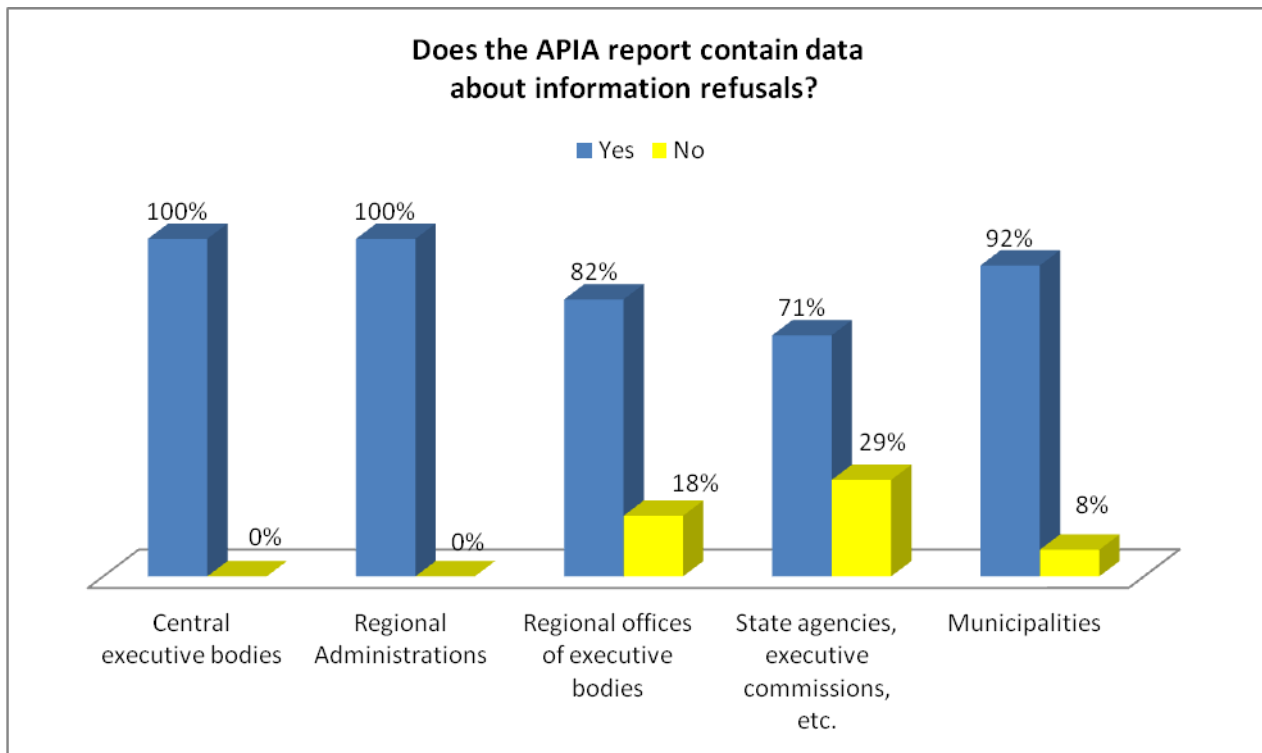


Chart 58. Does the APIA implementation report contain data about grounds on which information refusals were made?

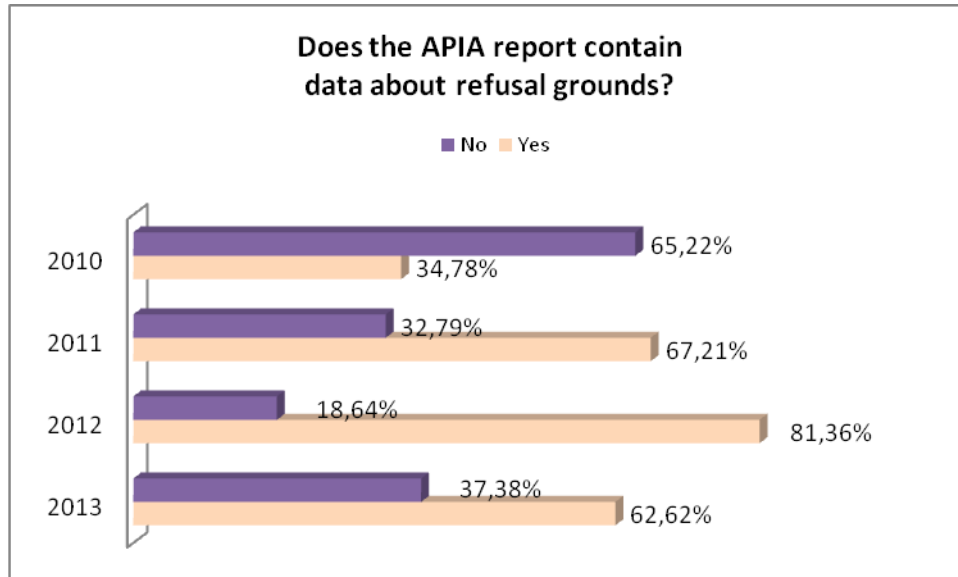
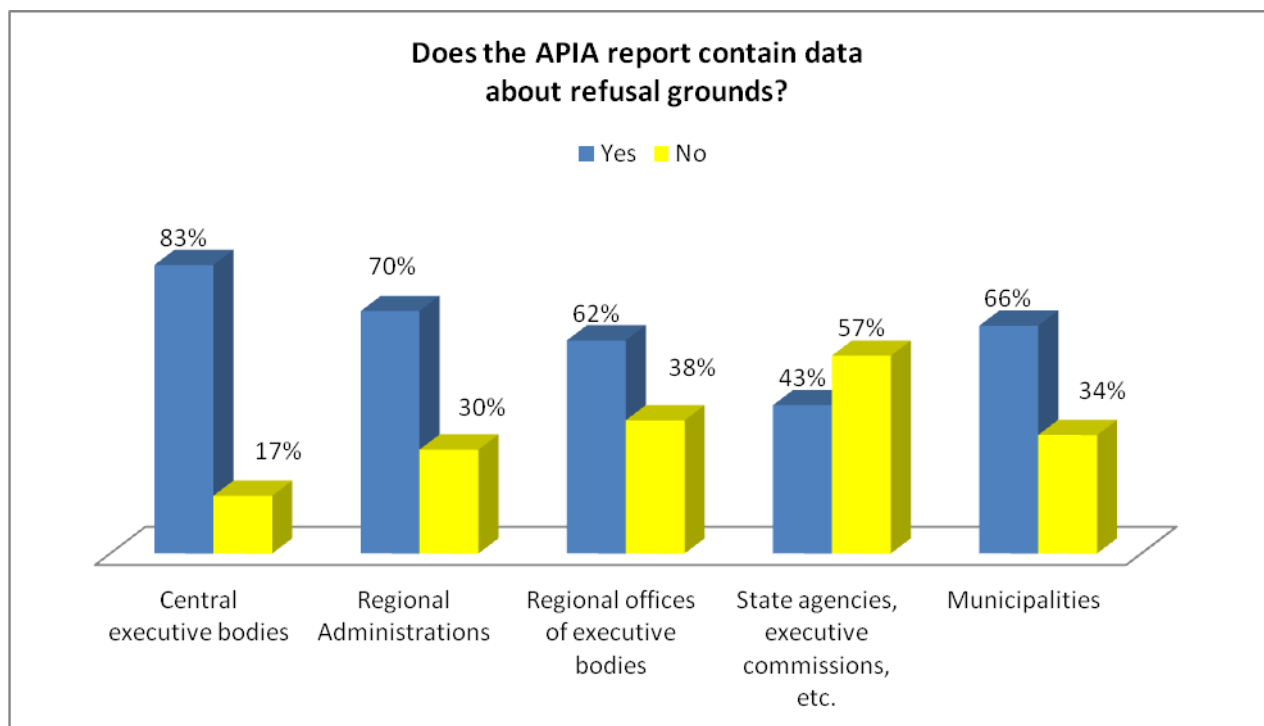


Chart 59. Does the APIA implementation report contain data about grounds on which information refusals were made? (by type of public body – 2013)



Contact Information of the Department/Official In Charge of Access to Information – name, address, phone number, e-mail, responsible official, working hours

Chart 60. Contact information of the APIA department – name?

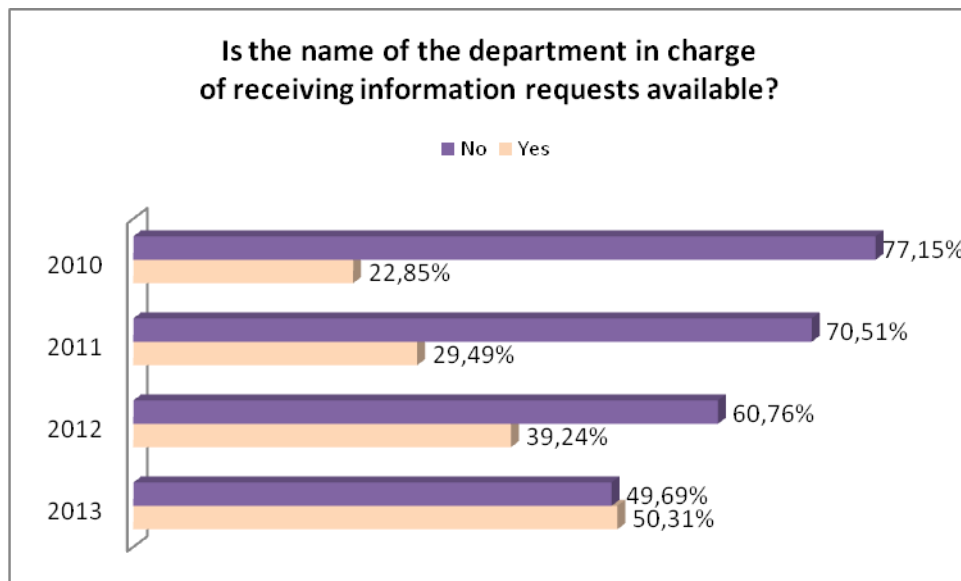


Chart 61. Contact information of the APIA department – name? (by type of public body – 2013)

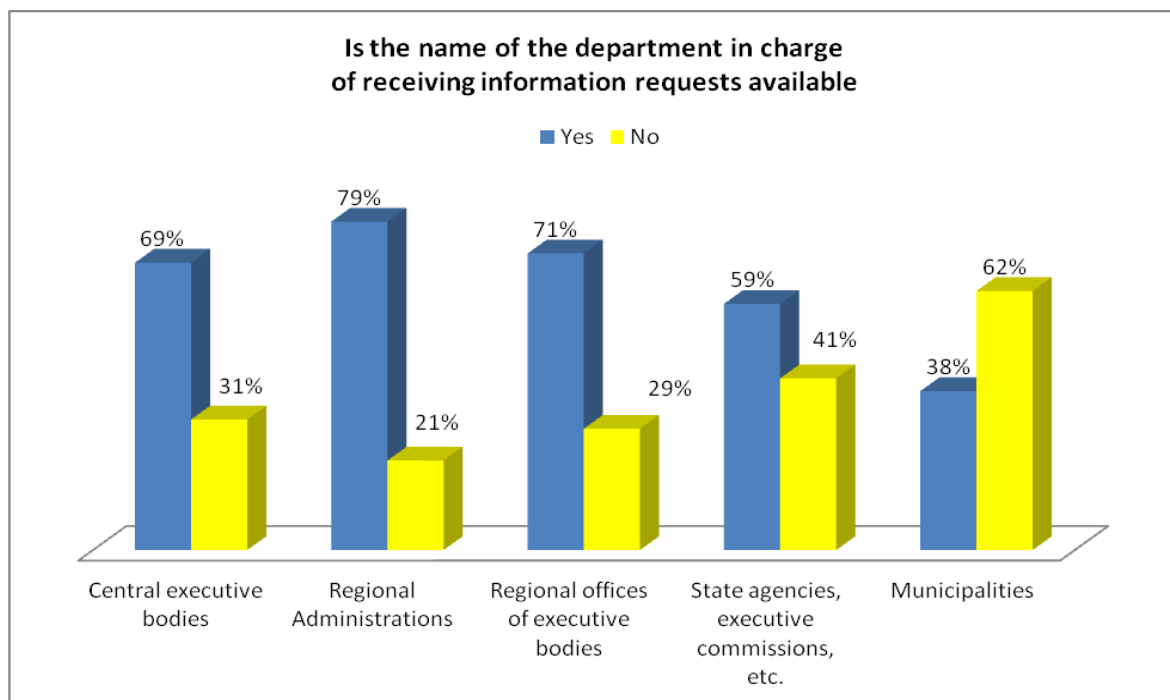


Chart 62. Contact information of the APIA department – phone number?

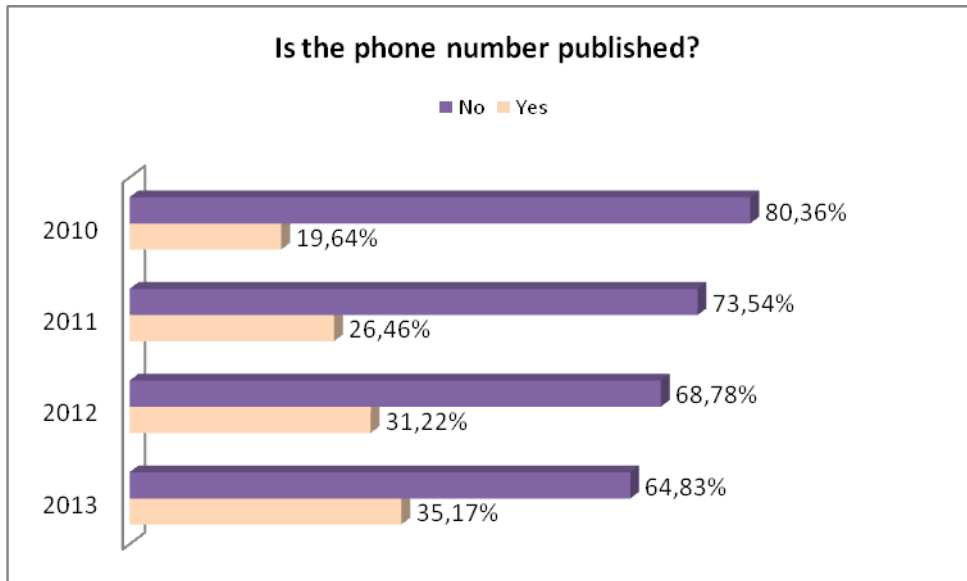


Chart 63. Contact information of the APIA department – phone number? (by type of public body – 2013)

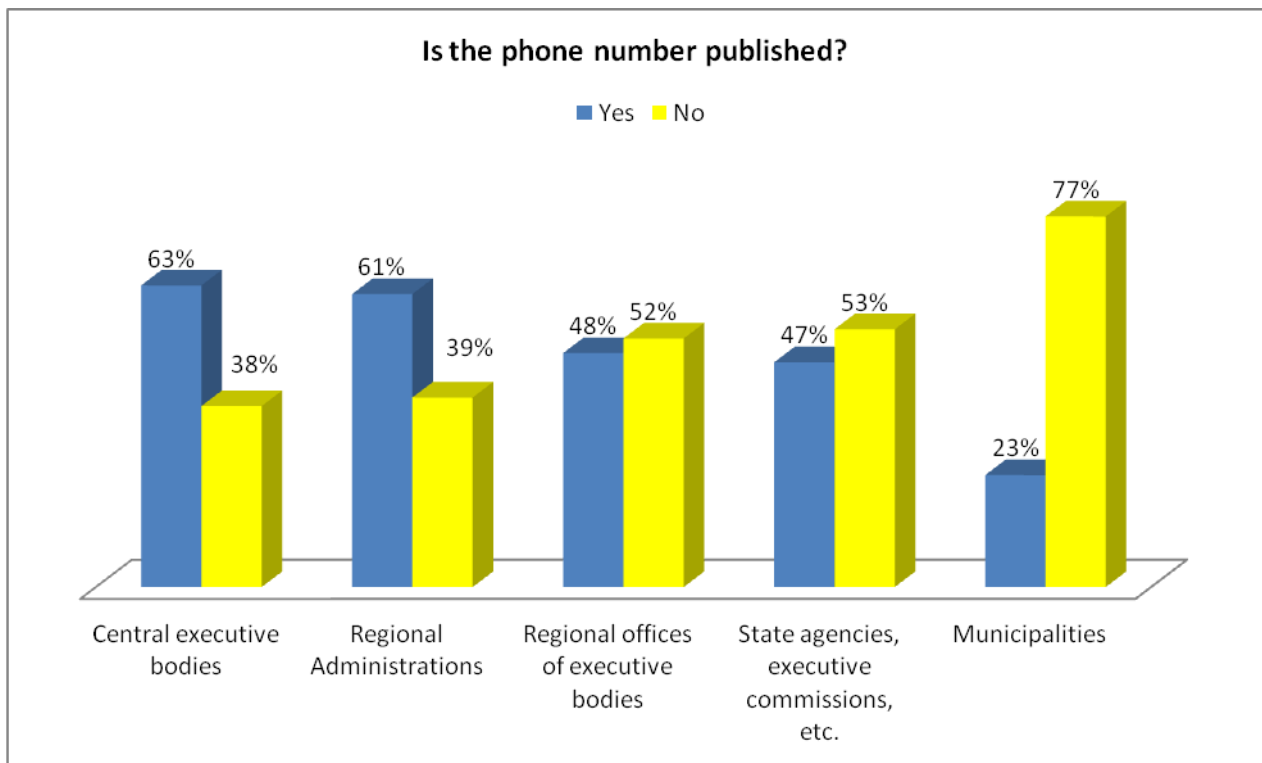


Chart 64. Contact information of the APIA department – responsible official?

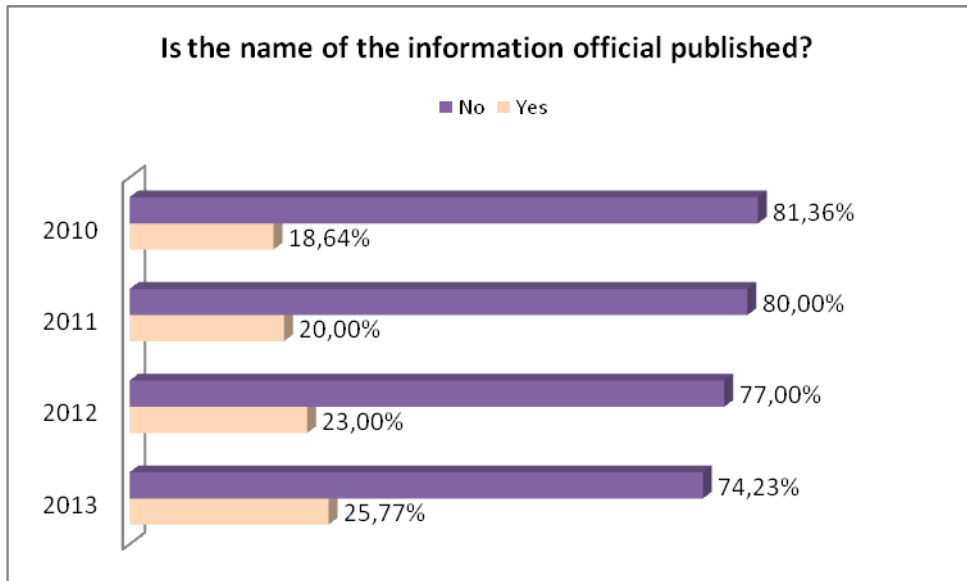


Chart 65. Contact information of the APIA department – responsible official? (by type of public body – 2013)

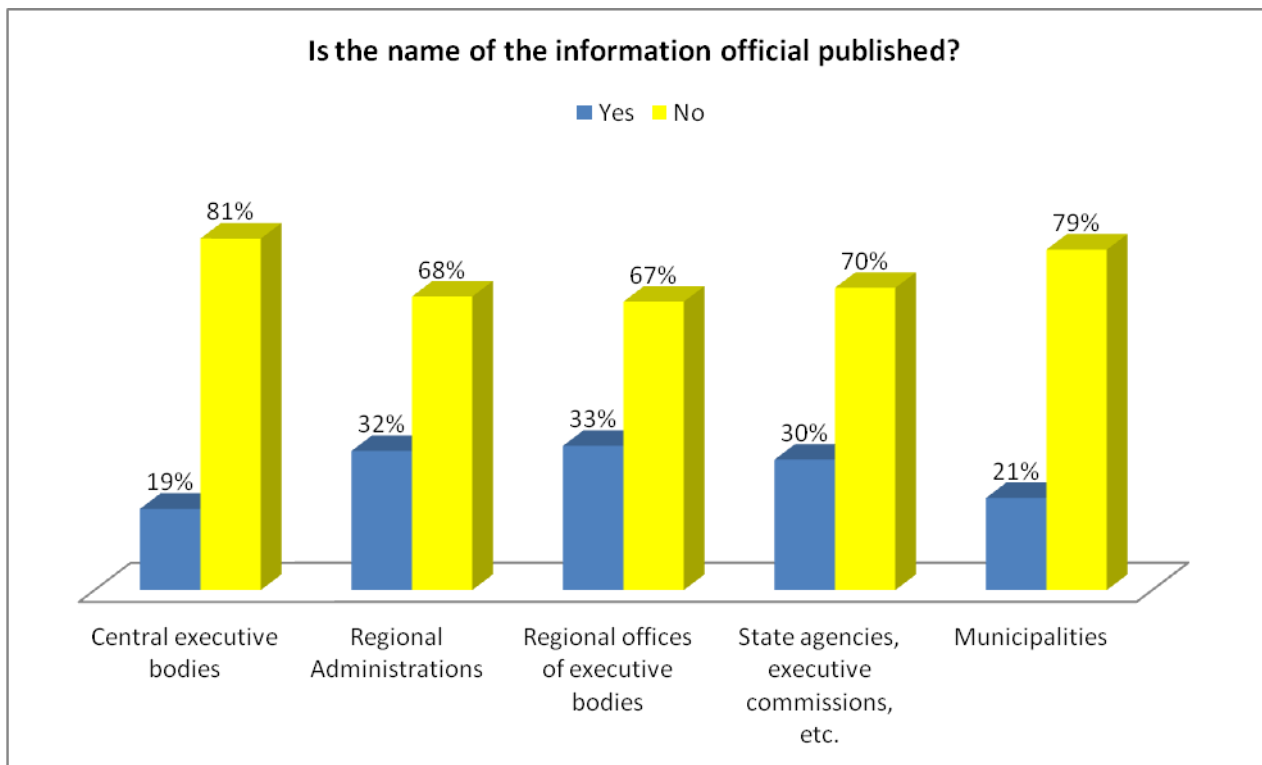


Chart 66. Contact information of the APIA department – e-mail address?

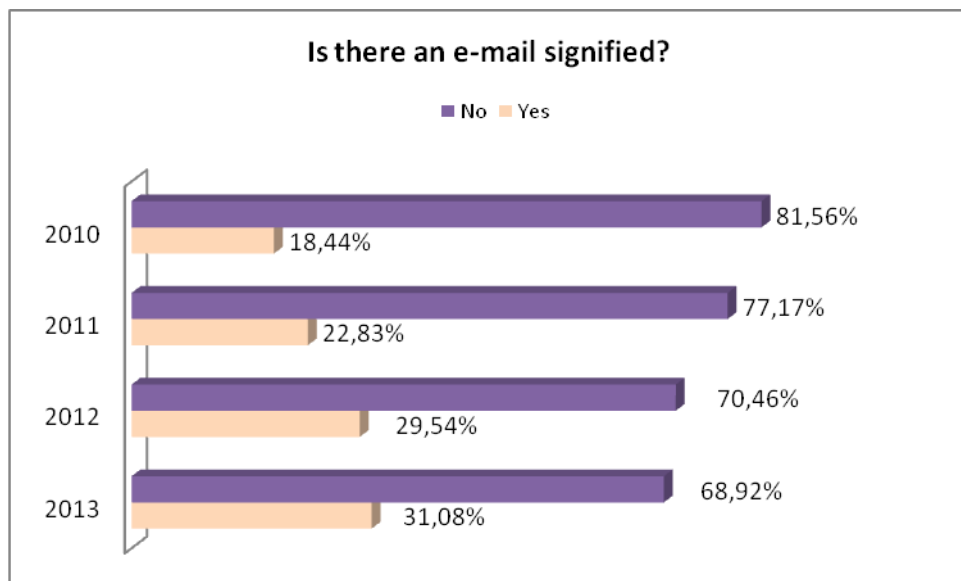


Chart 67. Contact information of the APIA department – e-mail address? (by type of public body – 2013)

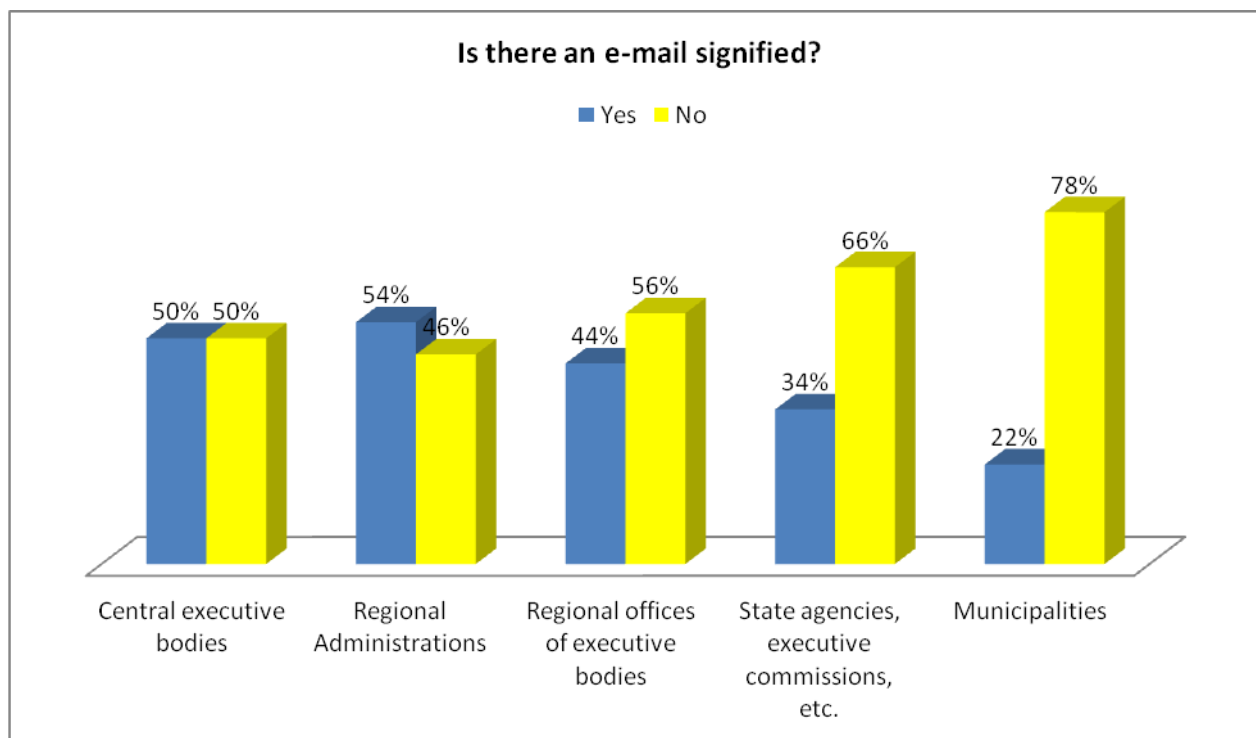


Chart 68. Contact information of the APIA department – address?

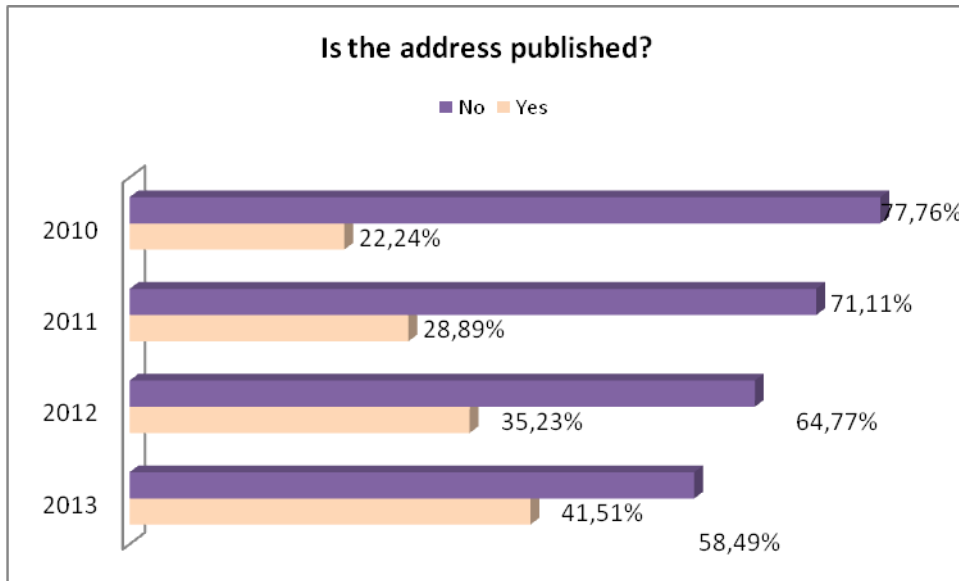


Chart 69. Contact information of the APIA department – address? (by type of public body – 2013)

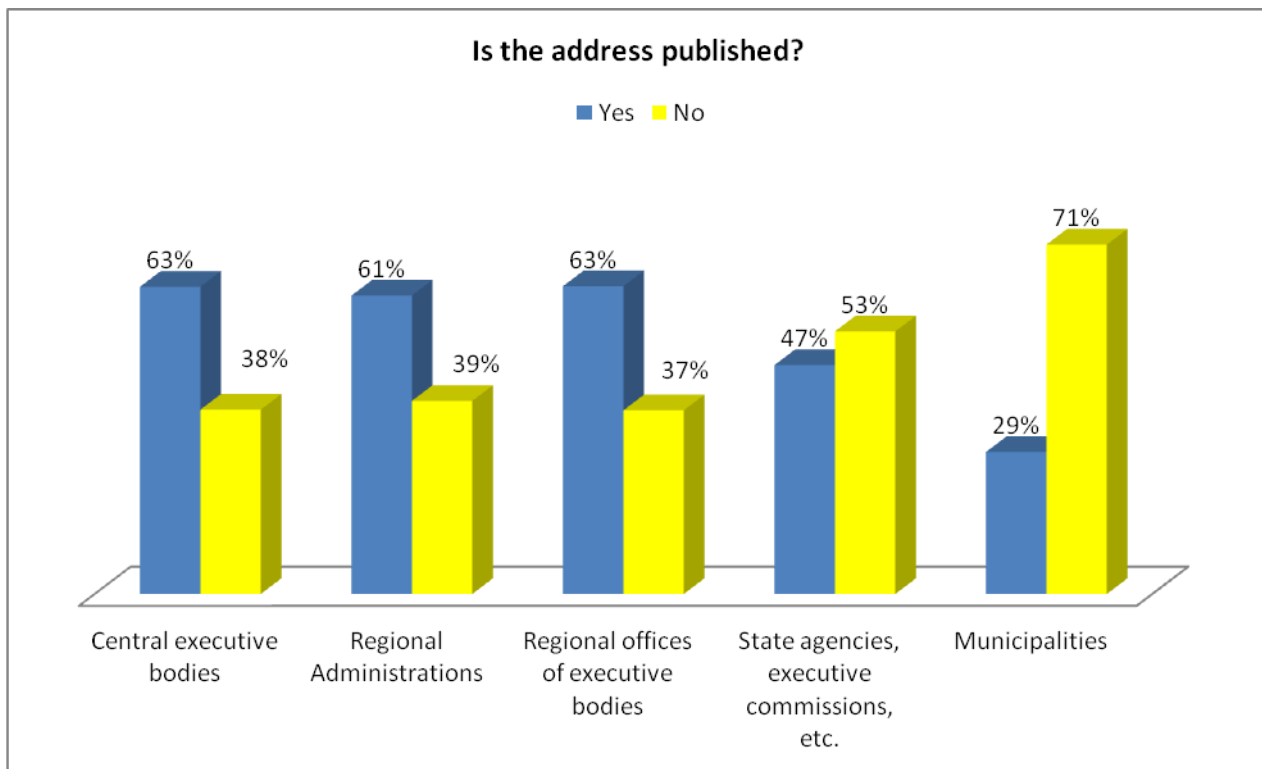


Chart 70. Contact information of the APIA department – working hours?

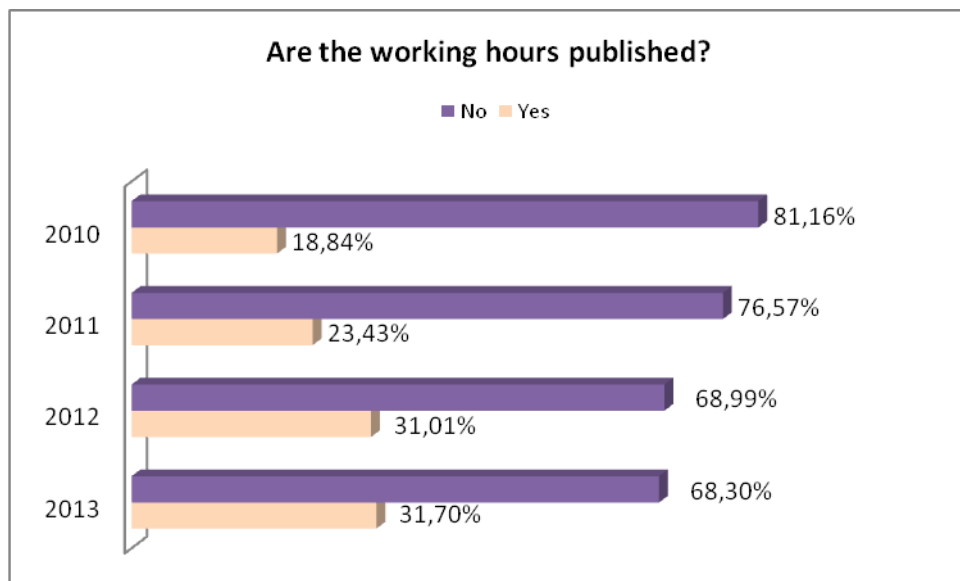
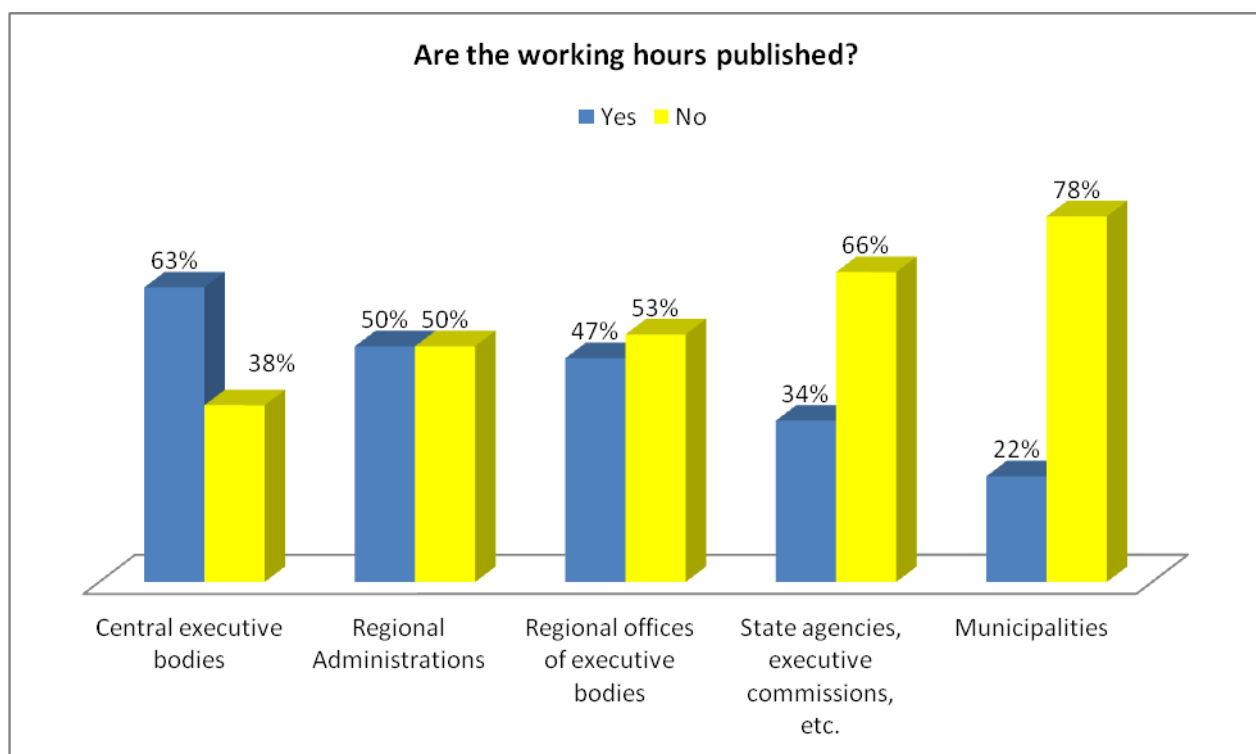


Chart 71. Contact information of the APIA department – working hours? (by type of public body – 2013)



Other Type of Information Necessary for the Exercise of the Right of Access to Information

Chart 72. List of declassified documents?

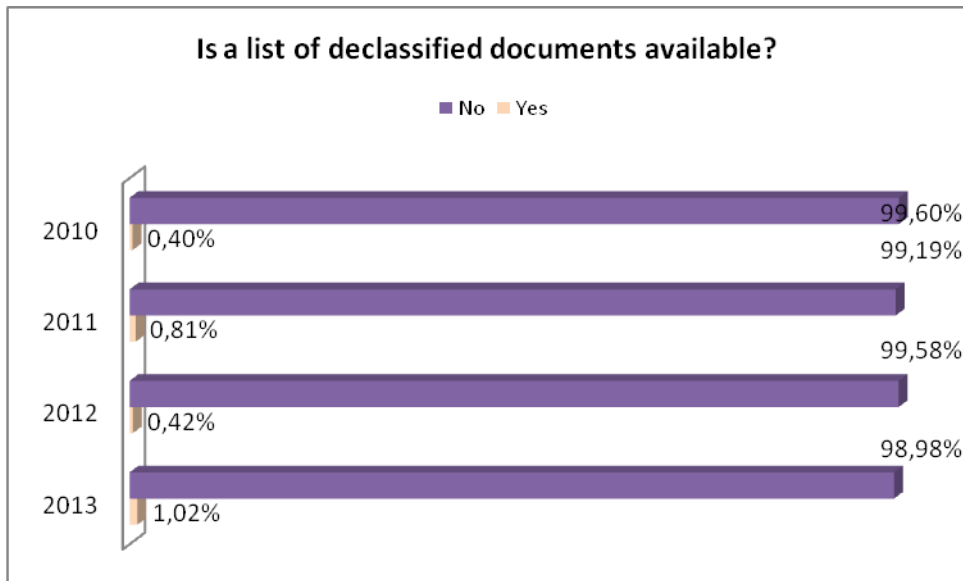


Chart 73. List of declassified documents? (by type of public body – 2013)

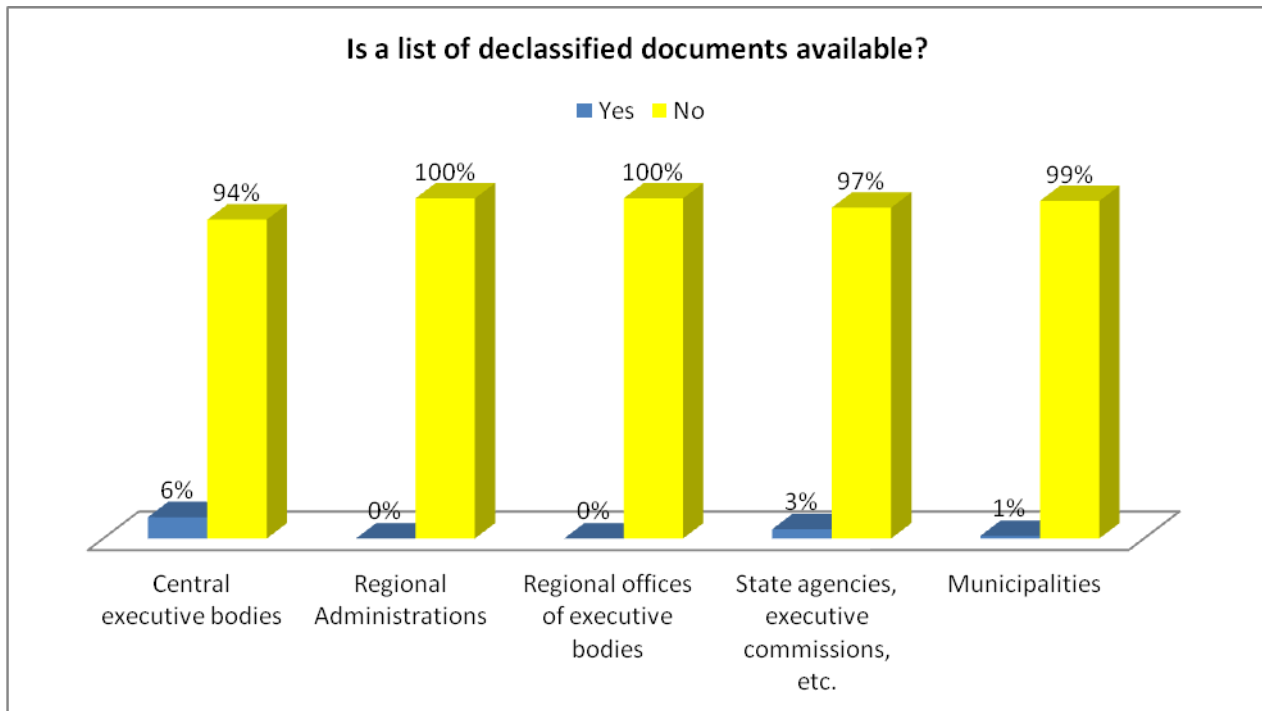


Chart 74. List of the categories of information subject to classification as *official secret*?

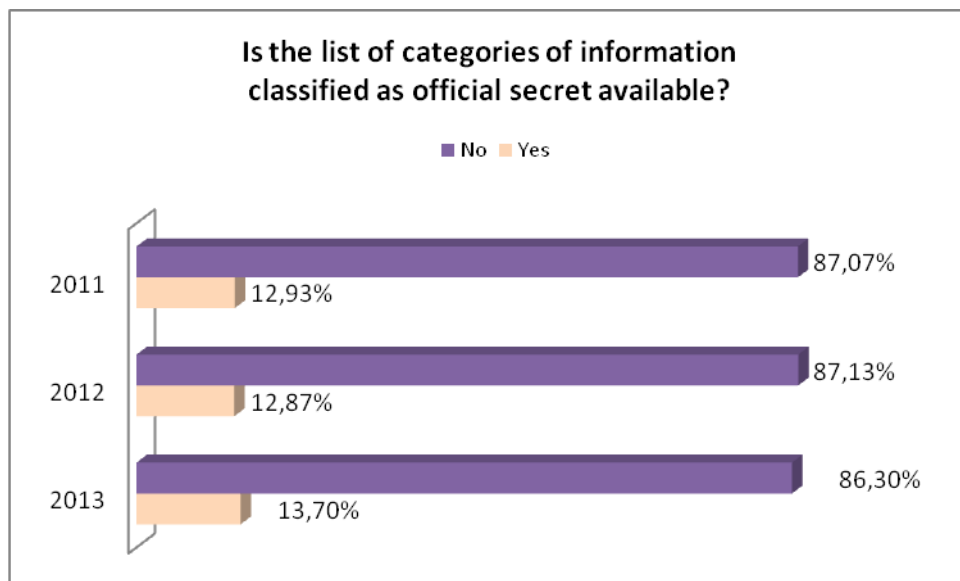
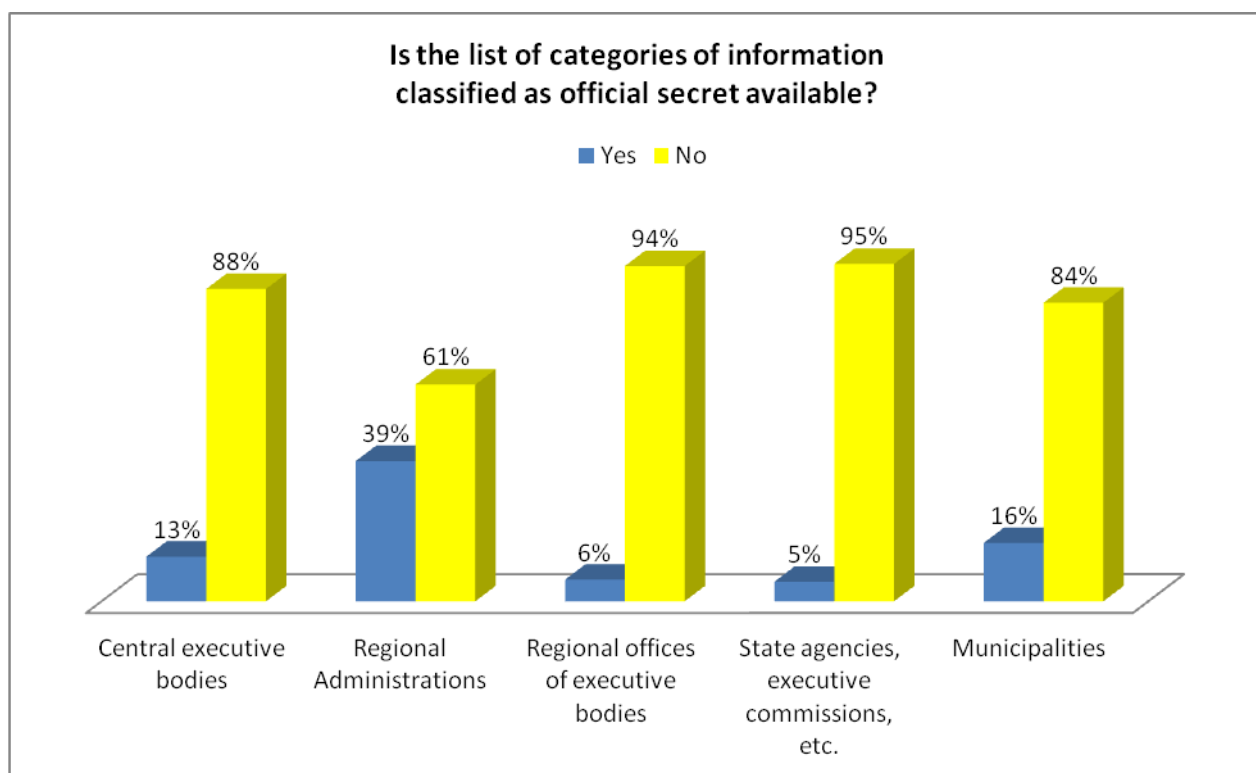


Chart 75. List of the categories of information subject to classification as *official secret*? (by type of public body – 2013)



Response to Electronic Requests

Chart 76. Are access to public information requests accepted electronically?

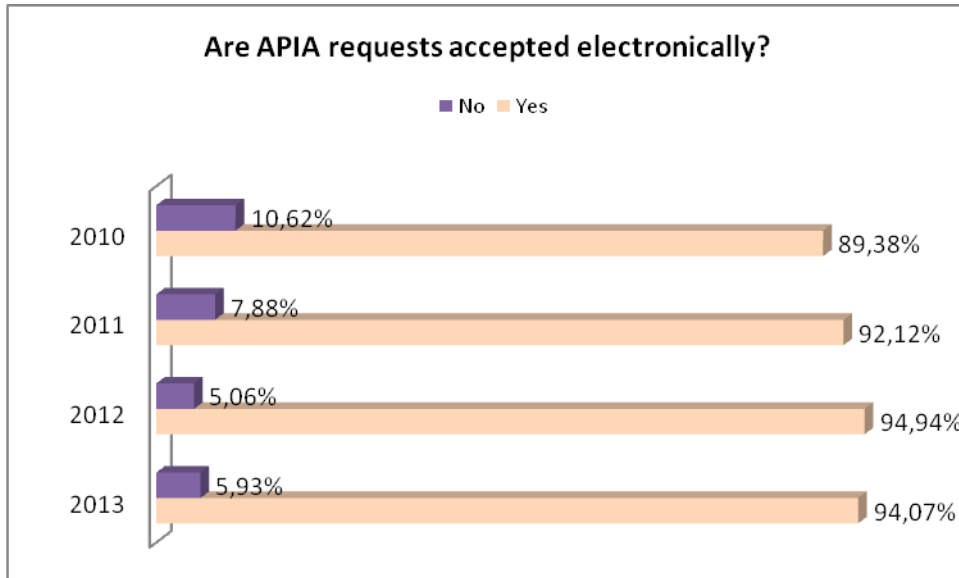


Chart 77. Are access to public information requests accepted electronically? (by type of public body – 2013)

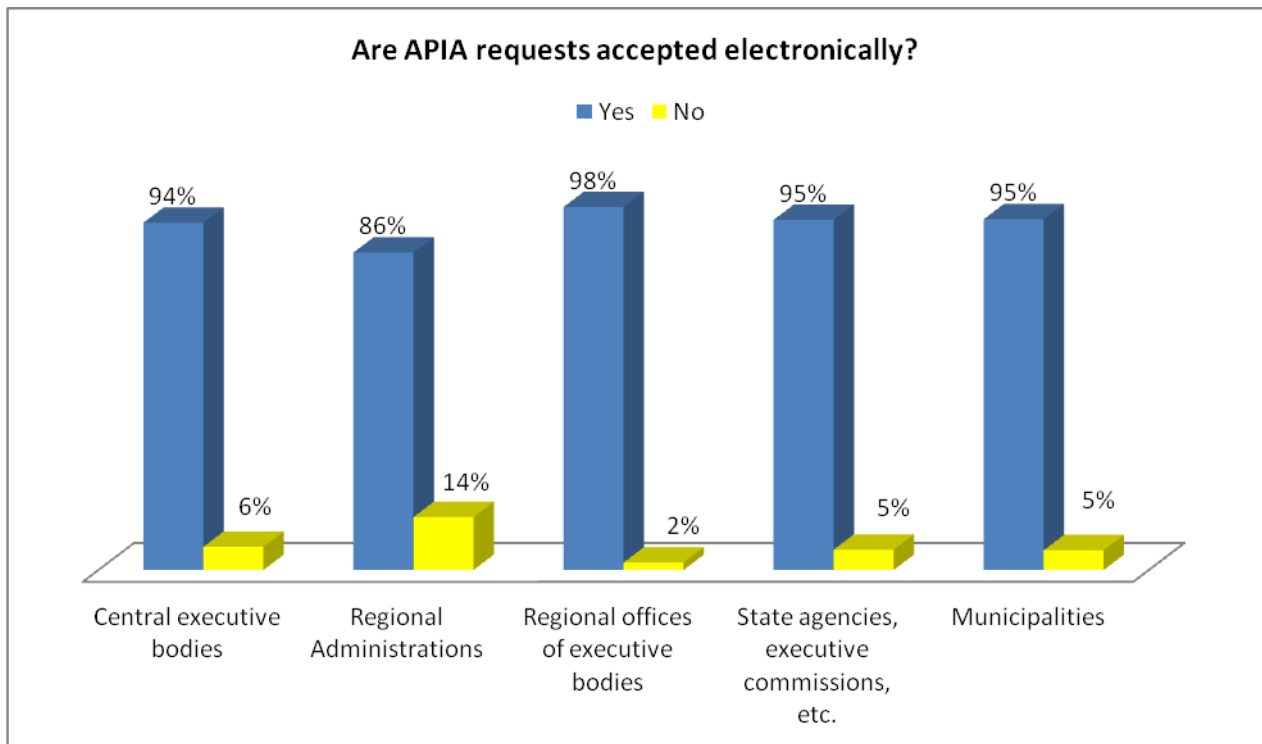


Chart 78. Is an electronic signature required for filing information request electronically?

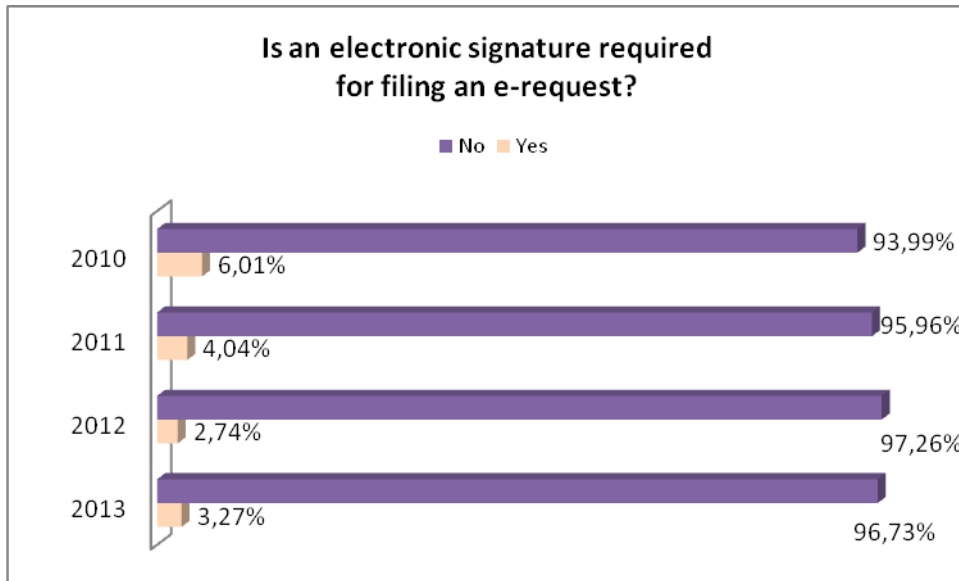


Chart 79. Is an electronic signature required for filing information request electronically? (by type of public body – 2013)

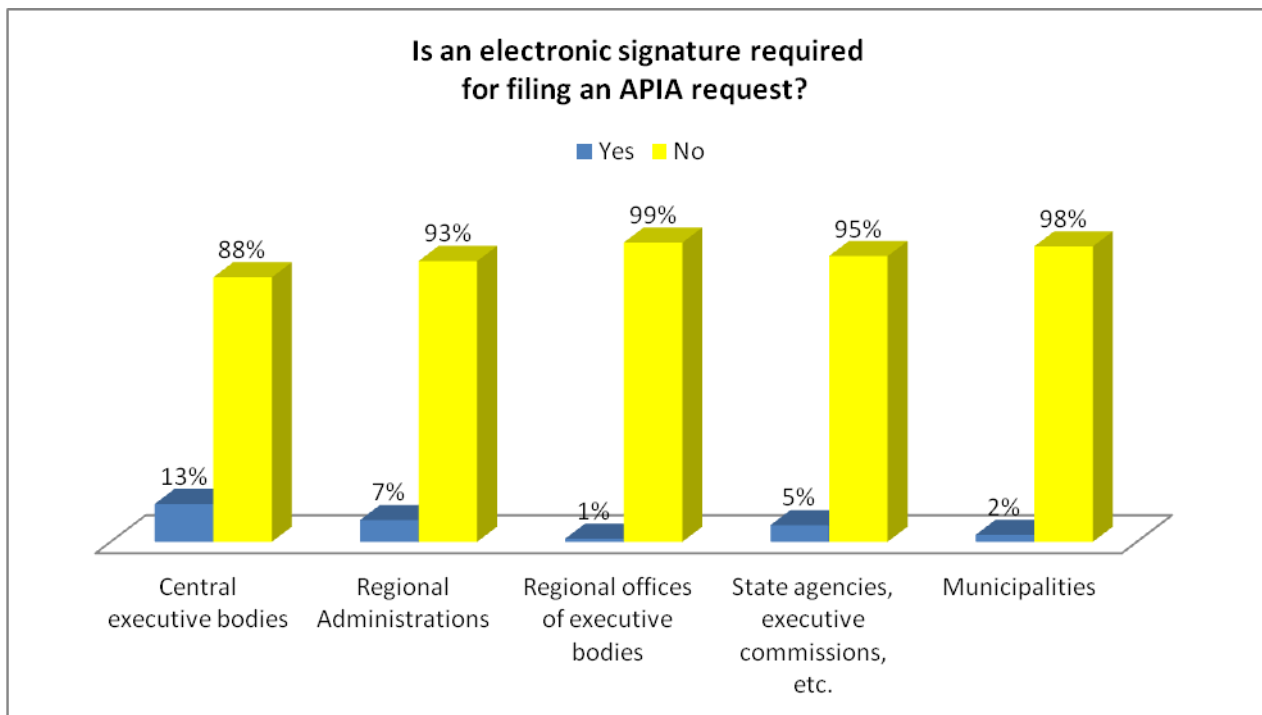
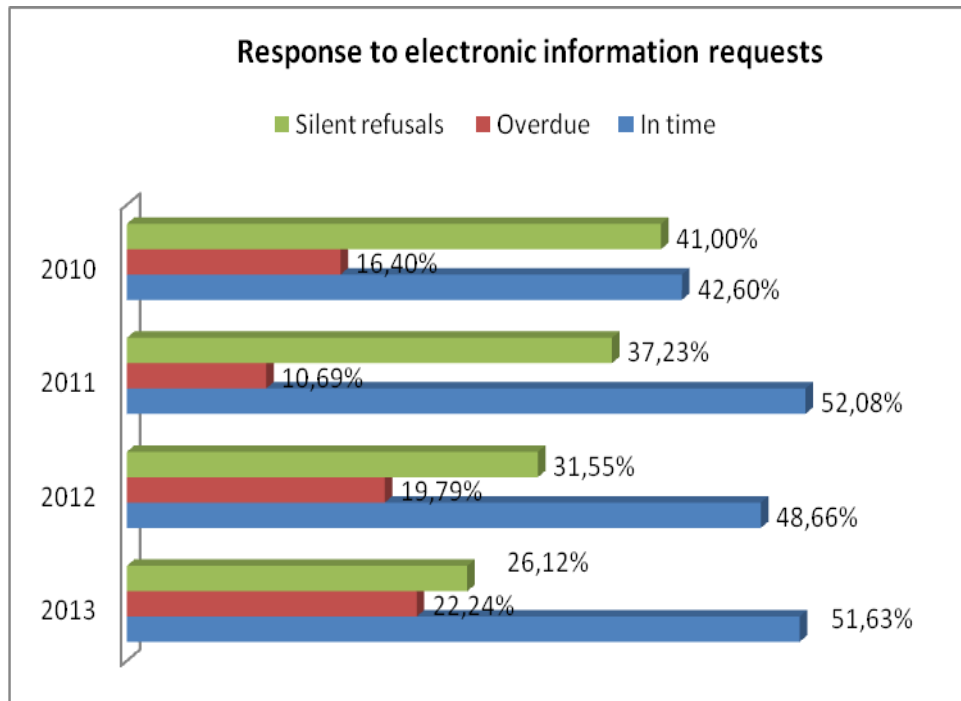
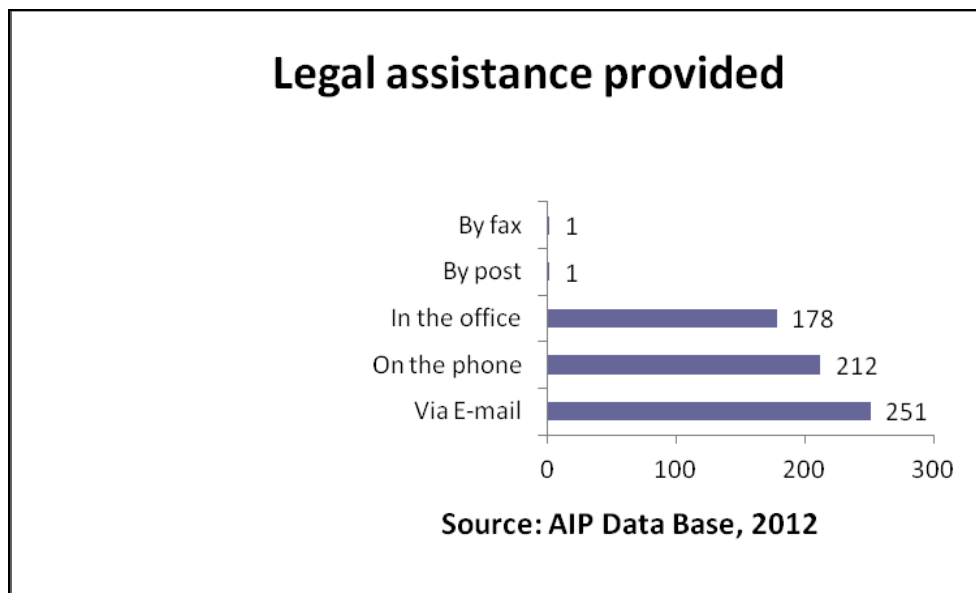
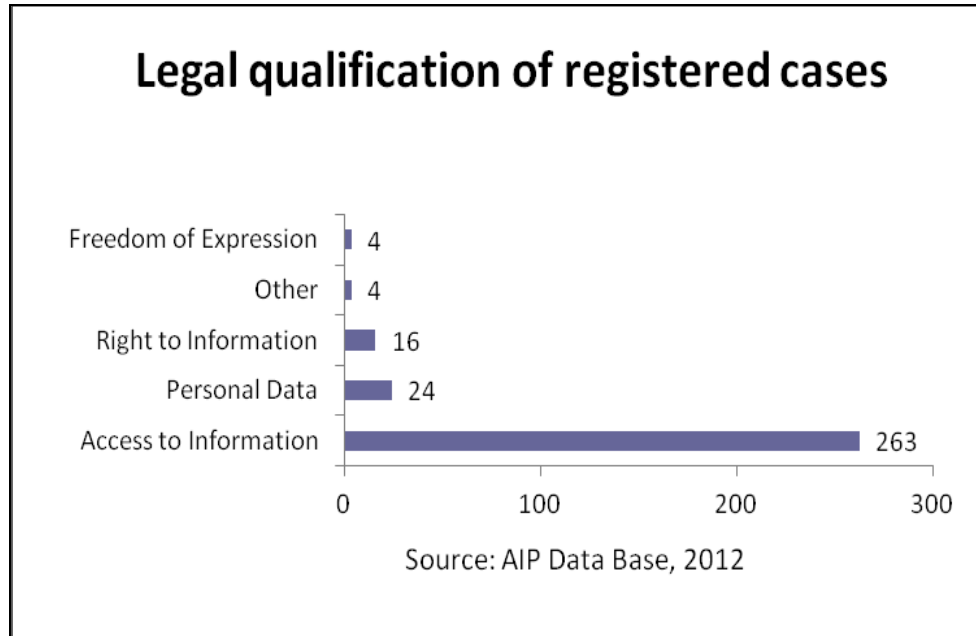


Chart 80. Response rate to access to information requests filed electronically
2010 – 2013

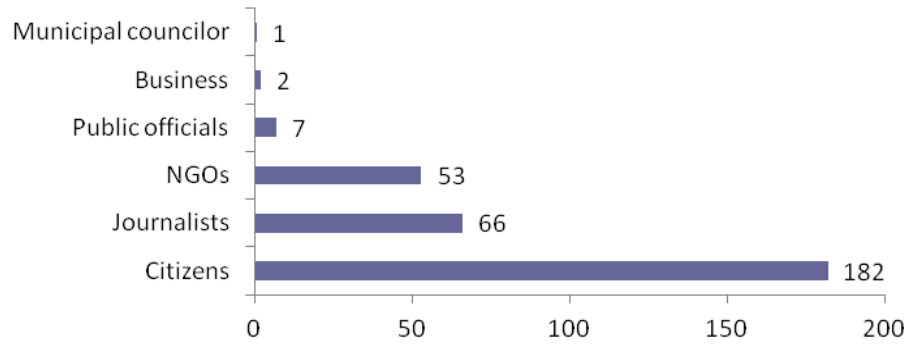


APPENDIX 2

STATISTICS FROM ACCESS TO INFORMATION PROGRAMME ELECTRONIC DATA BASE OF CASES REFERRED FOR LEGAL HELP

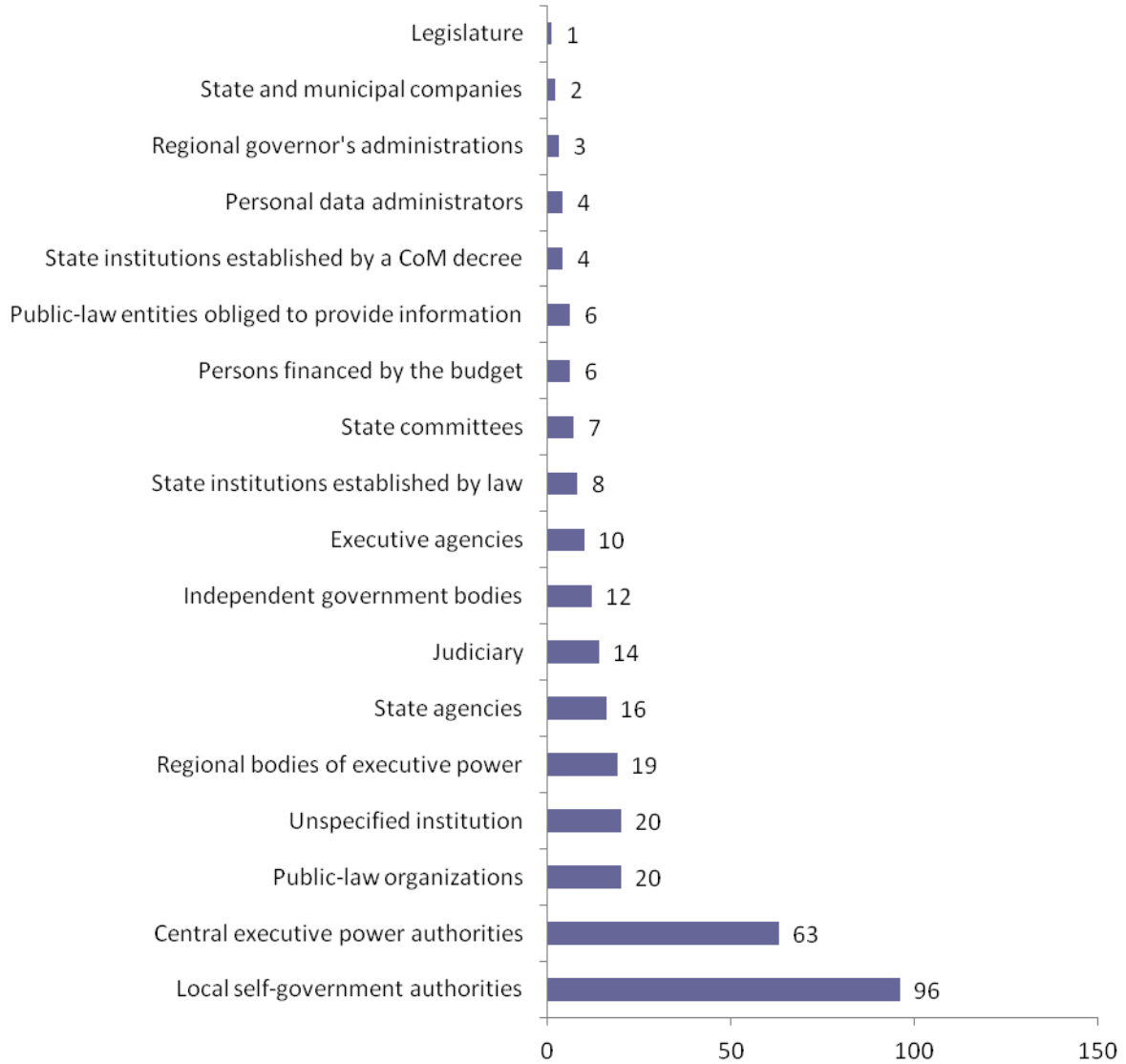


Cases referred by



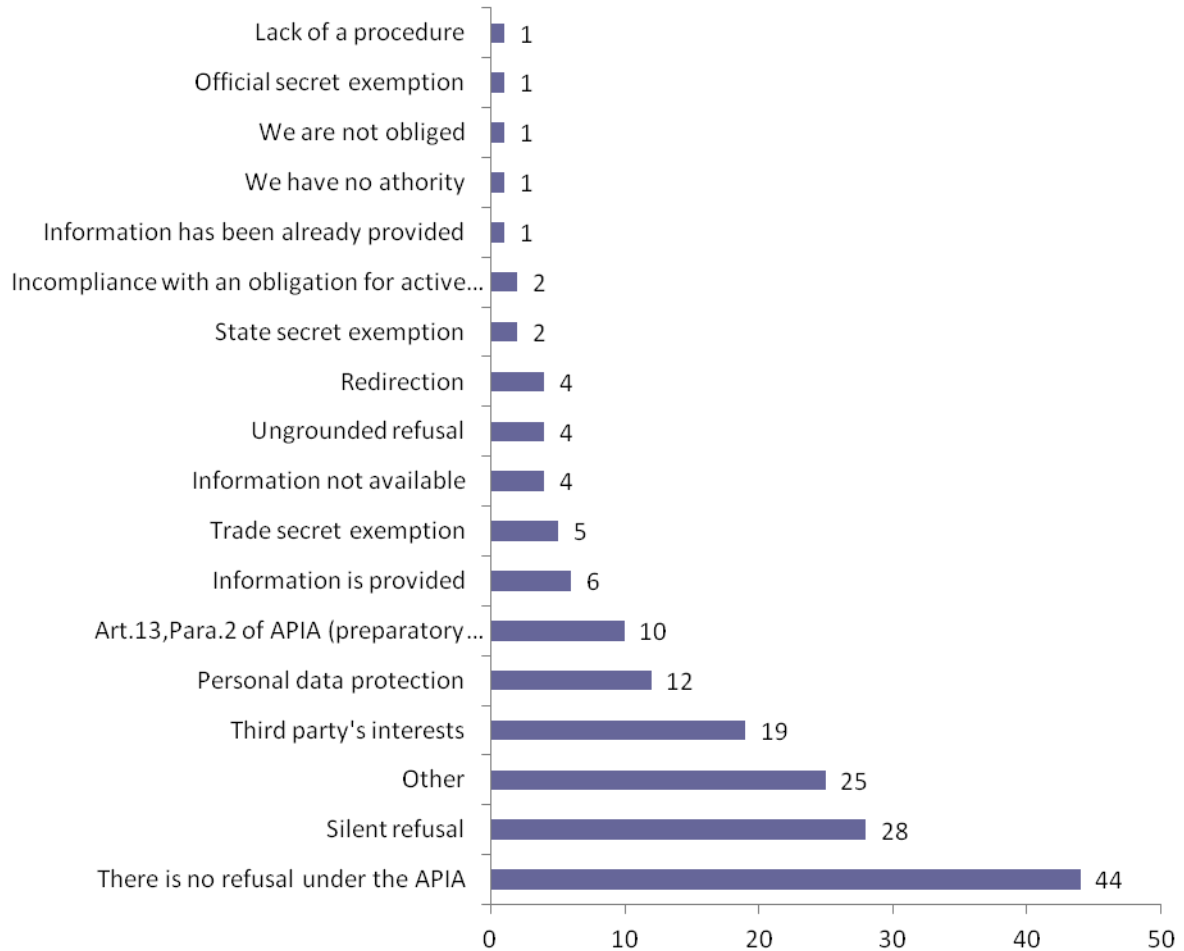
Source: AIP Data Base, 2012

Institutions where information was sought



Source: AIP Data Base, 2012

Grounds for refusal



Source: AIP Data Base, 2012. The data correspond to the number of cases related to access to information

APPENDIX 3

LITIGATION CASE NOTES

1. Balkani Wildlife Society v. the Ministry of Physical Education and Sports

First instance – administrative case no. 5489/2011 of the Administrative Court – Sofia City, Second Division, 28th panel

Cassation (second) instance – a. d. no. 15594/2011 of the Supreme Administrative Court, Fifth Division

Request

With an application of May 2011 Alexander Dutsov (Chairman of Association) requested from the Ministry of Physical Education and Sports (MPES) an abstract of all contracts (number and date of conclusion, price and subject of the contracts) concluded between the Ministry and the Bulgarian Ski Federation since 01 January 2007 to the date of the request (the 20 May 2011).

Refusal

By a decision of the 6 June 2011 the Ministry's chief secretary refused access to the requested information on the grounds that the Bulgarian Ski Federation was a third party whose protected interests were involved and the Federation had expressly refused provision of the documents.

Complaint

The explicit refusal was challenged before the Administrative Court Sofia City (ACSC). The complaint stated that the Ministry should not have sought consent on disclosure from the federation as the information does not affect legally protected interests of the federation (personal data or trade secret). It was also emphasized that in this case it is undisputed that there is an overriding public interest to provide the information under the Access to Public Information Act.

First Instance Court Decision

By Decision no. 4474 of 19 October 2011 the ACSC dismissed the action as unfounded. The decision stated that the information really affects the interests of the federation and the administrative body has lawfully refused to grant access to it since there is no consent. It is also pointed out that the applicant has not demonstrated the existence of an overriding public interest in disclosure of the requested information.

Cassation appeal

The ACSC decision was appealed before the SAC. The main argument in the cassation complaint is that for a part of the requested information there is a presumption of overriding public interest in providing it under the provisions of § 1, item 5, letter “f” of the AP of the APIA according to which until proven otherwise there is an overriding public interest in disclosure of the information relating to the parties, subcontractors, subject, price, rights and obligations, conditions, time limits, sanctions set out in the contracts where one of the parties is an obliged body under the APIA.

Cassation (second) Instance Decision

By Decision no. 13492 of 29 October 2012 the SAC repealed the decision of the ACSC, as well as the refusal by the MPES chief secretary and instructed him to provide access to the requested information. The Justices stated that the additional provisions of the APIA have laid down a presumption of overriding public interest in disclosure of the contracts concluded by obliged subjects under the APIA. Therefore, the applicant should not to demonstrate any overriding public interest but the institution must prove the absence of such. The decision is final.

2. Dimitar Dimitrov v. the Communications Regulation Commission

First instance – a. d. no. 9865/2011 of the SAC, Fifth Division

Cassation (second) instance – a. d. no. 4051/2012 of the SAC, Five-member panel, Second College

Request

With a request of May 2011 the citizen Dimitar Dimitrov wants the Communications Regulation Commission (CRC) to provide information on whether the person appointed as chief secretary has the necessary professional experience for this position.

Refusal

By a decision of 9 June 2011 the CRC chairman refused to provide the requested information. The decision stated that this was not public information within the meaning of Art. 2 of the APIA, but personal data and the request fell within the hypothesis of Article 2, Para. 4 of the APIA which provides that the law does not apply to access to personal data. The decision also stated that the information affects the interests of a third party and its consent on the disclosure is lacking.

Complaint

The explicit refusal was challenged before the Supreme Administrative Court.

Proceedings before the First Instance Court

The case was heard at a public court hearing in February 2012 and was scheduled for decision. The complainant submitted written comments, which stated that the requested information does not constitute personal data, as the activity of a public official is related to the exercise of public authority, not to his personal life. It was pointed out that the requested information is a direct indication of whether the person met the conditions for appointment as chief secretary. Providing this information will allow the applicant to form an opinion on whether the CRC management staff has the necessary professional qualification for the quality and efficient fulfillment of its powers in the respective sphere of public life.

First Instance Court Decision

By Decision no. 2726 of 24 February 2012 the Supreme Administrative Court repealed the refusal and instructed the chairman of the CRC to provide the requested information. The Justices stated that the duration of professional work experience is not related to privacy and family life but is an objectively existing fact. In this sense, the requested access to information does not affect protected personal data, as the applicant does not raise the question of the chief secretary's professional experience in general but whether he had the professional experience required under the rules. Therefore, it is not personal data that are concerned but rather access to information, enabling the applicant to form an opinion about the activities of the obliged subject and specifically whether the chairman of the CRC observes the rules for appointment of staff in the commission.

Cassation appeal

The SAC three-member panel decision was challenged by the CRC chairman before a five-member panel of the SAC. The complaint stated first instance court had not discussed in the reasoning of the decision the fact that the person holding the office of chief secretary of the CRC has expressed an explicit disagreement the requested information to be disclosed.

Cassation (second) Instance Decision

By Decision no. 8572 of 14.06.2012, the five-member panel of the SAC upheld the decision of the three-member panel. The Justices held that the duration of professional work experience is a prerequisite for appointment to a particular post, and in this case the information is sought about a senior public official with management functions. As to the expressed dissent for disclosure of the information by the employee, the judicial

panel notes that in this case it is without any legal significance and cannot justify a refusal to provide the requested information. The decision is final.

3. Pavlina Zhivkova (“Banker” newspaper) v. the Ministry of Finance

First instance – administrative case no. 6243/2011 of the Administrative Court – Sofia City, Second Division, 34th panel

Request

With an application of June 2011 Pavlina Zhivkova (“Banker” newspaper) requested from the Ministry of Finance (MOF) information about how many of the members of parliament who left their original parliamentary groups in the 41st National Assembly have filed declarations with the finance ministry to transfer the state subsidy money they are entitled to to other parties, and to which. She also sought information on who were these independent MPs and to which political party has each of them requested to transfer the state subsidy money. The interest of the journalist was prompted by the fact that several independent MPs have declared affiliation to political parties other than the ones they have been elected with.

Refusal

By a decision of 22 June 2011 head of Directorate “Human Resources and Administrative Services” in MF denied access to the requested information. The refusal indicated that individual declarations of independent MPs contain personal data.

Complaint

The explicit refusal was challenged before the ACSC.

First Instance Court Decision

By Decision no. 1442 of 19 March 2012, the ACSC repealed the refusal and instructed the administrative body to provide the requested information. The court held that MPs themselves are obliged subjects under the APIA as the information in question concerns the expenditure of funds from the state budget rather than personal income. It is noted that MPs are “bearers of public authority and to their capacity of public figures apply higher standards of transparency and accountability that are not typical for private individuals”. The decision was not appealed and became final.

4. Diana Boncheva v. the Municipal Electoral Commission – Yambol

First instance – administrative case no. 483/2011 of the Administrative Court – Yambol, 3rd panel

Cassation (second) instance – a. d. no. 3265/2012 of the Supreme Administrative Court, Fifth Division

Request

With an application of 25 October 2011 Diana Boncheva (AIP coordinator for Yambol) filed an application with the Municipal Electoral Commission (MEC) - Yambol, requesting access to the original protocols of the Sectional Electoral Commissions (SEC) of the local elections held on 23 October 2011 in 103 polling sections in the Municipality of Yambol and copies of selected protocols after review.

Refusal

Within the 14-day period under the APIA no response was received.

Complaint

The silent refusal was challenged before the Administrative court – Yambol.

Proceedings before the First Instance Court

The case was heard at an open hearing on 16 December 2011. At the hearing the MEC presented Decision no. III on Protocol no. 47 of 26 October 2012 with which at its meeting the commission decided to refuse access to the original protocols of SEC. The reasons for refusal are that the Election Code provides access only to transcripts of excerpts from the protocols and that the original protocols of SEC contain the names of the SEC members which are protected personal data. The applicant stated that she wished to pursue the case against the explicit refusal, of which she became aware at the hearing. The case was scheduled for judgment.

First Instance Court Decision

By Decision no. 400 of 11 January 2012 on ACY dismissed the action as unfounded. The court found that the legislator has provided an opportunity to provide transcripts of excerpts from the protocols, in compliance with the Personal Data Protection Act (PDPA). The judge stated that under the PDPA a name is undoubtedly personal data and each of the 103 SECs consists of individual commissions members whose names are written in the original protocols of the mayor and municipal councilors election. Thus, the court found, the OIC's decision was correct and in compliance with the special.

Cassation appeal

The ACY decision was appealed to the SAC. The complaint stated that the Election Code comprises rules for publicly revealing transcripts of excerpts from the protocols of the SEC in the premises of regional elections commissions and a right for candidates, advocates, representatives of political parties, coalitions of parties and nomination committees and observers to receive upon request excerpts from SEC protocols. These provisions of the EC concern, however, not the originals of SEC protocols but regulate only a quick way to familiarize voters and those directly connected with elections, with excerpts from protocols of the SEC. Therefore, for access to the original protocols should apply the general procedure under the APIA. It was also stated that the names of the SEC members are not protected personal data because in this case the information is related to their capacity of public officials who perform official functions as an expression of state authority.

Cassation (second) Instance Decision

By Decision no. 1619 of 4 February 2013 the SAC repealed the first instance decision, as well as the refusal and instructed the MEC to provide access to the original protocols. The Justices held that the names of officials are not protected personal data. According to Article 19, Para. 1 of the EC, members of election commissions, including the sectional electoral commissions, have the status of public officials in the performance of their functions and therefore the display of their names in the protocols established by the Commission identify them as officials - members of the respective collective body rather than as individuals. Accordingly, the disclosure of original protocols will not reveal personal data. Finally, the court stated that the EC provision on public revealing of transcripts of excerpts from the SEC protocols is irrelevant to the original SEC protocols disclosure and cannot justify for refusal of access. The decision is final.

5. Lazar Lazarov v. the Elin Pelin Municipality

First instance – administrative case no. 248/2012 of the Administrative Court – Sofia region, 3rd panel

Cassation (second) instance – a. d. no. 9351/2012 of the Supreme Administrative Court, Fifth Division

Request

In early February 2012 Lazar Lazarov (resident of the village of Lesnovo, Elin Pelin Municipality) submitted an application with the mayor requesting access to the entire administrative file for approval of the detailed spatial development plan (DSDP) for allotment of property for the expansion of the airfield in the village of Lesnovo, including a request to assess the need for environmental impact assessment, assessment of

management and control of the environment, declared and duly approved noise map of the site and more.

Refusal

By a decision of 16 February 2012 the mayor refused the requested information. The refusal was on the grounds that much of the information was not created by the municipality, represents information on administrative files on approval of a DSDP and is not public information under the APIA because the information is relating to administrative services. It is pointed out that access to such information pursuant to Article 131, Para. 1 of the Spatial Planning Act (SPA) only have the interested (affected) parties.

Complaint

The explicit refusal was challenged before the Administrative Court Sofia Region (ACSR). The complaint stated that according to the APIA in order for an obligation to provide access to be created it is sufficient that the information is available regardless of whether the institution is the creator of this information, or is merely keeping it. Regarding the allegation that the SPA contains special rules for access to such information, the complaint stated that the provision of the SPA referred to by the mayor is not applicable to this case since it concerned another aspect of the right to information, namely the active provision of information by introducing the obligation for the authorities to notify on their own initiative the persons concerned for the coordination and approval of development plans and schemes.

First Instance Court Decision

By Decision no. 448 of 05 June 2012, the ACSR repealed the refusal and returned the case to the mayor for reconsideration in accordance with the court's directions, according to which the APIA is the applicable law. In its reasoning, the court stated that the requested information is public within the meaning of the APIA because it concerned the public life in the village and affects the legal rights of each of its citizens. The court further notes that the elaboration of a DSDP represents proceedings relating to the issuance of an administrative act and not administrative services provided to citizens.

Cassation appeal

The ACSR decision is challenged by the mayor of Elin Pelin before the SAC. The cassation appeal once again laid down the argument that the requested information is not public, access to it could be provided under the SPA and only to the directly interested parties. Another argument set out was that the information is in fact a set of documents, whereas under the APIA can only be descriptively requested access to information, but not access to specific documents.

Cassation (second) Instance Decision

By Decision no. 704 of 16 January 2013 the SAC upheld the ACSR decision repealing the refusal. The Justices find the allegation of the mayor that the information is not public groundless. According to the court this information relates to the issuance and approval of a DSDP, an EIA and other documents pertaining to the allotment of land and construction of an airfield – i.e. a construction affecting public life in the village of Lesnovo. The information in the documents sought will enable residents, including the applicant, to form an opinion on the activities of state authorities and local government. The decision is final.

6. Mila Trifonova v. the Sofia Municipality

First instance – administrative case no. 8937/2011 of the Administrative Court – Sofia city, Second Division, 22nd panel

Request

With an application of 17 September 2011 Mila Trifonova (resident of the capital) requested from the mayor of Sofia Municipality (SM) access to the project for realization of green spaces in the "Vazrazhdane" park. The documents specifically requested are those from the file on issuing a decision of the Municipal Council relating to entitling the municipal company to expend funds for green spaces realization. The file includes a report, an opinion of a standing committee and a draft decision. Separately with the application is requested also the municipality's program for management of municipal property in 2011.

Refusal

By a decision of 21 September 2011 the SM secretary denied access to the requested information. The motives stated that in respect of the report and the file attached to it there was a restriction of disclosure under Article 13, Para. 2 of the APIA relating to preparatory information that has no significance in itself. Concerning the remaining information it is indicated that it is not covered by the APIA. Finally, the refusal stated that all programs and strategies of the SM are published on the website of the municipality.

Complaint

The explicit refusal was challenged before the ACSC. The complaint stated that when with the application have been made several requests for information, then the decision of refusal should state the reasons for each of the individual requests, and this was not done in this case. It was pointed out that access cannot be denied to all documents in

the file based on the preparatory information restriction as the report contains not only opinions and recommendations from the Commission to the Sofia Municipal Council but also certain findings. These findings have independent significance because they reflect the situation at a given moment and do not depend on the views, opinions and recommendations of individuals assisting the SMC in issuing its acts, and cannot be amended by subsequent acts. Finally, the complaint indicated that on the SM webpage was posted only a strategy for managing municipal property of the Sofia Municipality for the period 2009 - 2011, but there was no specific program for 2011.

First Instance Court Decision

By Decision no. 940 from 22 February 2012, the ACSC repealed the refusal and returned the file to the SM secretary for a new decision with mandatory instructions on the interpretation of the law. In its reasoning, the court stated that the SM secretary exhibited no factual and legal grounds for refusing to provide information on each of the requests in the application. In this connection the court notes that the lack of reasoning in the administrative act deprives the court of the opportunity to consider whether the act has been issued in accordance with the purpose of the law and under its proper implementation, which is why even on that ground alone the administrative act is unlawful. Concerning the preparatory documents restriction the court held that it applies only if a final decision by the administrative authority is issued, as in these cases the public can obtain information from the latter. The court held that access cannot be denied to a whole report on the basis of preparatory documents as besides opinions and recommendations it contains findings with completely independent significance because they reflect the situation at a given time and are not subject to change. The decision was not appealed and became final.

7. Ivan Atanassov (Sakar news) v. Harmanli Municipality

First instance – administrative case no. 778/2011 of the Administrative Court – Haskovo

Cassation (second) instance – a. d. no. 3435/2012 of the Supreme Administrative Court, Fifth Division

Request

In early September 2011 Ivan Atanasov (a journalist from Sakar News) submitted an application with the mayor of Harmanli, requesting access to the audit report and the conclusion of an inspection by the Public Financial Inspection Agency (PFIA) in the Harmanli Municipality.

Refusal

By a decision of 14 September 2011 the mayor denied access to the requested information. The refusal stated that the audit report should be requested from the PFIA, as it is the institution, creator of the information. He laid down the argument that the information falls within the exemption under Art. 13, Para. 2, item 2, which is applicable to the information containing opinions and positions regarding ongoing or prospective negotiations led by the authority or on its behalf, as well as information relating to those and which was prepared by the respective authorities administrations.

Complaint

The explicit refusal was challenged before the Administrative Court - Haskovo (ACH). The complaint stated that the APIA did not, at all, introduce a requirement only for the creator of certain information to allow access to it. According to the APIA any body possessing the requested information (created or kept) is obliged to provide it upon request. As for the ground for refusal, alleged by the mayor, under Art. 13, Para. 2, item 2, the complaint stated that it is not applicable because the report and the conclusion of the inspection are neither opinions, nor positions, nor information relating to forthcoming negotiations within the meaning of Art. 13, Para. 2, item 2 of the APIA.

Proceedings before the First Instance Court

The case was heard in open court on 29 November 2011 and was postponed due to improper summoning of the mayor. Subsequently, the case was heard in two public hearings - on 9 December 2011 and 17 January 2012 and was scheduled for judgment.

First Instance Court Decision

By Decision no. 17 of 30 January 2012 the ACH repealed the refusal of the mayor and returned the case for reconsideration. The court held that the unclear, vague and contradictory motives of the mayor's refusal amount to a lack of reasoning. Furthermore, Article 13, Para. 2, item 2 does not apply to the requested information, as the audit report obviously does not contain opinions and positions regarding negotiations led by the authority, nor is it prepared by its administration. It was argued that the exemption under Article 13, Para. 2, Item 1 of the APIA, related to preparatory documents, also cannot be applied in this case. Finally, the court noted that the allegations that the applicant may request that information from the PFIA, since the document was issued by the Agency are unfounded, because even if the report was created by another authority the Harmanli Municipality has the report at its disposal. Given that more than one of the obliged subjects under the APIA have a certain kind of information, this does not preclude a request to be made before any one of them.

Cassation appeal

The ACH decision was challenged by the mayor of Harmanli before the SAC. The appeal stated that in this case regarding the requested information there are numerous court proceedings that have not been completed at the time of the refusal and at present. Furthermore, the requested information affects the interests of third parties – participants in proceedings under the Public Procurement Act and under the Ordinance on Small Public Procurements and providing information about them would seriously undermine their interests.

Cassation (second) Instance Decision

By Decision no. 1364 of 29 January 2013 the SAC upheld the first instance decision repealing the refusal. The Justices held that the mayor's attempt to “complete” the contested decision by the statement of reasons in the cassation appeal is inadmissible. In order for the court to carry out an effective judicial review of its legality, the act should contain extensive reasoning including the specific factual and legal grounds which led the authority to issue it. On the issue of the illegality of the contested mayor's decision, the SAC shares completely the reasoning of the ACH and did not consider necessary to reiterate it. The decision is final.

8. Ivan Petrov v. The Bulgarian National Radio

First instance – administrative case no. 3075/2010 of the Administrative Court – Sofia City, Second Division, 25th panel

Cassation (second) instance – a. d. no. 16146/2010 of the Supreme Administrative Court, Fifth Division

Request

On 13 October 2009 Ivan Petrov (resident of the capital) submitted an application to the Director General of the Bulgarian National Radio (BNR), requesting access to the following information on owned by the radio cars (motor transport vehicles):

1. How many currently available vehicles does BNR – Sofia own;
2. What are the brands and models of the vehicles held by BNR – Sofia currently;
3. What are the state and control numbers of the vehicles held by BNR – Sofia currently;
4. How many vehicles did BNR – Sofia own in the previous year – 2008;
5. Where are they parked and does not a part of them obstruct the citizens on the sidewalk of “Dragan Tsankov” boulevard – in front of the BNR – Sofia building?

Refusal

By a decision of 22 October 2009 the Director General of the BNR refused to provide the requested information. The reasons for the refusal were that public information about mass media is only the one under Article 18 of the APIA. It is pointed out that BNR is actually a public law entity, but in this case should apply the special provisions for mass media. It is stated generally that the requested information is not public within the meaning of Art. 2, Para. 1 of the APIA. The refusal also indicates that this information is operative and has no significance in itself (grounds for refusal under Art. 13 Para. 2, Item 1 of the APIA). Finally, it is noted that the information referred to in question no. 3 of the application concerns the security of the vehicles owned by the BNR and of those owned by BNR employees, as well as that the information in question № 5, it is generally not public.

Complaint

The explicit refusal was challenged before the ACSC. The complaint stated that the requested information is public, since its provision will undoubtedly give the applicant the opportunity to form his own opinions about the activities of the BNR related to the expenditure of budget funds and property owned. On the issue of the applicability of the preparatory documents restriction to the requested information in the complaint it is noted that it appears from the nature and content of the requested information, that it is not operational in nature or rather it is not related the operational preparation of acts of the body, which is the exact ground for refusal under Art. 13, Para. 2, Item 1 of the APIA. The complaint argues that it is unclear how the provision of information about the registration numbers of cars owned by the radio will threaten the security of vehicles or employees of the radio. Moreover, many of them are clearly recognizable on the streets as they are marked with the labels and stickers.

First Instance Court Decision

By Decision no. 3209 of 20 October 2010 the ACSC repealed the refusal in the part concerning the number, brands and models of cars owned by the BNR (items 1, 2 and 4 of the application) and held it well founded concerning the registration numbers and parking of the vehicles. The court stated that the information about the number, brand and model of the vehicles owned by the BNR is public because it is related to the activity of the BNR as a national provider of radio services. From this information the applicant could form his own opinion on the activity of the BNR, all the more so in the case of property acquired with funds from the state budget. Regarding the information on the license plate numbers and parking of vehicles, the court stated that this information is not public under the APIA because the applicant could not draw any opinion whatsoever about the activities of the obliged subject.

Cassation appeal

The decision was challenged by the Director General of the BNR before the SAC. The appeal repeated the refusal's arguments that the requested information is not public as a whole under the APIA and the BNR was not obliged to provide it.

Cassation (second) Instance Decision

By Decision no. 170 of 05 January 2012 the SAC upheld the first instance decision for partial repeal of the refusal. The Justices pointed out that the administrative court correctly and in accordance with the substantive law ruled that from the information to be provided by the new pronouncement of the Director General of the BNR, the applicant will form his own opinion on the activities of the BNR related to the particular property. The decision is final.

9. Petyo Blaskov v. the National Customs Agency

First instance – administrative case no. 9957/2011 of the Administrative Court – Sofia City, Second Division, 29th panel

Cassation (second) instance – a. d. no. 7650/2012 of the Supreme Administrative Court, Fifth Division

Request

With an application of 15 September 2011 Petyo Blaskov (newspaper “Republic”) requested from the director of the National Customs Agency information whether there are other excise customs warehouses other than those of “Lukoil Bulgaria”, where were not installed measuring instruments in accordance with Ordinance no. 3 on the specific requirements and the control exercised by the customs authorities on the measurement of excisable goods, which companies possessed these warehouses, the list of companies and the number of points without installed measuring instruments.

Refusal

By a decision of 12 October 2011 the Agency director refused to provide the information on the ground that it affects the interests of third parties (the owners of the warehouses) and their consent to provide it was lacking.

Complaint

The explicit refusal was challenged before the ACSC. The complaint stated that whether the warehouses of a given company meet regulatory requirements or not, is information created and kept by public institutions, not companies. Next, its publicity does not lead to

unfair competition because there is no competition in the implementation of the law – it is mandatory for all. Therefore, Article 31 of the APIA is incorrectly applied in seeking the opinion of third parties. It is pointed out that there was no assessment of overriding public interest in disclosure the case having national prominence and being the subject of public debate. The provision of this kind of information will contribute to a more effective compliance with the law.

First Instance Court Decision

By Decision no. 1885 of 6 April 2012 the ACSC repealed the refusal and returned the file to the National Customs Agency for a new decision with instructions on the interpretation and application of the law. According to the court the nature of the requested public information excludes the applicability of the stated ground for refusal. The decision indicates that the interpretation of the legal provisions leads to a conclusion for restrictive interpretation of the grounds for refusal. This also applies to the hypothesis of affected third parties' interests and their lack of consent, whereas in the cases of overriding public interest access cannot be denied. According to the court the requested information concerns directly the transparency and accountability of the National Customs Agency and there is an overriding public interest for its provision.

Cassation appeal

The ACSC decision was appealed by the Agency before the SAC. In the cassation appeal was again stated that information affects the interests of third parties and in the absence of their consent should not be disclosed.

Proceedings before the cassation (second) instance

A hearing of the case at an open hearing is scheduled for 3 April 2013.

10. Yuriy Ivanov v. the Ministry of Regional Development and Public Works

First instance – a. d. no. 267/2011 of the Supreme Administrative Court, Fifth Division

Request

With an application of 5 October 2011 Yuriy Ivanov (Association "Public barometer" – Sliven) requested from the Ministry of Regional Development and Public Works (MRDPW) access to the inspection report by the Ministry Inspectorate on the activities of "ViK" Ltd. – Sliven (water and sewage supplier) for the period 2005 – 2010 in connection with a received signal for violations in the conduct of public procurement proceedings for the supply of water meters.

Refusal

No reply was received in the 14-days legal time limit.

Complaint

The silent refusal was challenged before the SAC. The complaint stated that the requirements of the law regarding the written form of the act, providing or denying access to the requested information, are not met, which is a violation of procedural law.

First Instance Court Decision

By Decision no. 702 of 13 January 2012 the SAC repealed the silent refusal and returned the file to the MRDPW for explicit decision on the application. The Justices held that as the SAC has repeatedly ruled in its court acts, silent refusal under the APIA is inadmissible and therefore only for that reason it is subject to repeal. The court considered that in this case there is no reason to deviate from this constant jurisprudence. The decision was not appealed and became final.

ACCESS TO INFORMATION IN BULGARIA 2012

Report

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ACCESS TO INFORMATION PROGRAMME FOUNDATION



Access to Information Programme was founded on October 23, 1996 in Sofia by journalists, lawyers, sociologists and economists determined to contribute to the establishment of informed public opinion.

Access to Information Programme Foundation is a member of the International Freedom of Information Advocates Network (FOIA Net), The Access Initiative (TAI) network, the European Citizen Action Service (ECAS), the European Civil Liberties Network (ECLN), and the Network of Democracy Research Institutes (NDRI).

AIP maintains a countrywide network of coordinators in all regional cities in Bulgaria.

In 2005, the Atlas Economic Research Foundation recognized Access to Information Programme with two of the most prestigious awards for establishing and promoting the principles of democracy and market economy: *The Templeton Freedom Prize for Ethics and Values* and *The Templeton Freedom Award for Institute Excellence*.

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In 2011, the Civil Association *Vidovden* recognized AIP with the annual award *Vidko* for contribution to the raised awareness about and the exercise of the right of access to government information.

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In 2013, the Bulgarian National Audit Office recognized AIP with the Symbol of the National Audit Office and a Diploma for AIP contribution to the enhancement of the publicity and transparency of the institutions in Bulgaria and to the development of an informed society.

Goals

- AIP assists the exercise of the right of access to information.
- AIP encourages individual and public demand for government held information through civic education in the freedom of information area.
- AIP works for the increase of transparency in the work of public institutions at central and local level.

Activities

- Monitoring of legislation and practices related to access to information.
- Provision of legal help in cases of information seeking.
- Trainings in the access to information area.
- Public awareness campaign on access to information.



ACCESS TO INFORMATION PROGRAMME