



Transparency in the Balkans and Moldova

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“Paper Trail to Better Governance” project

This report was produced as part of “Paper Trail to Better Governance” project by Balkan Investigative Reporting Network - BIRN Kosovo and BIRN HUB - to promote the rule of law, accountability and transparency in the Balkans and Moldova.

The project is supported by the Austrian Development Agency (ADA), the operational unit of Austrian Development Cooperation.

The project has addressed the transparency of public institutions in Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Moldova through tracking Freedom of Information requests, monitoring public data and publishing watchdog journalism.

Investigations from the two-and-a-half year programme focussed on five key themes which are critical for good governance in the region - energy, road building, the financial sector, the influx of money from the Middle East and the arms industry.

More than 25 journalists have been trained in investigative skills and given special, in-depth knowledge of the particular field they are researching. Through the extensive use of public documents, the investigations are exposing wrongdoing in government, public and private companies and among powerful individuals.

For more information visit the project’s dedicated website, balkaninsight.com/en/page/paper-trail, and our online archive of documents, <http://birnsource.com/>.

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Executive Summary

The findings of this report present a mixed picture transparency and accountability in the Balkans and Moldova.

On paper, Freedom of Information (FOI) laws across the Balkans and Moldova are strikingly similar, but their implantation varies markedly. Some of the countries proactively publish large amounts of data and documents from public institutions, embracing the concept of open data, while others lag behind. Surprisingly, a country's strong performance in releasing data does not always translate into a well-oiled Freedom of Information system. For example, Albania's National Centre of Registration (QKR) is one of the best in Europe in terms of publishing copies of original company documents; yet the Albanian authorities rejected 50 per cent of requests submitted by BIRN journalists under FOI.

The right to information and the right to access public documents is enshrined in the constitutions and laws of democratic societies. The legislation in place in Albania, Kosovo, Macedonia, Serbia, Montenegro, Bosnia and Herzegovina and Moldova guarantee the right, to access official documents. As part of Balkan Investigative Reporting Network's work testing transparency, we discovered that the practice often falls short of the advanced legislative framework. Many of the requests sent by BIRN journalists to access public documents were rejected, ignored or required repeated interventions on the part of the journalist to secure a response.

To increase transparency and accountability across the seven countries, and challenge the level of implementation of the Freedom of Information laws, BIRN submitted 173 official requests to access public documents between October 2013 and April 2016.

These were sent to a range of institutions across the region based on the journalists' research requirements. Out of 173 official requests, 59 were rejected, 90 approved, 10 were partially approved and 14 are pending. The requested information with a broad range of issues including cadastral documents, business registry documents, audit reports, details of public spending, tenders, transaction documents, minutes of court cases, contracts for public procurements from public enterprises and government papers.

While Balkan countries and Moldova are increasingly publishing government data online, even when they do so the format in which it is provided makes it difficult for journalists to find and use effectively. This includes scanned documents published as PDFs which are not archived by Google or searchable by key terms on the relevant website. Many databases in the Balkans provide only a limited number of search options, meaning that it is, for example, impossible to find the owner of a company or a parcel of land by searching by the name of the individual. To counter this, BIRN has implemented a programme of scraping, whereby information has been extracted from these databases and made available on our website birnsource.com.

Freedom of Information Laws throughout Balkans (laws on paper vs practice)

Freedom of Information Laws in the Balkans share many similarities, having been imported wholesale from established western democracies. Despite strong legal frameworks, the everyday application of laws remains far from smooth.

Albania

According to the Law on Access to Information of Albania¹, regulations state that a request for official documents can be submitted orally or in writing. Despite its practical shortcomings, a law on freedom of information has been on the statute books since 1999.

However, in September 2014, this law received a legislative upgrade providing greater access for the public to official documents as well as concrete penalties for public officials who refused to make information available. Now, by submitting an FOI request a journalist in theory is able to gain access to most public information, documents and data in Albania.

The new law includes a number of novel concepts, including the possibility of reclassifying secret documents, the release of partial information and the use of information technology to make information held by public institutions available to the public.

The law also obliges public institutions to appoint coordinators for access to information and created the institution of a Commissioner for the Right to Information, an appeals body in cases where institutions either refuse to answer FOI requests or hand out partial information.

The FOI law in Albania enables public bodies to charge for photocopying but there is no charge for providing electronic copies.

The public body must decide within ten days from the initial submission of the request whether it has been accepted. If the request is rejected, the applicant can appeal to the Commissioner and then the courts. A number of exemptions are applied to the release of information, including to documents related to national security and international and inter-governmental relations.

Just 44 per cent of BIRN's requests were approved; 50 per cent were rejected and 5.6 per cent are ongoing, long after the deadline has elapsed. The best performance came from Albanian Authority of Roads, while the worst performer was the General Prosecutor's office.

¹Law on the Right to Information over the Official Documents (2014), Albania
http://idp.al/images/english/legislation/LAW_119-2014.pdf

Bosnia and Herzegovina

Bosnia and Herzegovina, as a democratic country seeking accession to the EU, was one of the first countries in the Balkan region to adopt Freedom of Access to Information Act in 2000. However, experts agree that the law requires amendments to address shortcomings that have been identified over the years.²

According to the Law on Access to Information of Bosnia and Herzegovina³, requests for information must be made in writing. The applicant must collect the requested documents in person at the competent institutions' premises. The applicant may be charged in cases when the documents have to be photocopied or when the authority deems that the requests involve a substantial number of documents. Institutions have 15 days to respond to a request. When the request has been rejected, the applicant has the right to appeal the decision. The appeal steps include an administrative appeal, initiating a procedure with the ombudsperson, and finally with the relevant court. BiH restricts access to certain documents in order to protect state security interests, ensure public safety, protect foreign and monetary policy interests, and in order not to cause harm to the prevention or detection of crimes.

In Bosnia and Herzegovina, half of BIRN's requests were rejected; while the remaining 50 per cent were only partially granted. However, some institution, such as the Municipal Court in Sarajevo, were efficient in their responses and helpful. BIRN found that the Ministry of Energy, Mining and Industry was non-transparent and refused to provide basic details of a contracts signed by public institutions.

Kosovo

According to the Law on Access to Information of Kosovo⁴, a request for access to information can be made in writing or orally. In practice, however, institutions often still request an official letter. A reasonable fee can be levied when the documents have to be transcribed or translated. Public institutions are obliged to respond within seven days, starting from the initial registration date of the request. If the request is rejected, or the authority fails to respond in time, the applicant can initiate an appeal to the ombudsperson and the court. Exemptions can be made in the following cases: national security; defence and international relations; public safety; detection and investigation of criminal activities; disciplinary investigations; inspection, control and supervision by public institutions; privacy and other private legitimate interests.

In Kosovo's case, 25 per cent of BIRN's request were approved; 38 per cent were rejected and 3per cent are still pending. In terms of performance, Kosovo's Agency for Business registration (ARBK) performed the best, while the Ministry of Infrastructure

2Towards Proactive Transparency in Bosnia and Herzegovina, December 2013, Analitika, Center for Social Research

http://www.analitika.ba/sites/default/files/publikacije/proaktivna_transparentnost_policy_memo_eng_4juni_web.pdf

3Freedom of Access to Information Act (2000), Bosnia and Herzegovina
<http://www.legislationline.org/documents/action/popup/id/6402>

4Law on Access to Public Documents (2010), Republic of Kosovo
<http://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2724>

performed the worst due to its rejection of our request to obtain a copy of Pristina-Kukes highway contract.

In Kosovo, most of the requests for access to public documents are submitted by journalists or activists of civil society organisations, and very few by citizens - this is because citizens are not fully aware of their rights.

In 2012, BIRN asked the Office of the Prime Minister (OPM) for expenses and invoices billed by the Prime Minister and six deputy prime ministers during their official travels and meetings abroad. At the time the Prime Minister was Hashim Thaci and deputy Prime Ministers were Behgjet Pacolli, Hajredin Kuci, Mimoza Kusari-Lila, Slobodan Petrovic, Edita Tahiri and Bujar Bukoshi.

In response to the incomplete response provided by Office of the Prime Minister, BIRN filed an appeal to the ombudsperson, which subsequently requested the Office of the Prime Minister publish the invoices. In response, the Office of the Prime Minister requested an opinion from the National Agency for the Protection of Personal Data to clarify whether BIRN's request would violate personal data protection. The National Agency for Data Protection issued an opinion that concluded that "access to expenses and invoices of senior state officials infringes sensitive personal data and privacy of the Prime Minister and Ministers". The opinion stated: "Food invoices contain data that may reveal religious affiliation or health of the officials."

BIRN then filed a lawsuit against the Office of the Prime Minister. After three years of legal battles, the Basic Court of Pristina ruled that the prime minister's office must make the travel expense documents public.⁵ Such a decision represents an important precedent not only in Kosovo but in the region as well. The information has yet to be published, despite repeated requests from BIRN.

Although this legal challenge did not form part of this project, it illustrates that while the appeals process in Kosovo works, institutions appear willing to ignore the rulings of the court on matters of transparency.

Macedonia

According to the Law on Access to Information of Macedonia⁶, the applicant can request information either in writing or orally, and if the request is approved; the information can be accessed in person, as a transcript, photocopy or electronic entry. There is no cost associated with requesting documents. The applicant can submit the request in writing or orally. Reviewing the documents within the institution's buildings is free of charge. However, the cost of photocopying, transcribing, translating or delivering the documents is not. A decision on the requested information should be made within 30 days. Access to information can be refused if it threatens the protection of national or public security; the economy; the environment; commercial or private legitimate interests; monetary and exchange policies; and if it obstructs or

⁵Balkan Insight: BIRN Wins Legal Case Against Kosovo PM's Office
<http://www.balkaninsight.com/en/article/birn-wins-legal-case-against-kosovo-pm-s-office-10-29-2015>

⁶Law on Free Access to Public Information - (Official Gazette of the Republic of Macedonia) no. 13/2006; 86/2008 and 6/2010) <http://www.legislationline.org/topics/country/31/topic/3>

impedes the prevention or the detection of criminal offenses. Applicants have the right to appeal a refusal. The applicant should first complain to the Commission for Protection of the Right to Free Access to Public Information. If the applicant is unsatisfied with the decision, he or she can launch a judicial review.

In Macedonia, BIRN submitted three requests for access to documents to the Central Register of the Republic of Macedonia. This institution approved all three.

Moldova

According to the Law on Access to Information of Moldova⁷, information can be requested in writing or orally. Access to information can be made orally, by examining the document/information while on the institution's premises, or by receiving an electronic or hardcopy. Viewing documents on the institution's premises is completely free of charge, however, institutions may charge a reasonable fee for the cost of photocopying, transcribing, translating or delivering the documents. Public documents must be provided within 15 working days, although this deadline can be extended for five extra days if a large amount of information is requested. If the request is rejected, the applicant has the right to appeal the refusal to the relevant courts, and if the final court decision finds on behalf of the applicant, the state imposes penalties in form of fines to any government agency that has violated the law. Limitations to the law mean that some information can be withheld, including state secrets, information on the military, intelligence, economic, foreign policy or criminal proceedings, information which could interfere with a lawsuit, personal data, confidential business activities submitted to public authorities, and the preliminary results of scientific and technical research. BIRN used publicly available databases in Moldova, including the company record provided through the Official Gazette, but did not submit any formal Freedom of Information requests.

Montenegro

The Parliament of Montenegro first adopted the Law on Free Access to Information in 2005 with the aim of ensuring good governance and transparency by providing comprehensive access to information on public interest.⁸

According to the Law on Free Access to Information of Montenegro⁹ a request can be submitted in any form; whether in writing or orally. Documents granted to the applicant are done so free of charge, however a reasonable fee for photocopies can be levied. The public authority is expected to decide immediately if the request can be accepted and grant access to the requested documents within no more than 8 days. The applicant has the right to appeal the refusal to the courts, and if the final court decision is in favour of the applicant, the state imposes penalties in the form of fines.

⁷The Law on Access to Information (2000), Republic of Moldova
<http://www.legislationline.org/documents/action/popup/id/6394>

⁸Law on Free Access to Information (2005), Montenegro, <http://www.gov.me/files/1187946018.pdf>

⁹

According to the law, access to information can be restricted if its disclosure would significantly endanger the following: national security, international relations, public security, commercial and other private or public economic benefits and others.

In Montenegro, all request were approved and documents released. It is worth noting that requests were not dealt with within the timeframe envisaged by the law and journalists were often required to make multiple calls to the relevant institution in order to chase up documents. The Interior Ministry and Cadastral Office recorded the best performance, while the business registry did not perform as well due to the time taken to release the documents.

Serbia

According to the Law on Access to Information of Serbia¹⁰, an applicant must make their request in writing. The applicant should collect the documents in person from the relevant institutions' premises, although it is common practice to email information if it is available in electronic format. The law dictates that a decision has to be made within 15 days. The applicant is not charged for the request, but may be required to compensate the institution for the cost of photocopying a large number the documents. The applicant can appeal a refusal notice to an independent commissioner. Information can be withheld if its release threatens national and public security; endangers economic, environmental, commercial or legitimate personal interests; damages monetary policy; or if it obstructs or impedes the prevention of crime.

Implementation of the law is variable, with some institutions performing extremely well, releasing large amounts of public data, while others remain more opaque. During the first 24 months of the project, Serbian journalists submitted 115 requests for access to public documents. In total 52 per cent were approved; 36 per cent were rejected; 8.7 per cent are ongoing and 3 per cent were partially answered.

The state-owned road company Koridori Srbije performed particularly well, responding quickly and positively to all of BIRN's requests. On the other hand, the Higher Court in Belgrade repeatedly denied BIRN's requests for a transcript of court proceedings, despite the fact these were minutes from public hearings. The request related to a court case against Zvonko Veselinovic - a well-known businessman who has close connections to the Serbia's leading party, SNS.

¹⁰Law on Free Access to Information of Public Importance (2009), Serbia
<http://www.right2info.org/resources/publications/laws-1/serbia-law-on-free-access-to-information-of-public-importance>

How open are governments in the Balkans and Moldova?

All seven countries covered by BIRN as part of this report are members, or prospective members, of the Open Government Partnership, demonstrating a public commitment to more transparency.

But while the amount of information and documents available online is growing in the Balkan countries and Moldavia, there is still a lot to be done.

It is clear that not all governments in the region take a proactive approach to releasing information and when this is done, it appears to be done in a haphazard way, with little strategic coordination between institutions and little thought about how the information should be published.

Governments should work more on providing access to government contracts for large infrastructure projects; the winners and losers of all public tenders; detailed releases of government spending; court documents; minutes of government meetings; and the history of changes to companies.

Below is a detailed look at what is being published proactively in the seven countries that BIRN has looked at.

Moldova - The proactive publishing of information and also documents by the public institutions not only meets citizens' demands, but also enhances transparency and accountability mechanisms. In Moldova information and documents about the labour force, environment, population, education, etc. are found on National Bureau of Statistics of the Republic of Moldova.¹¹ Moldova publishes information on company registration through its official gazette, although the amount of data available lags behind the other countries which BIRN surveyed.

Macedonia - Essential statistical information for Macedonia can be found on the State Statistical Office. This body publishes its surveys, statistics and reports on the official website. Information on companies and land ownership is also published online.¹²

Serbia - Information regarding companies, including detailed accounts and company decisions, can be found under Serbian Business Registers Agency¹³. Information on land and real estate ownership is available on the Serbian Geodetic Authority website¹⁴.

Bosnia - With regards to public information online, the current law on freedom of information does not regulate the publishing of public documents online, which hinders the process of proactive transparency. Many of the laws, guidelines and recommendations given so far do not oblige Bosnian public institutions to publish all of

11Statistical data bank, Republic of Moldova

<http://statbank.statistica.md/pxweb/Database/EN/databasetree.asp>

12State Statistical office, Macedonia - http://www.stat.gov.mk/PublikaciiPoOblasti_en.aspx

13Serbian Business Registers Agency - <http://www.apr.gov.rs/eng/Home.aspx>

14Geodetic Authority of the Republic of Serbia - http://www.rgz.gov.rs/template4.asp?PageName=osnovno_o_nama&MenuID=0020001&LanguageID=3

their documents.¹⁵ Crucial information such as budget information, income and expenditure, auditor's reports are not published online.

However, in Bosnia and Herzegovina laws of some state institutions prescribe the publishing of some documents and relevant information online. For example, documents related with public procurement and granting of contracts and appeal decisions, according to the law on Public Procurement in Bosnia and Herzegovina should be published on the public procurement online portal.¹⁶ Such data can be found on the public procurement portal. Information related to companies and cadastral records are available on dedicated websites.

Albania - Albania has made great strides in proactively releasing information in recent years. Its National Registration Centre of Albania website provides detailed company information, including copies of original documents.¹⁷ Beyond this, it produces daily reports of financial transactions via Financa.gov.al and customs related data via this website Dogana.gov.al.

Kosovo - The website of the Kosovo Business Registration Agency provides information about businesses in Kosovo. This website is under the Ministry of Trade and Industry of Kosovo. Government decision are published on the official website of the prime minister, <http://www.kryeministri-ks.net/?page=1,5> and statistics via Kosovo Agency of Statistics, <https://ask.rks-gov.net/sq/>.

Montenegro - The official website of Montenegrin government provides information on the state budget and other important documents/decisions.¹⁸ Montenegro also provides information on company and land ownership through two user-friendly websites.

¹⁵Public Institutions and the Internet: Policies and Practice in Bosnia and Herzegovina, Nevena Ršumović, Tarik Jusić and Amar Numanović, November 2014, Analitika.
http://www.analitika.ba/sites/default/files/publikacije/public_institutions_and_the_internet_-_brief_eng_-_web.pdf

¹⁶Public Procurement Agency and Procurement Review Body - Bosnia and Herzegovina
<https://www.javnenabavke.gov.ba/index.php?id=01&jezik=en>

¹⁷National Registration Centre, Albania - <http://www.qkb.gov.al/nrc/NjoftimePerKreditorret.aspx>

¹⁸Government of Montenegro <http://www.gov.me/en/homepage>

CONCLUSION

BIRN submitted 173 Freedom of Information to institutions across the Balkans and Moldova during our 30-month project.

The information gleaned from these requests fed into 28 investigations and the documents were published online at BIRN's bespoke online database, birnsource.com.

Beyond that, BIRN journalists explored and mined the many online sources of government documents and data provided by institutions. This information played a critical role in exposing wrongdoing and corruption.

This was an unprecedented exploration of the state of transparency across these seven countries, and our findings present a very mixed picture.

First, despite the sometimes rusty and tortuous process, Freedom of Information laws provide the public with the ability to access official documents. These should be the cornerstone of all journalist work.

It is clear, however, that the administration of FOI requests falls well below what is foreseen in the law. BIRN found that securing the release of documents required the kind of time and persistence that would put off many private individuals.

The public, civil society organisations and the media must be encouraged to use their right to know in order to hone the administrative process and instill a transparency mindset on sometimes reluctant bureaucrats and wary politicians.

Second, vast amounts of public information is being proactively published online, but the information is often difficult to access and exploit. Rather than haphazardly placing documents and data online, with what appears to be no coordination between institutions, governments should carefully coordinate their open data strategy, consulting with interested parties such as citizens groups, civil society and the media.

There is some cause for optimism about the state of transparency in the Balkans, but much work still needs to be done to ensure that the public is properly informed about the workings of government.

Recommendations

Taking into account the current situation in the Balkan countries and Moldova, and the number of requests sent by BIRN journalists which were rejected by a range of public institutions, BIRN recommends the following actions be taken by public bodies in order to improve transparency.

- Ensuring that a higher body is in place that has the power to punish institutions which do not provide public documents to the citizens. This body should champion the right of citizens to access information through FOI requests and through open government initiatives
- Appeal procedures must be made more effective, either by simplifying the decision-making process or by increasing the number of employees at the Office of Ombudsperson's/Commissioner's Office;
- Equal treatment of all requests to access public documents, whether they are from a journalist or member of the public;
- Institutions should provide their decisions (positive or negative) in a written form and share such decision with the applicant;
- Increase trainings within the institutions on Freedom of Information laws and awareness raising of the importance of open government data.

Examples of websites provided official government data

Albania

Company registry

http://www.qkr.gov.al/nrc/kerko_per_subjekt.aspx

Bosnia and Herzegovina

Land Registry

<http://www.katastar.ba/pregled>

Company registry

<http://bizreg.pravosudje.ba/>

Kosovo

Company registry

<http://www.arbk.org/>

Macedonia

Land registry

http://www.katastar.gov.mk/prebmk_address/searchadd.aspx

Company registry

<http://www.crm.com.mk/DS/default.aspx?MainId=12>

Moldova

Official Gazette (including company registration)

<http://www.cis.gov.md/buletinul-electronic>

Montenegro

Land registry

http://www.nekretnine.co.me/me/Katastarski_podaci.asp

Company registry

<http://www.crps.me/>

Serbia

Land registry

<http://katastar.rgz.gov.rs/KnWebPublic/>

Company registry

<http://www.apr.gov.rs/eng/Registers/FinancialLeasing/Search.aspx>

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