



ACCESS TO INFORMATION RIGHT OF JOURNALISTS IN ARMENIA-2024



RESEARCH

FREEDOM OF INFORMATION CENTER

ACCESS TO INFORMATION RIGHT OF JOURNALISTS IN ARMENIA-2024 Research

The primary goal of the research is to examine and demonstrate how journalists in Armenia exercise their right to access information, identify the current challenges and obstacles, and propose practical solutions to overcome them.

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SUMMARY

21 years after the formation of the legislation on access to information in Armenia¹, there are still many problems. Although a positive practice has been developed in the field of access to information, the existing problems are a significant obstacle to the realization of the rights and the media mission of journalists. [The RA Law “On Freedom of Information”](#) establishes quite clear procedures for providing information, however, it should be noted that there are no effective enforcement mechanisms, hindering the full realization of the access to information right of journalists.

The study of the practice of journalists’ information requests and the results of researches conducted in the journalistic community prove that when discussing and responding to journalists’ requests, information holders often make various violations of the access to information legislation and, accordingly, the access to information right of journalists, which are systematically presented in different sections of this research.

The recorded problems are demonstrated at different levels: institutional, legislative, and political. One of the primary problems is the illegal requirement to substantiate the requests. 61% of the interviewed journalists have stated that they face such situations from time to time when the information holder-the state body-requires to substantiate why the journalist has submitted the given request and/or how they are going to use the information. Making such a requirement is a direct violation of national and international access to information regulations.

One of the most serious problems in the process of receiving information is the quality of official responses to requests. More than half of the journalists have assessed the content of the responses to requests as insufficient (54.9%). In some cases, journalists receive responses that are incomplete or very general or do not contain specific answers to all the questions posed. The situation becomes more complicated when journalists’ requests touch on sensitive topics. At the same time, none of the interviewed journalists has said that the responses to requests completely satisfy them.

When more than one question is posed, the practice of submitting the response without sequential numbering indicates that the information holders are either deliberately ignoring the procedure for responding to the request defined by law, or are not aware of this regulation, or both.

In the process of receiving information, the problem of discrimination is worthy of note. 64.5% of the representatives of the journalistic community point out that when providing information, state bodies discriminate between different media and journalists. Moreover, only 2.6% of the respondents have not been involved in cases of discrimination. The problem largely depends on which media outlet the journalist represents. If it stands out for its sharp criticism of the government, the requests from journalists of these media outlets are more often than not met with outdated, vague, or unfounded responses.

The other group of violations of the access to information right is related to responding to requests within the time frames established by law. Only 35% of the journalists have noted receiving a

¹ The RA Law “On Freedom of Information” was adopted in 2003.

response within the 5-day period determined by law. Moreover, 37.7% of the interviewed journalists have stated that they receive responses within 6-10 days on average instead of the 5-day period, 26% have stated that they receive responses within 11-30 days, and 1% have mentioned receiving a response within the 5-day period determined by law.

Another problem related to time frames is the abuse of the opportunity to delay the response time frames on the grounds of performing additional work. Answering the FOICA's question about how often state institutions ask for additional time to respond to requests, almost half of the interviewed journalists, 48%, have selected the "often" option. It turns out that the response to almost every second request is given in an additional 30-day period, which is a serious obstacle from the point of view of fulfilling the professional duties of journalists.

72.7% of the journalists who have participated in the research have stated that the most difficult thing is to get information about the military and security sectors. It is worrying that around 11.5% of the interviewed journalists have reported that most often the provision of information is refused without substantiation.

Although journalists have the opportunity to appeal the violated rights in court, it is often ineffective because it is very costly and time-consuming. The RA legislation does not provide for special-tighter-trial periods and procedures for investigating cases regarding the protection of the access to information right, as a result of which the lengthy investigation of these cases often deprives the journalist of an effective legal protection. Norms defining liability for violating the access to information right are also not fully applied in judicial practice.

As international practice shows, the best mechanism to appeal violations is to appeal to an independent and impartial FOI authority. Although the FOI authorized body is mentioned both in the RA Law "On Freedom of Information" and in the [Convention on Access to Official Documents](#), this body has not yet been formed in Armenia. Therefore, the only effective mechanism for appealing refusals is still the judicial appeal.

The recorded various problems prove that there is a lack of unified standards and mechanisms aimed at the application of FOI legislation in the state bodies holding information. There is also no unified statistics in the field. At the same time, it has been recorded that there is a lack of knowledge and skills among the information holders about the access to information right in general and the law "On Freedom of Information" and the Convention regulations in particular.

The research also includes practical proposals and recommendations aimed at solving the identified problems, which are addressed to various actors:

- information seekers: civil society and journalistic community, information holders, the RA Government,
- legislative body-the RA National Assembly,
- RA Human Rights Defender,
- as well as the Supreme Judicial Council and the courts, expecting the appropriate response and involvement of all in the process of solving the recorded problems.

THE AIM, OBJECTIVES, AND METHODOLOGY OF THE RESEARCH

The primary goal of the research is to examine and demonstrate how journalists in Armenia exercise their right to access information, identify the current challenges and obstacles, and propose practical solutions to overcome them.

The research objectives are:

- carry out an evaluation of the current situation of FOI, presenting the characteristics of journalists' practice of receiving information,
- identify the problems and obstacles caused by the professional characteristics of journalists,
- highlight the gaps in the RA Law "On Freedom of Information" that have a direct impact on the process of exercising the access to information right of journalists,
- present proposals and recommendations to various stakeholders and actors aimed at the full provision of the access to information right of journalists.

The research methodology includes combining different research methods. The primary data for the research was collected based on the responses given by the representatives of the journalistic community to the pre-designed questionnaire. **The online questionnaire was answered by 77 journalists** representing various media outlets in Yerevan and provinces, including television, radio, print media, and online media. The questions included in the questionnaire refer to the most diverse aspects of the practice of access to information, from the stage of preparing information requests to the application of mechanisms for the restoration of the violated access to information right.

Based on the questionnaire, data collection was followed by in-depth interviews with experts in the field, FOI officials of state administration bodies, and civil society representatives to identify deep-seated problems and develop complex proposals aimed at solving them. **11 in-depth interviews were conducted in April 2024.** These interviews reveal the perceptions of different actors about the root causes of the recorded problems and the main directions of the necessary complex changes.

The team of researchers also collected data from authoritative sources, including the annual reports of the RA Human Rights Defender, studies conducted by experts of the Council of Europe, published official statistics; researches conducted in recent years by a structure specialized in the field of access to information, as well as from the study of international best practices. The research methodology also includes direct observations of practice. The Freedom of Information Center (hereinafter referred to as the FOICA) provides consultations to working journalists on a daily basis regarding the mechanisms of exercising the access to information right. These practical cases have helped the researchers to record the most vulnerable problems for journalists.

The research team also carried out a study of the legal framework of the field, inventorying the existing gaps and their practical manifestations, paying special attention to the need and necessity of improving the RA Law "On Freedom of Information" (hereinafter referred to as the FOI law). In all subsections of the research, the legislative regulations of the problem in question are presented, including the provisions of national laws and international documents.

INTRODUCTION

Access to information is the basis of freedom of the press. The access to information right allows journalists to fulfill their mission of providing the public with objective, timely, and complete information. Access to information enables journalists to receive information to investigate and analyze complex and sensitive topics, providing the public with the information they need to engage in public debate and participate in decision-making.

The access to information right in Armenia is enshrined in the RA Constitution and by the RA Law “On Freedom of Information” adopted in 2003, which defines the procedure and conditions for searching and receiving data, including official information and documents, obtained and formed in accordance with the legislation. Being the only comprehensive legal act that enshrines the access to information right, although the FOI law applies to everyone, it is a key tool for journalistic activities and a guarantee of ensuring journalistic freedoms. In parallel with this, with the active participation of the civil society in Armenia, a positive practice of the FOI law protection has been formed, including judicial protection, due to which the regulations of the FOI law are still feasible and up-to-date.

It is noteworthy that since the adoption of the FOI law, it has not undergone significant changes. Although many attempts have been made by previous and current governments, thanks to the united efforts of the civil society, all attempts to poorly amend the FOI law have been successfully prevented. As a result, despite avoiding many obstacles, the law needs to be improved in the context of technological development and the development of communication regulations.

In recent years, a significant step towards the development of access to information legislation was the ratification of the [Convention on Access to Official Documents](#) by the Republic of Armenia in 2022 (hereinafter referred to as the Convention).² In 2018, the civil society, represented by the Freedom of Information Center, began to take active steps towards the ratification of the Convention, as this is the first international document whereby states not only recognize the access to information right, but also agree to ensure the realization of this right and cooperate in the field of accessibility.³ On the one hand, the document affirms the fundamental access to information right defined by international agreements and the RA domestic legislation; on the other hand, it defines the responsibility of state bodies to work openly and transparently. In January 2023, the Republic of Armenia presented the first [national report](#) to the information accessibility group of the Council of Europe.

Another positive change was the adoption of the FOICA’s petition in December 2021 aimed at increasing the amount of administrative liability for the violation of the access to information right.⁴ The document presented a proposal to amend the Code on Administrative Offenses and a project that recommended increasing the amount of administrative fines for violating the access to information right, which was accepted first by the Ministry of Justice and then by the National Assembly. The legislative amendment entered into force on October 14, 2022, stipulating that a fine of 50,000 to 70,000 AMD will be imposed if information holders illegally do not provide

² See more details about the process of ratification of the Convention by the RA https://foi.am/success_stories/3724

³ The Explanatory Report of the Convention is available here https://foi.am/u_files/file/legislation/EuropeConventioneng.pdf

⁴ See more details about the petition presented by the FOICA https://foi.am/success_stories/3696

information, and if the same violation is committed again within a year, instead of the previous 50,000 to 100,000 AMD, a fine of 100,000 to 150,000 AMD has been determined. The successful implementation of this initiative was seen as a positive example of cooperation between civil society and the government to strengthen accountability for FOI violations.

Another strategic step towards the improvement of the field was the adoption of the 2024-2026 [Concept](#) of the Fight against Disinformation of the Republic of Armenia and its [Action Plan](#) on December 27, 2023. These strategic documents, among others, aim to promote the accessibility of official information and proactive accountability, anticipating the launch of more transparent, accountability-oriented formats and platforms of state institutions, improvement of existing resources, improvement of communication in state institutions, development of media literacy and fact-checking skills.⁵

In the international index of FOI legislation, the Republic of Armenia occupied the 37th place in the list of 140 countries in 2023.⁶ Despite significant progress, the field of access to information is full of many and varied problems, which relate to both the legal regulations of the field and their application, and are a significant obstacle in terms of journalistic freedoms and the implementation of the media mission.

⁵ The Concept of the Fight Against Disinformation and its Action Plan are available at the following link <https://foi.am/researches/3743>

⁶ Global Right to Information Rating, Armenia. The index is available at the following link <https://www.rti-rating.org/country-data/Armenia/>

SECTION 1.

INFORMATION REQUESTS OF JOURNALISTS

One of the criteria for ensuring access to information is the proper processing of information requests. Information holders must consider and respond to each information request as provided by legislation, without any discrimination or exception and regardless of who has applied, with what question, or in what manner.

According to the results of the research, 75.3% of the interviewed journalists have stated that their main source of information is the requests addressed to the information holders. Therefore, unanswered requests or requests with incomplete responses significantly hinder journalists from performing their professional activities. Below we present the various problems that journalists face in the process of receiving information.

1.1 THE REQUIREMENT TO SUBSTANTIATE THE REQUEST

One of the most frequently encountered violations in the process of receiving information is the requirement to substantiate the journalists' request.

Legislative Regulation

According to Part 4 of Article 9 of the law “On Freedom of Information”:

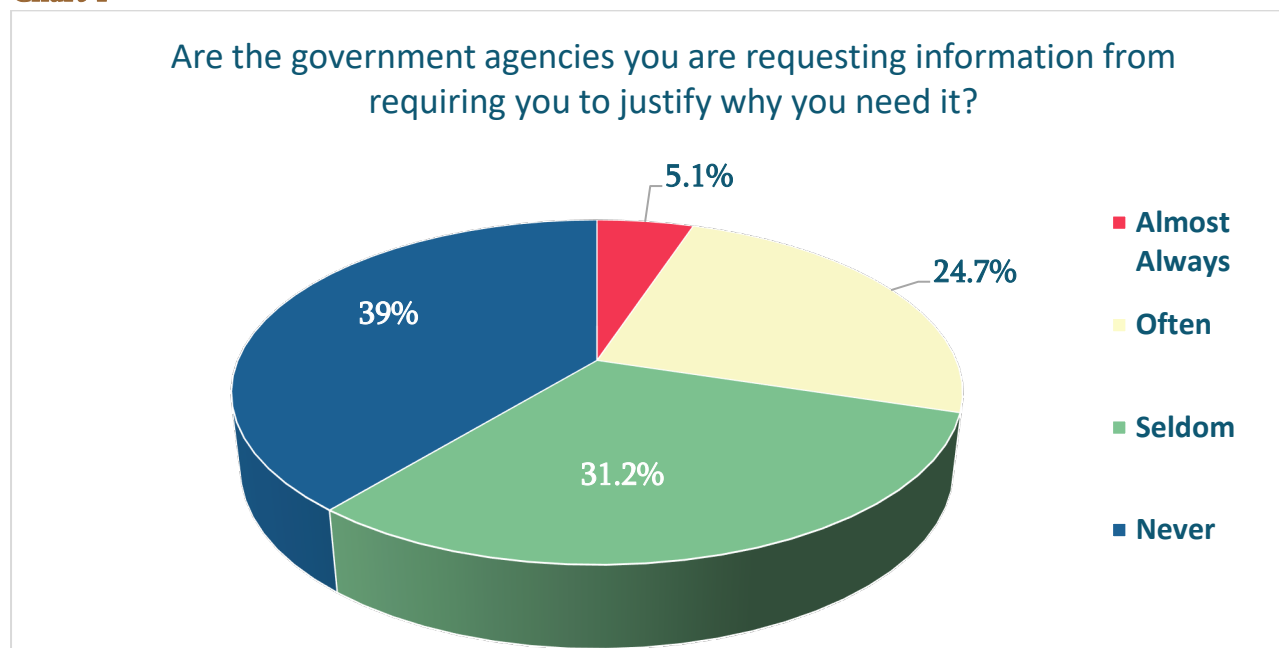
“4. The applicant is not obliged to substantiate the request.”

Part 1 of Article 4 of the Convention on Access to Official Documents states that a requester for an official document is not obliged to provide a substantiation for access to an official document.

The journalists who have participated in the research have noted that information holders sometimes require substantiating why the journalist demands this or that information. As is seen in Figure 1

- 61% of journalists have stated that from time to time they face situations when the information holding state body requires substantiating why the journalist has submitted the given request and/or how they are going to use the requested information.
- Only 39% of journalists have reported that after receiving the request, state bodies never require to substantiate the request.
- On the other hand, 5.1% have stated that they rarely face this requirement.

Chart 1



Journalists state that the substantiation is often required not in writing sent in response to the request, but verbally, contacting the journalist by phone. The representatives of the state institution that have participated in the interviews recommend looking at the issue from a different angle:

“Sometimes the journalist’s request is not very clear, or it is obvious from the question in what context the response will be used, but you also understand that the official complete response of the specialized department will not be sufficient and useful for the journalist, so in such cases we might ask the journalist to clarify the question.”

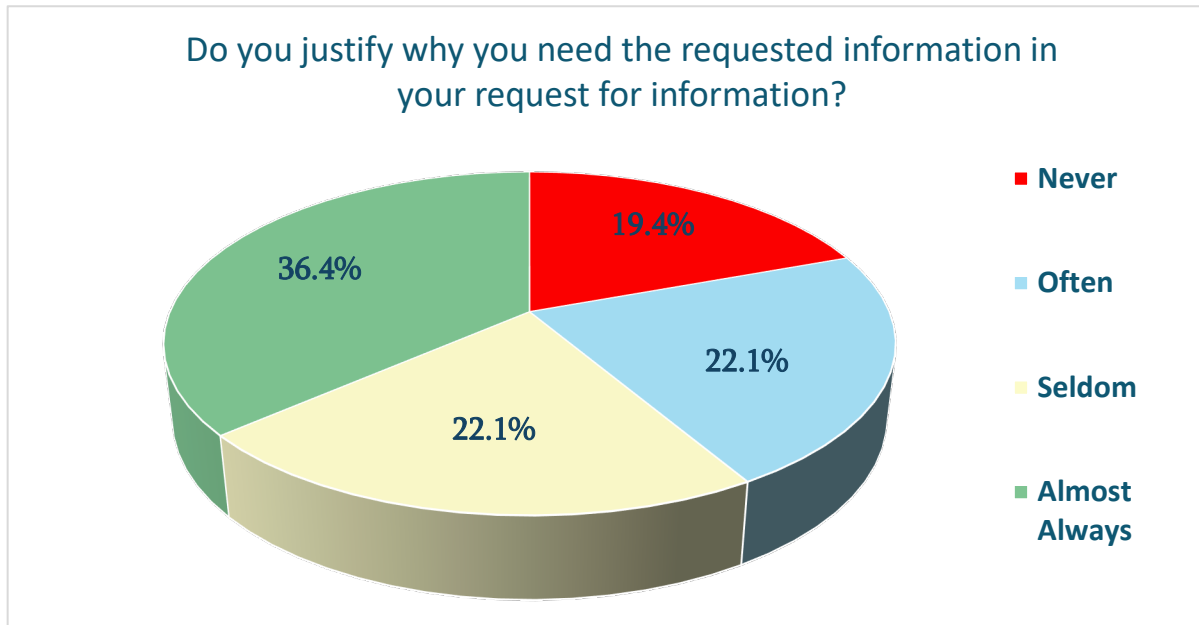
Of course, the request to clarify cannot be equated with the requirement to substantiate the request. Journalists note that substantiation requirements are most often submitted in cases when requests are related to sensitive topics, such as unsubstantiated expenditure of financial resources, questionable procurements, tenders or disclosures of corruption risks, etc. In such cases, it is obvious that we are dealing with an illegal requirement.

The practice of the requirement to substantiate the request is not only a direct violation of the FOI law and the Convention, but also proves that there is a lack of knowledge and skills among the information holders about the access to information right in general and the law “On Freedom of Information” and the Convention regulations in particular.

Although the FOI legislation establishes a clear rule that the requester is not obliged to substantiate their request,

- 36.4% of the journalists who have participated in the research have stated that on their own initiative they almost always give a substantiation in the written request-why they are requesting the given information,
- 22.1% do like this sometimes,
- another 22% - rarely
- In general, only 19.4% of journalists never substantiate the request.

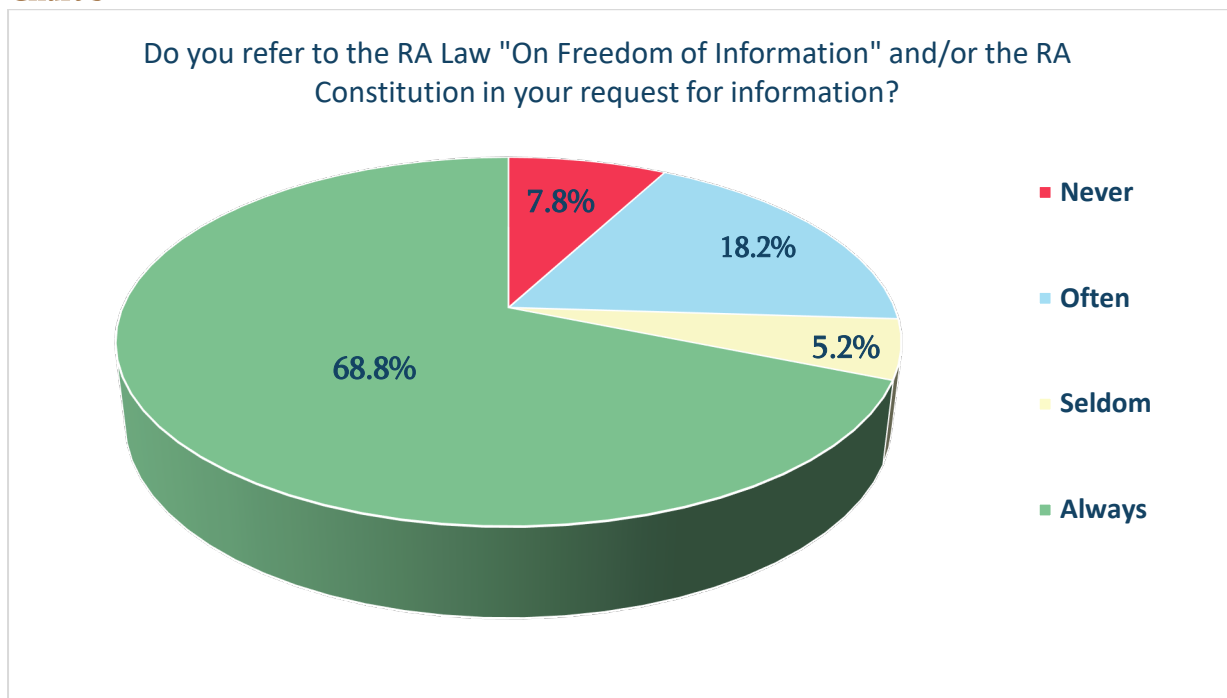
Chart 2



Of course, a journalist with a request can include a substantiation for receiving information in the request. This may be due to various objective and subjective reasons (one's own formal rules of writing, documentary record of one or another purpose for use in journalistic material, etc.). But it is important to note that **substantiating the request is exclusively the journalist's right and not their obligation.**

It is also interesting that 68.8% of the interviewed journalists have stated that in the request to receive information, they always refer to the FOI law and the RA Constitution (*see Chart 3*) to make it more evidence-based and protected.

Chart 3



It should be mentioned that back in 2008, only 31% of journalists interviewed in the framework of a similar research conducted by the FOICA stated that in some cases they referred to the provisions of the FOI law⁷. This proves that the journalists in practice felt the positive effect of referring to the legal norms on the information holders, so that the latter would be more willing and inclined to provide the requested information. Documenting this problem based on the results of the previous research, the FOICA developed and widely circulated a sample of information request, which contains references to the necessary legal norms. Currently this sample is published on the official websites of many state bodies as an exemplary form of a request, and is also widely used by civil society and journalists in the process of receiving information.

In conclusion, in practice, journalists often face the illegal requirement to substantiate their requests. Meanwhile, the information holder has no right to require that the applicant substantiate the request under any circumstances. Making such a requirement is a direct violation of the law “On Freedom of Information” and the provisions of the Convention. Accordingly, failure to substantiate the request cannot in any way be a ground for refusing to provide the information.

1.2 METHODS FOR SUBMITTING INFORMATION REQUESTS

Legislative Regulation

The law “On Freedom of Information” defines two ways of submitting a request to the information holder: *written and verbal*. The law provides for only 3 cases of responding to a verbal request: when

1. providing the required information can prevent threats to state, public security, public order, public health and morals, the rights and freedoms of others, the environment, and property of individuals.
2. it is necessary to verify the availability of relevant information with the given information holder.
3. it is necessary to clarify the procedure for considering written requests by the given information holder.

Journalists send their requests for information in several ways, encountering various problems in this process.

With such limited use of verbal request, written requests become the main form of information seeking in the journalistic community. The law “On Freedom of Information” does not define the forms of submitting a written request to the information holder and the specifics of these forms. As a result, information seekers are free to submit a written request to the information holder in any way not prohibited by law, as well as in all those forms/tools (e-mail, websites, unified platform, etc.) that are at that time defined as official tools for communicating with information holders.

⁷ [The research](#) conducted by the FOICA in 2008, page 19.

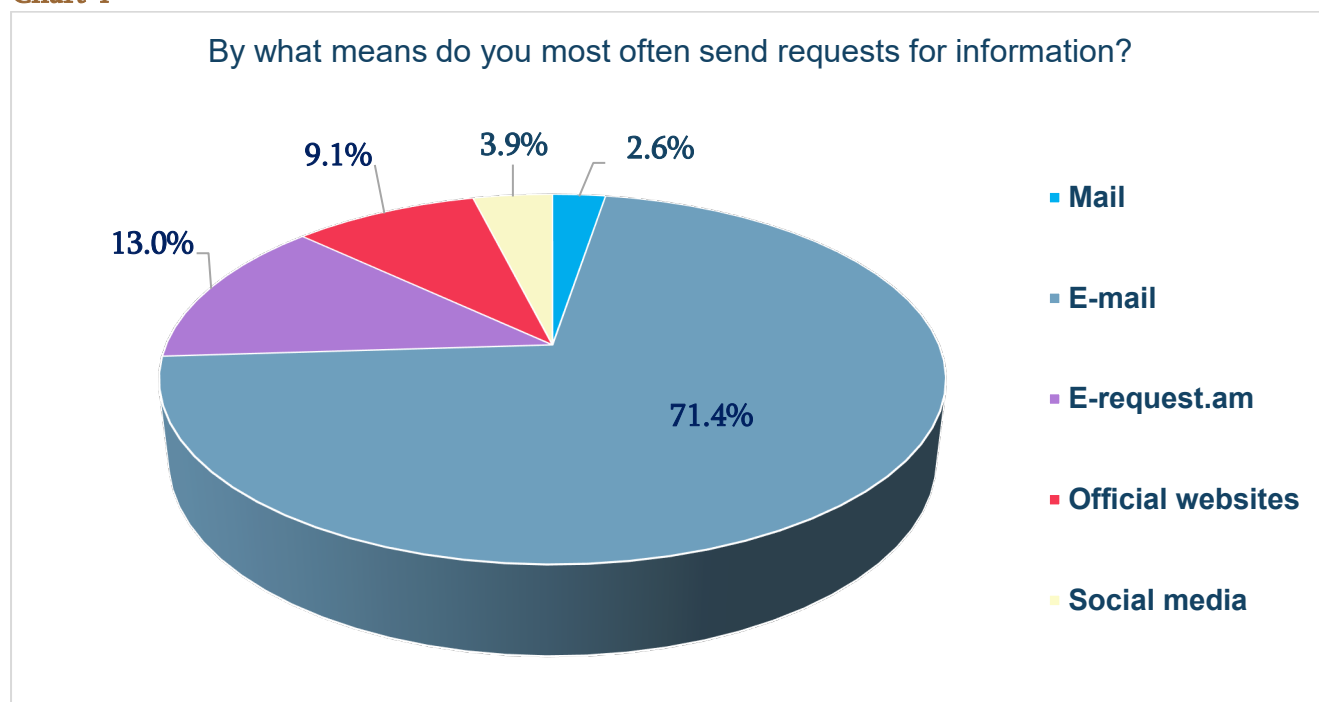
Thus, journalists have several ways to submit written requests:

- in paper form by postal delivery,
- official electronic mail,
- a unified platform for submitting requests: www.e-request.am,
- Directly with the online tools provided on the official websites.

As the researches show, the overwhelming majority of journalists prefer sending the request electronically (see *Chart 4*). In particular,

- 71.4% of journalists prefer sending requests by official mail.
- There follows the unified request platform: e-request.am with 13%.
- 9% of journalists send requests through the online system available on the official website of the information holder,
- and 3.9% prefer to send written requests through social platforms.
- Only 2.6% of journalists send requests in paper form.

Chart 4



Thus, the vast majority of journalists prefer to send requests by e-mail, often sending the request simultaneously to the official e-mail address of the department and to the head of the public relations department/press secretary. In the interviews, most of the experts have stated that journalists mostly prefer e-mail considering their work experience, but they have also noted that “journalists feel that the request is more personalized, and they know who is responsible in case of a problem.” On the other hand, journalists note that sending a request by official e-mail is more targeted. According to them, this way is also the fastest, without excessive bureaucracy.

The unified platform for online requests

Although the government launched a unified online platform for submitting requests back in 2018⁸, only 13% of journalists have reported using it.

Within the framework of the research, the role of the unified platform for submitting requests has been considered in the context of the practice of sending requests by journalists: how often do journalists use the unified platform to send their requests to information holders, why do they avoid it, what are the main advantages of using the platform and the reasons for using it less frequently? The platform is designed to facilitate electronic document management, enabling citizens to send their applications, requests, and complaints to state bodies from one common platform. It allows sending the request, tracking the progress of the request, and receiving the response to the request.

According to the data provided by “E-Governance Infrastructure Implementation Agency” (“EKENG”) CJSC, which has been operating the e-request platform since October 2019, as of March 31, 2024, the system includes 231 organizations, to which 8602 information requests were sent solely in the first quarter of 2024. The statistics of the last 3 years of requests sent through the e-request platform show that the number of requests is increasing with every passing year: in 2023, the number of requests increased by more than 47% compared to the previous year. In 2021, 15493 requests were sent through the system, in 2022 - 19204 requests, and in 2023 - 28253 requests.

Despite this obvious improvement, as is seen in Figure 4, the system is not very popular among journalists. This can be due to several circumstances:

Negative experience. Most of the journalists do not use the system today because of the negative experience they had in the past. In the initial period of the system’s creation, it had a number of technical problems, which were gradually solved. The platform started to work more effectively, the relevant specialists of the state institutions included in it also learned to work with it correctly and efficiently. The feedback of journalists and CSO representatives using e-request greatly contributed to this process. However, journalists who encountered technical difficulties in the initial period for various reasons simply do not use the platform today.

Electronic signature requirement. According to legislative regulations, the platform requires requests to be sent signed, in this case, by electronic signature. At the initial stage of launching the platform, users saw a notification about the need for an electronic signature right at the start of the request submission process. If they were unaware that they could also send a document without a signature, they would abandon the idea of submitting a request through the platform if they did not have an electronic signature or device.

Taking into account the positive practice developed in the field of access to information and the absence of the substantive need to sign the request, at the suggestion of the FOICA, the notification about the mandatory signature was removed from the front page of the request section of the platform. This greatly changed the perception. However, at the final stage of sending a request through the platform, the system offers the option to sign the document or send it without a

⁸ The RA Government Decision 524-N of April 26, 2018 enshrined the legal basis for the launch of the unified platform for electronic requests.

signature. If you choose the “don't sign” button, a notification appears “Since an unsigned letter does not verify that it was sent by you, the state body may not process it or may require additional certification.” As a rule, departments accept the scan of a signed request, they also respond to requests without a signature, but the requirement for a signature and notification still discourages journalists. It seems safer to send the document from a personal or official e-mail address of a media outlet. Moreover, in accordance with Clause 2 of Article 4 of the Convention on Access to Official Documents, the applicant can send the request anonymously, except for the cases where the disclosure of identity is essential to process the request.

Habit, lack of awareness and trust. Finally, some journalists admit that not using the platform is more related to habit and psychological circumstances than to real obstacles. They are often guided by mechanisms that have already been tried and proven to be effective. Journalists also state that they do not trust the system so much, because in their opinion, when using the system, the range of management of the request process decreases. Journalists prefer a more personalized approach, and the spokespersons’ suggestion of sending the request through e-request they sometimes assess as “botching.” They prefer to work with people rather than systems, mainly because of the lack of trust in the system and the unpredictability of that system. However, the unified platform not only allows maintaining one’s own database of requests, but also more clearly shows where the request is at the moment, who is working on it, and when the department plans to send the response.

The vast majority of journalists prefer sending requests electronically. The most common way is to send by official electronic mail. The unified request platform launched by the government is still not widely recognized among journalists for various reasons. Journalists do not have a complete and clear understanding of how the unified platform actually works and what tools are available to track the progress of processed requests and coordinate their results.

1.3 CONTENT OF RESPONSES TO REQUESTS AND PROVISION OF TECHNICAL REQUIREMENTS

Legislative Regulation

According to Article 12 of the FOI law,

“In the field of ensuring access to information, the information holder is obliged in accordance with the procedure established by law: (...) 3) to provide the information seeker with **reliable and complete information** under its control.”

According to the RA Government Decision 1204-N dated October 15, 2015,

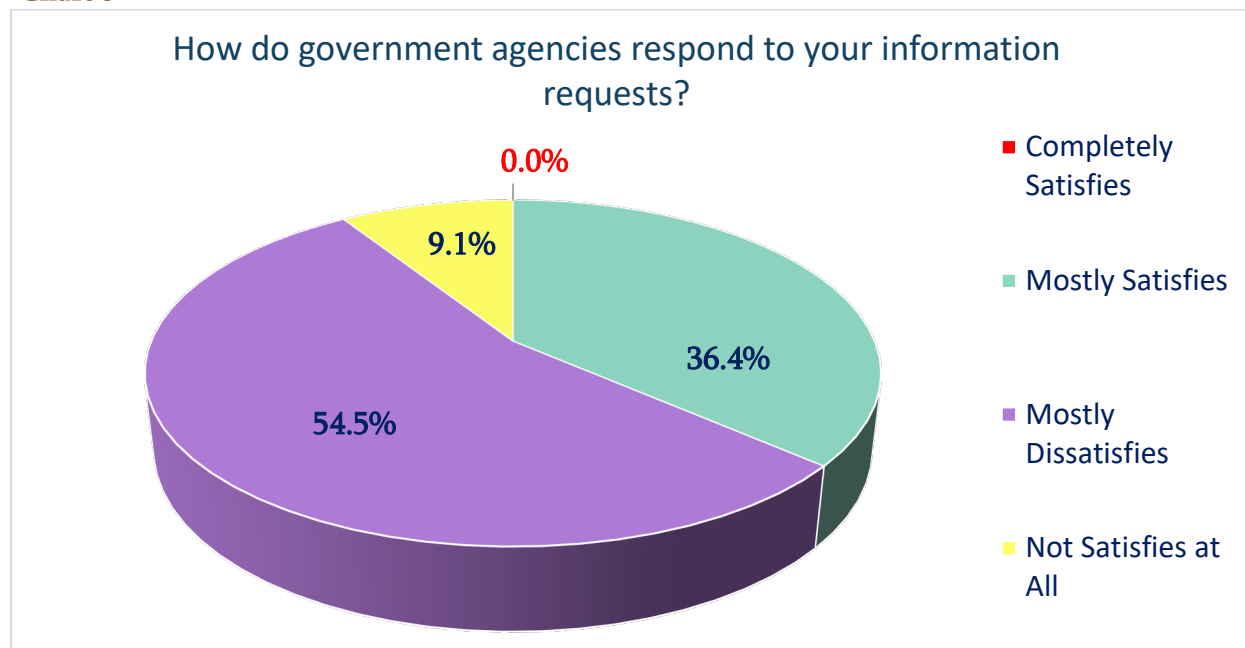
“On defining the procedure for registration, classification, and storage of information processed by the information holder or delivered to it, as well as the provision of information or its duplicate (copy) by state and local self-government bodies, state institutions and organizations” (hereafter Decision 1204-N) in accordance with Clause 8 of Appendix 2: “8. The response to the request must be reliable and complete, containing valid answers to all the questions posed. In case the applicant poses more than one question, the state body shall provide reliable and complete answers to all questions by sequential numbering.”

One of the most serious problems in the process of receiving information is the quality of official responses to requests. They are in some cases incomplete, vague, general, and in case of requests

containing several questions, sometimes some of the questions are ignored, intentionally or carelessly.

More than half of the journalists, 54.5%, who have participated in the research, have assessed the content of responses to requests as insufficient (*see Chart 5*). At the same time, none of the interviewed journalists has said that the responses to requests have completely satisfied them.

Chart 5



Journalists note that the provided information is often incomplete or with unclear wording, missing this or that information requested.

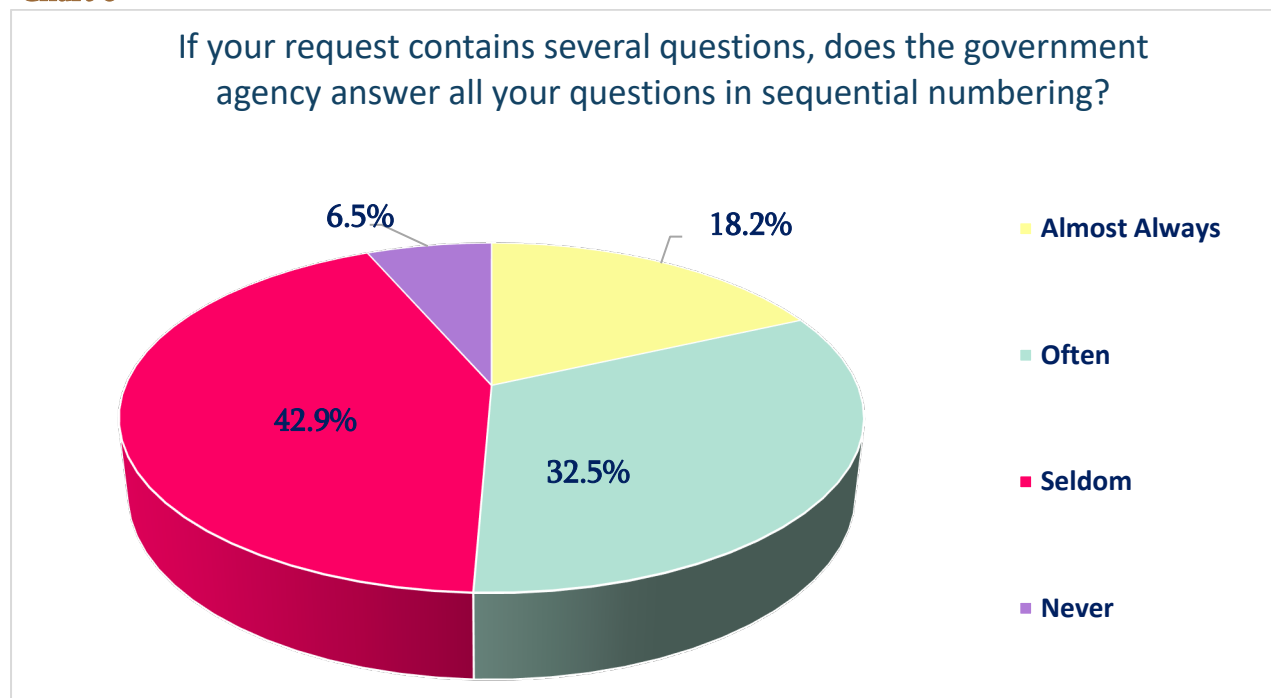
“One of the main problems related to the content is that often a vague response is provided to a specific request sent in bullet points, which only refers to some of the questions. In some cases, these answers are very superficial and, no offence to our colleagues, sometimes these texts resemble a blathering, from which it is impossible to understand anything. It seems that this is done only so that the department is not criticized for not responding to the request, but the answer is the same: if they had not responded, it would not have been any different.”

“(…) it is very difficult to get complete, comprehensive information from state bodies regarding the requests we have made. There are cases when we send the questions, get a partial answer, and send it back. (...) All this is manifested in the responses to requests, when a journalist sends 4-5 questions, carefully and clearly formulated, to the department and receives a one-paragraph answer, the content of which, so to speak, is not about your questions—in fact, there is no substantive answer.” “There is also the issue of incompetent employees, the lack of motivation, that they do not feel responsible at all to convey complete information to journalists and the public.”

In the context of the above legislative regulations, the results of the survey conducted among journalists are problematic, as in case of almost half of the respondents, we are talking about providing incomplete responses to requests. Furthermore, this issue extends beyond the journalist’s subjective judgment of the response’s adequacy (whether it is satisfactory or not); it also involves the violation of a straightforward requirement established by Decision 1204-N.

Nearly half of the interviewed journalists (49.3%) reported that responses to requests containing multiple numbered questions are “rarely” or “never” numbered (*see Chart 6*).

Chart 6



Additionally, it is important to note that the requirement to number the requested information or the answers to questions in a response that includes multiple pieces of information is not merely a formality. **Its purpose is to ensure that the information holder does not intentionally or inadvertently overlook any part of the request, thereby providing a complete and thorough response.**

The practice of submitting the requested information (answers to the questions) without sequential numbering in case of posing more than one question indicates that the information holders either deliberately ignore the procedure defined by the legislation for responding to the request, or are not aware of the given regulation, or both. In any case, such a practice is against the law. On the other hand, however, it should be noted that sometimes the problem may also arise due to journalists' unclearly formulated requests.

Thus, half of the journalists are not satisfied with the quality of the official responses given to their requests. Responses are in some cases vague, incomplete, contain complex terminology, and in case of requests containing several questions, sometimes some of the questions are ignored, intentionally or carelessly, in violation of the legislation.

1.4 DISCRIMINATION IN THE PROCESS OF RECEIVING INFORMATION

In the process of receiving information, the problem of discrimination is noteworthy. The journalistic community notes that state bodies discriminate between different media outlets and journalists when providing information.

Legislative Regulation

According to Article 29 of the Constitution,

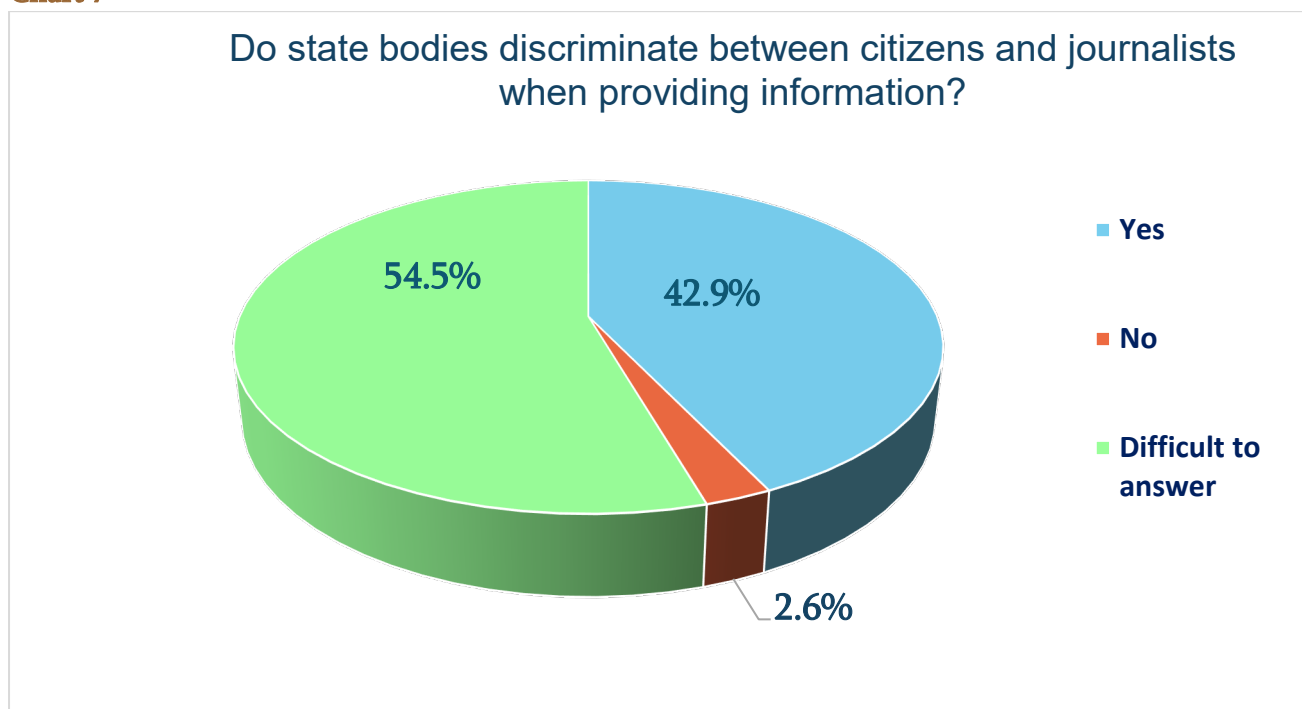
“Discrimination based on sex, race, skin colour, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited.”

According to Part 1 of Article 2 of the Convention on Access to Official Documents,

“Each party shall ensure to every person, upon request, without any discrimination, the right of access to official documents held by state bodies.”

64.5% of the journalists who have participated in the survey state that when providing information, state bodies discriminate between different media outlets and journalists. 32.9% have found it difficult to answer this question and only 2.6% of respondents believe that information holders do not discriminate (*see Chart 7*).

Chart 7



During the interview, the journalists described the manifestations of discrimination as follows:

“The quality of spokespersons’ responses largely depends on interpersonal relationships. (...) there are spokespersons who respond to the calls of specific mass media journalists, but do not answer or ignore unwanted ones.”

“There have been cases when they did not answer us, but after a few days we saw that, for example, they gave information or even an interview to the Public TV Company of Armenia. I wouldn’t say that the problem is very pronounced, but sometimes we witness such situations.”

“They provide information to their favorite media outlets easily and quickly. For example, you make a request on a topic and wait for a response for a month, and then you see the Public TV Company preparing a material on that topic and presenting what you requested.”

Practice shows that the problem largely depends on which media outlet the journalist represents. If the media is oppositional and stands out for its sharp criticism of the government, the requests from journalists of this media are more often met with violations and late responses. Meanwhile, everyone has the access to information right, and any discriminatory exercise of that right is unconstitutional.

Thus, the manifestations of discrimination in the process of receiving information depend on the conventional group divisions of journalists and media outlets: favorite-non-favorite, opposition-allies. In some cases, requests received from “unwanted” media outlets are not given timely and complete responses. Meanwhile, all requests, regardless of who the applicant is, must be considered and responded in the manner and under the conditions set by the law “On Freedom of Information,” without discrimination. Information holders must ensure that every information request is considered and responded only in accordance with the legislation.

1.5. TIME FRAMES FOR RESPONDING TO INFORMATION REQUESTS

The next group of violations of the access to information right is related to the time frames set by law for responding to requests.

Legislative Regulation

The FOI law defines 3 cases of leaving information requests unanswered: if

1. the request does not contain all the data to be specified in the request.
2. it turns out that the data related to the identity of the requester is false.
3. it is the second request submitted by the same person for the same information within the last 6 months, except for cases where the requested information may prevent the imminent threat to state and public security, public order, public health and morals, the rights and freedoms of others, the environment, and property of individuals.

Legislative Regulation

According to Part 7 of Article 9 of the FOI law:

“7. The response to the written request is given in the following time frames:

- 1) if the information specified in the written request is not published, a copy of it is given to the applicant within a 5-day period after receiving the request,
- 2) if the information specified in the written request is published, the information about the means, place and deadline of publication is given to the applicant within a **5-day period** after receiving the request,
- 3) if it is necessary to perform additional work to provide the information specified in the written request, this information is provided to the applicant within a **30-day period** after receiving the application, about which the applicant is informed in writing within 5 days after receiving the request, indicating the reasons for the delay and the deadline for providing the information.”

According to Part 10 of Article 9 of the FOI law:

“10. If the information holder does not have the requested information, or its provision is beyond the scope of its powers, it is obliged to inform the applicant about this in writing within a **5-day period** after receiving the given written request, and if possible, also provide the location of the information holder (including the archive) that has the information requested.”

According to Article 9, Part 7, Clause 3 of the FOI law:

“3) if it is necessary to perform additional work to provide the information specified in the written request, this information is provided to the applicant within a **30-day period** after receiving the application, about which the applicant is informed in writing within 5 days after receiving the request, indicating the reasons for the delay and the deadline for providing the information.”

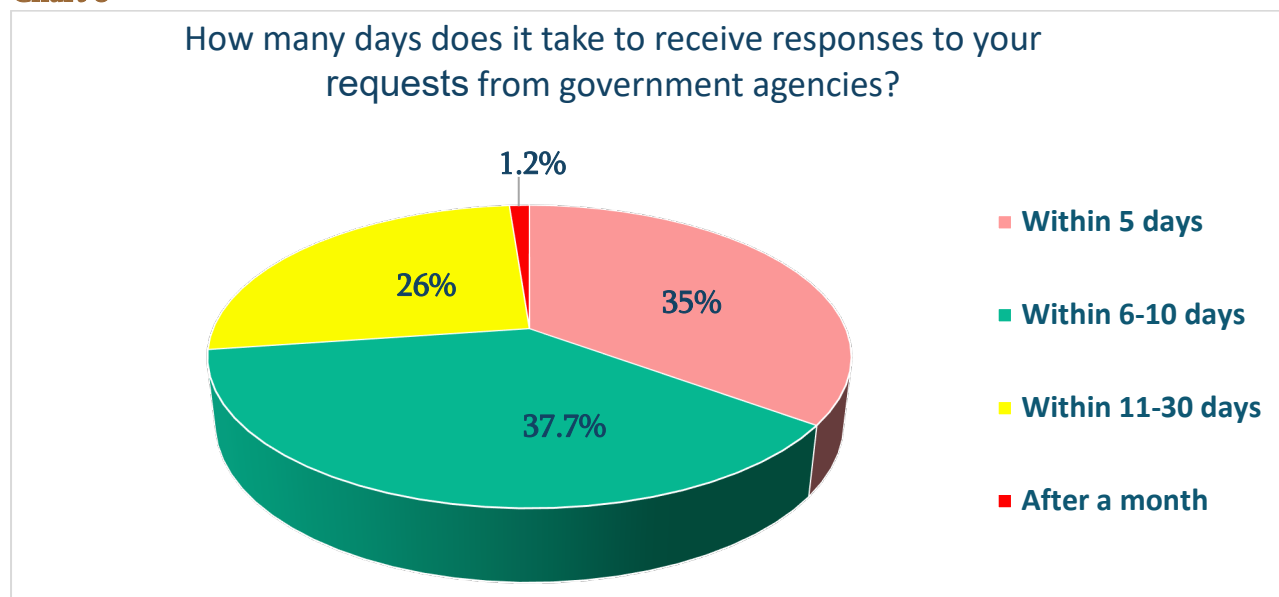
In all other cases, except for the above 3 cases, the information request must receive a response about submitting the requested information, refusing it, informing about the need to perform additional work for providing the information, informing about not having the information. To respond to information requests, the total period of **5 days defined by the law** “On Freedom of Information” is calculated from the moment the request is received by the information holder. Moreover, the law does not emphasize that it is about working days, therefore, based on the literal meaning of the words and phrases contained in the legal act norm, according to the rule of interpreting the norm, the time frames set by the FOI law can be interpreted as being calculated in calendar days.

However, in practice, the civil society has taken into account that the information holding bodies have a 5-day working week as a rule, and the employees of the information holding body are essentially deprived of the opportunity to consider the written request for information on non-working days. As a result, according to established practice, the time frames set by the law for responding to a request are often calculated in working days. In this case, in the matter of interpretation of the law, taking into account the administrative practice, a reservation has been made in favor of the information holder.

It should be recorded that only 35% of the journalists who have participated in the survey have stated receiving a response within a 5-day period defined by law. Thus, it turns out that only every 3rd request is responded within the time frame set by the law. 37.7% of journalists have stated that they receive responses within 6-10 days on average, instead of the 5-day period, and

26% have stated that they receive responses within 11-30 days. 1.2% of journalists have mentioned receiving a response after several months (see Chart 8). It is positive that none of the journalists has mentioned the unanswered request.

Chart 8



It is quite interesting to compare current results with the results of a similar research conducted in 2008, according to which 16% of the interviewed journalists stated that they received the response to the request within 1-3 months, and 10% stated that they did not receive a response at all.⁹ Although the progress is obvious, the situation still cannot be considered satisfactory, when overdue responses are a serious obstacle from the point of view of fulfilling the professional duties of journalists.

“Unnecessary delays are widespread, often after the 5 days prescribed by law, they inform that they will respond within 30 days. Sometimes, after 5 days of silence, they respond that they are not the addressee of the question.”

“In case of different bodies, the picture is different. For example, I sent a request to make a film. The request was responded with a delay of two months. I sent the request in November 2023, they responded in January 2024, when the film was already ready. I sent the request by e-mail. They called two months later, saying that they had sent the response by mail, but the letter had come back, so they sent it by e-mail.”

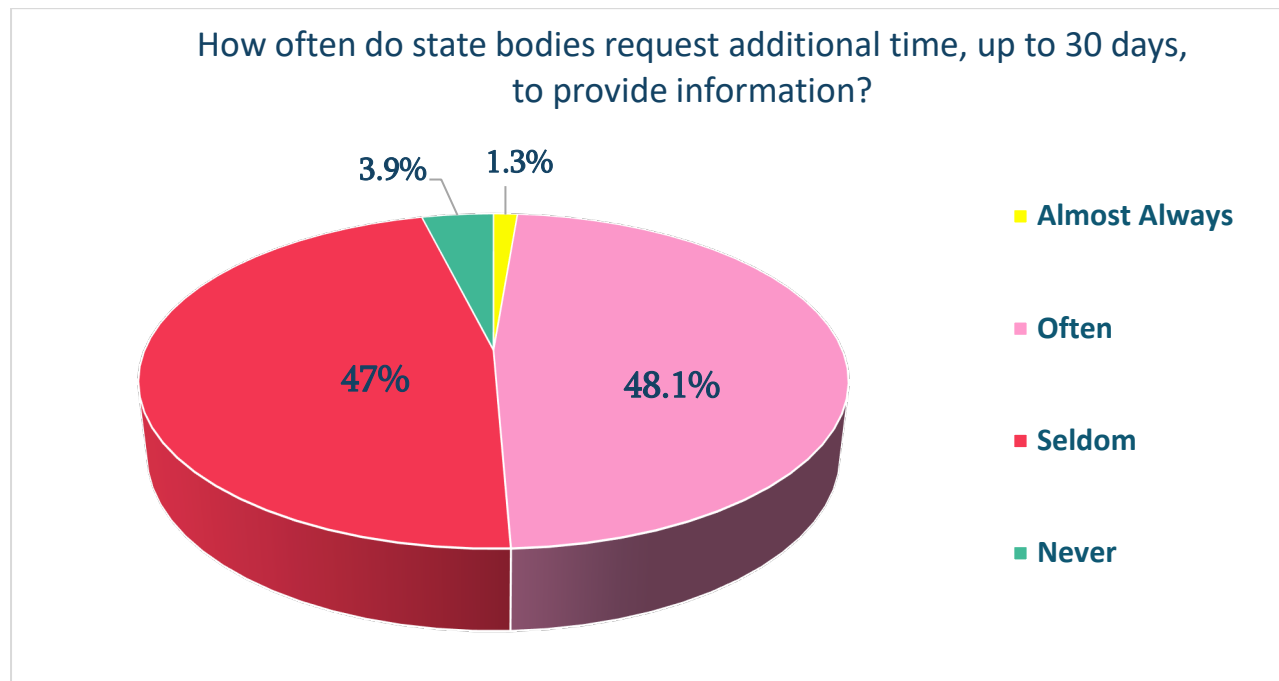
“State bodies abuse the 5-day rule and always send the response after the 5th day has passed... Often that response can be a refusal to provide information, which in fact takes 5-10 days to write.”

Journalists complain that there are also frequent cases when state bodies respond only on the 5th day, including refusal or request for additional time. It should be noted that the 5 days set for responding to the request is the maximum possible period, and the information holder should not wait for the end of the specified period, but provide the information immediately after receiving it or as soon as possible, within 5 days at the most.

⁹ Access to Information Right of Journalists, Research by the FOICA, 2008, page 36, available at the following link <https://foi.am/wp-content/uploads/2008/04/Media-Research-FOICA-ARM-2008.pdf>

Another problem related to time frames is the abuse of the opportunity to delay the response time frames on the grounds of performing additional work. Answering the FOICA's question about how often state institutions ask for additional time to provide information, almost half of the interviewed journalists, 48%, have selected the "Often" option (see Chart 9).

Chart 9



Journalists also note that they are often asked for a 30-day period not so much to perform additional work, but to gain time. Many of them warn about the widespread practice of abusing this time frame. There are also cases when, taking advantage of the 30-day period, the information holder initially applies the rule of an additional period, and after the 30-day period expires, the information holder (this happens especially often in case of law enforcement structures) refuses to provide the information on the grounds that it is confidential.

Journalists note:

"Since I write long articles, I often want data for several years, and they almost always ask for 30 days to respond, which might be normal if they didn't respond vaguely, or after 30 days wouldn't just say that they don't collect such data, after which you need to call again, send a request again, and you have to wait for days again."

"If we request a large amount of information, they ask for a 30-day period, but sometimes after 30 days they respond that the answers to the questions are confidential or do not concern their department. Moreover, they ask for 30 days even to provide such information, which, it is assumed, they have at hand and it does not require additional work."

In case of applying a 30-day period on the grounds of performing additional work, the information holder is obliged to inform the applicant about the new time frame and the reasons for its application within a 5-day period. In accordance with Article 9, Part 7, Clause 3 of the FOI law, in addition to indicating the need for additional work and the maximum period of 30 days,

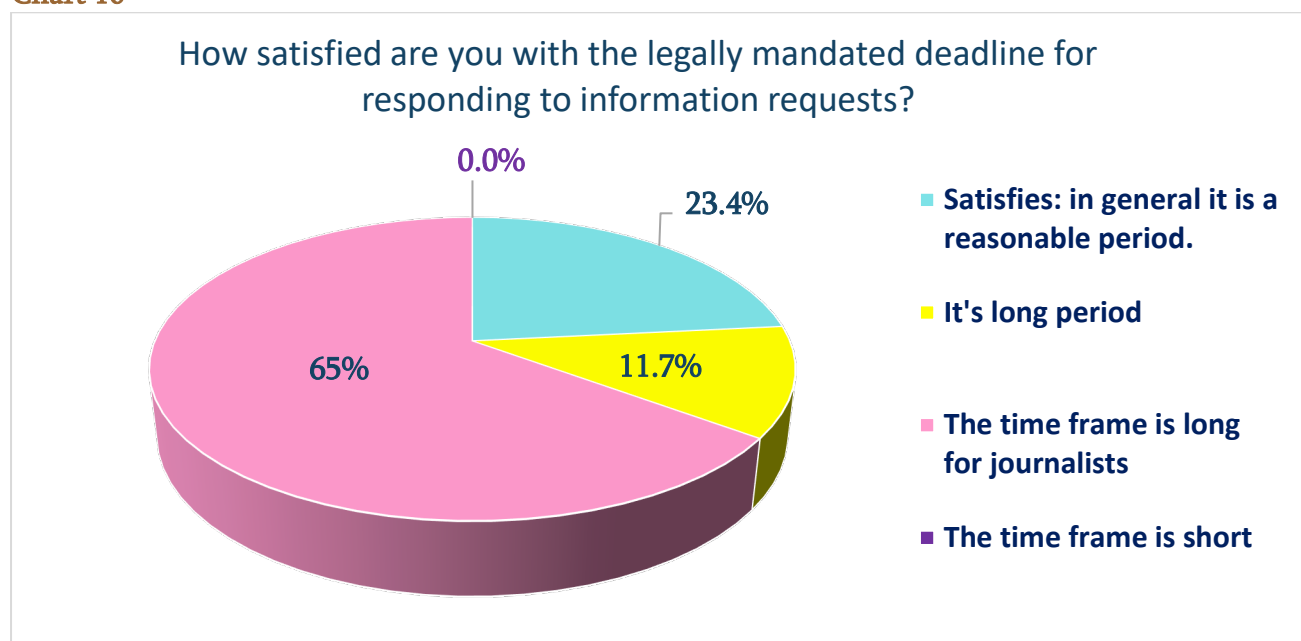
the information holder must mention in the interim response *the reasons for the delay and the deadline for providing the information*.

When referring to the time frame for providing information that requires additional work, the substantiation must be exhaustive and convincing for the journalist. For example, the fact that the official responding to the request is on vacation cannot be considered a fair substantiation. There is also a violation of the law in any case where the additional work that caused the delay in providing information is not specified, or when the specific deadline for providing information is not specified (which may not exceed 30 days, but may be less than 30 days). Additional work required to provide the information can be considered the need to verify the relevance of the information, perform analysis, collect the information from the departments of the information holder, etc.

Although none of the journalists who have participated in the survey have mentioned the problem of silent refusals, it still occurs in practice when the request does not receive any response. While the number of silent refusals has decreased significantly along with the development of the practice of applying the FOI law, in the conditions of modern forms of communication and particularly the requests submitted through the unified platform of electronic requests remaining unanswered, silent refusals indicate either the intention to leave the request unanswered, or a careless attitude towards the access to information right.

Journalists have also stated their opinion on how much they are satisfied with the 5-day period defined by the law (*see Chart 10*). As it below shows, only 23% are satisfied with this time frame. The majority are dissatisfied, considering that it is too long for the performance of journalist's duties.

Chart 10



On the other hand, the 5-day period seems very short to the employees of state bodies. The FOI officials note that the reason for the delays in the responses is the very short time frame, which in some cases they cannot provide due to system overload.

Summarizing the issues related to time frames, we can note that

- *journalists making requests are often not properly informed of the exact reasons for the delay in responding to requests,*
- *when delaying the response to the request, no proper substantiation is given about the reasons for the delay,*
- *the deadline for providing the response is not specified or the maximum possible period established by law is immediately referred to,*
- *the time frames for responding to the request are violated in some cases, even when calculating in working days.*

Thus, the problem of time frames for information requests is widespread and is a serious obstacle for journalists. On the other hand, it is positive that journalists no longer mention the problem of unanswered requests.

1.6 FOI OFFICIAL

The officials appointed for Freedom of Information in the information holder bodies have a primary role in facilitating journalists' access to information. They are responsible for coordinating and supporting the process of submitting and responding to information requests.

Legislative Regulation

According to Part 5 of Article 12 of the FOI law,

“In the field of ensuring access to information, the information holder is obliged, in accordance with the law: (...) 5) to appoint an FOI official.”

Article 13 of the FOI law refers entirely to the FOI official, defining:

“1. The FOI official can be the official appointed by the information holder or the head of the information holder.”

The same article also defines the scope of powers of the FOI official, noting that the FOI official:

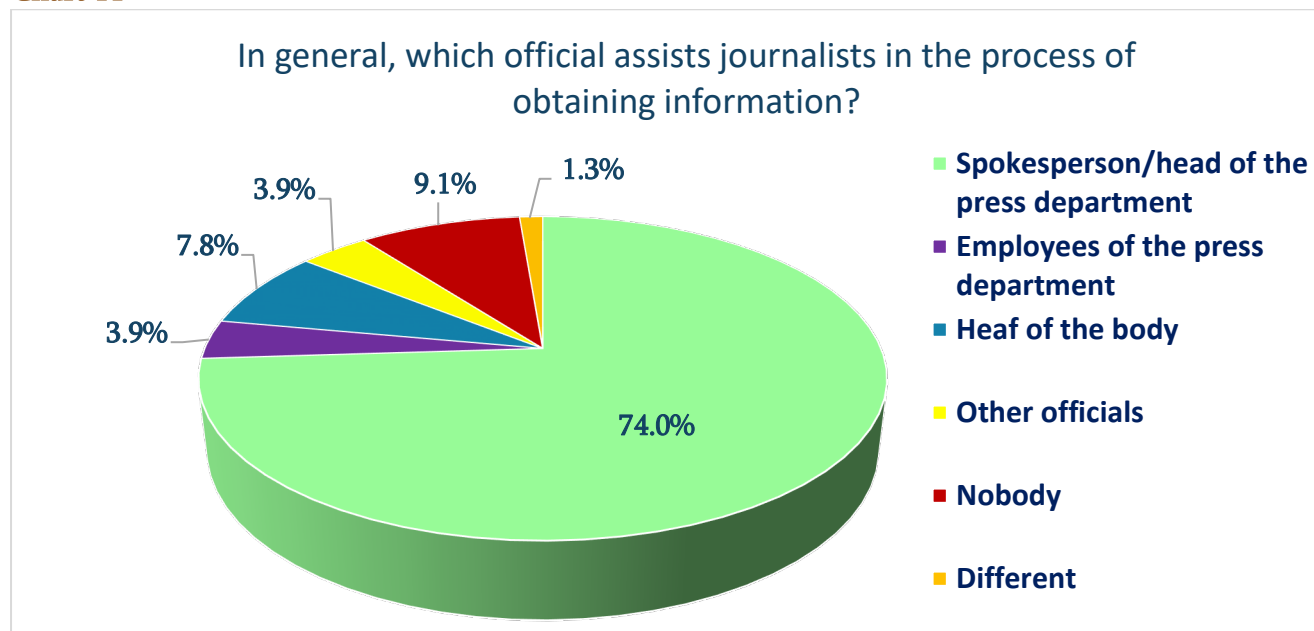
- ensures the implementation of the responsibilities of the information holder in the field of access to information,
- explains to the information seeker in an accessible manner the procedure, conditions, and forms of providing information,
- processes statistical and summary data of received requests.

The above-mentioned provisions of the FOI law were enshrined by Decision 1204-N, which also defined that the responsibilities of the FOI official are specified in the relevant legal act on appointing the FOI official or in another legal act defining the responsibilities. It also mentions the requirement to publish contact details on the official website of the information holder (Clauses 2-5 of Appendix 1 of Decision 1204-N).

The FOI law emphasized the role of FOI officials in the relationship with the information seeker, highlighting that the FOI official explains to the information seeker in an accessible manner the procedure, conditions, and forms of providing information.

74% of the interviewed journalists have stated that in the process of receiving information, they most often receive assistance from the press spokespersons and/or heads of the news department of the information holders (*see Chart 11*) that are concurrently appointed as the FOI official in the structure that holds the given information. 9% of respondents have stated that no one assists them in the process of receiving information.

Chart 11



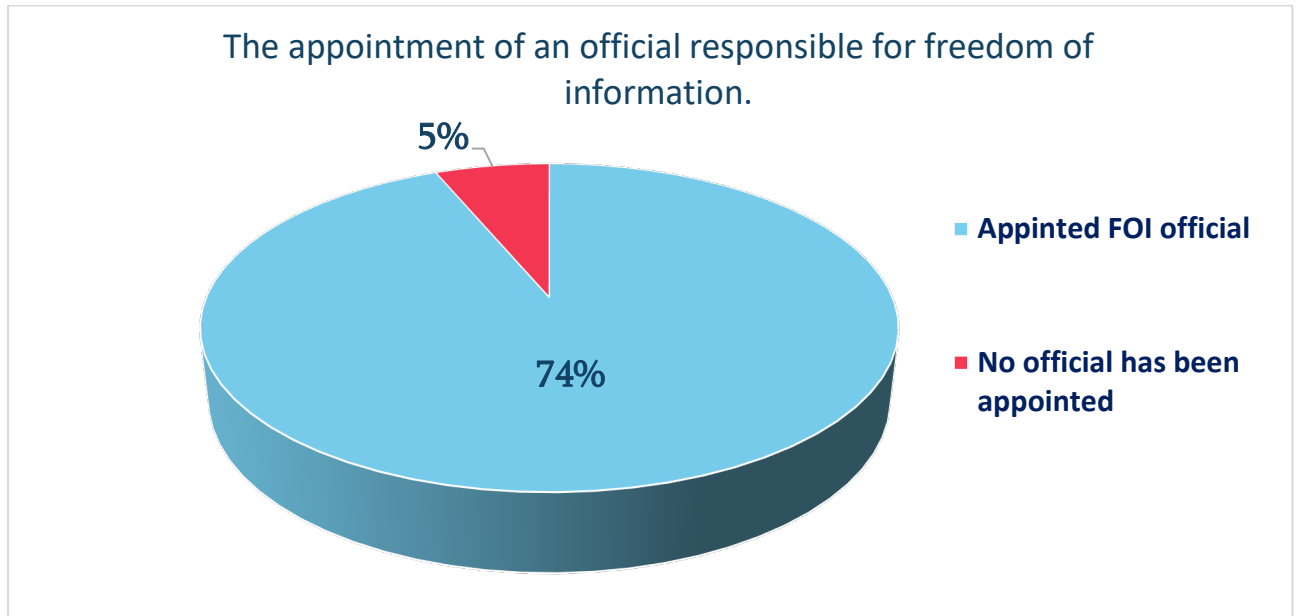
It should be noted that according to established practice, the powers of the FOI official in state bodies are often assigned to the press spokesperson/heads of public relations department. Journalists state that they tend to expect responses to their requests from the spokesperson, regardless of who is officially appointed as the FOI official.

FOI officials are an important link between the information seeker (in this case, the journalist) and the information holder. Accordingly, although the need to improve the institution of FOI officials and provide proper resources and powers for FOI officials is regularly and fairly raised, the institution of FOI officials is still not able to fully implement its functions in practice.

It should be emphasized that the responsibilities of press spokespersons/secretaries and/or heads of public relations departments as FOI officials largely depend on the structure's document management traditions and internal regulations. The practice varies from structure to structure. Thus, there are structures where the FOI official is informed about the requests received by the department, but is solely responsible for the requests received from mass media and CSOs. In some departments, for all the documents considered in the official request, the FOI official is appointed as the first executor. There are structures where the requests of citizens and journalists are clearly separated, and this is done primarily to make the work with journalists more efficient. All these options can be a reasonable way of working, but it is important to note that there is no general and unified approach in this field.

The studies by the FOICA show that 95 percent of the bodies in the state administration system have an appointed FOI official (*see Chart 12*). The FOICA regularly publishes the list of FOI officials on its official website to support journalists.¹⁰

Chart 12



Taking into account the powers assigned by law to the FOI official, the issue of the knowledge of FOI officials regarding the FOI field is also important. In the past, various analyses and strategic documents have emphasized the importance of training FOI officials to have sufficient knowledge and skills in the FOI right and the practice of the application of the field legislation for the proper enforcement of this right. In the report¹¹ AIG/Inf(2023)02 of January 12, 2023, addressed from the Republic of Armenia to the information accessibility group of the Council of Europe, the education and training of FOI officials was also addressed. The report states that the trainings of public servants are carried out periodically, within the framework of various programs or events, with the support of sectoral non-governmental organizations and international organizations.

¹⁰ The list of FOI officials working in the state administration system is available on the official website of the FOICA at the following link <https://foi.am/articles/3509>

¹¹ The national report is available [here](#).

SECTION 2. REFUSALS OF INFORMATION REQUESTS

2.1 GENERAL GROUNDS FOR REFUSALS

Legislative Regulation

Part 1 of Article 8 of the FOI law defines the grounds on which the provision of information may be refused.

“1. The information holder, except for the cases specified in Part 3 of this article, refuses to provide information if it:

- 1) contains state, bank, trade secret or restricted service information,
- 2) violates the privacy of a person’s private and family life, including the privacy of correspondence, telephone conversations, postal, telegraphic and other communications,
- 3) contains information on criminal proceedings, which is not subject to publication,
- 4) discloses data requiring access restriction due to professional activity (medical and notarial secrets, attorney-client privilege),
- 5) violates copyright and/or related rights.”

According to Part 2 of the same article:

“2. If part of the requested information contains data, the provision of which is subject to refusal, information is provided regarding the remaining part.”

According to Part 2 of the same article: “3. Provision of information cannot be refused if:

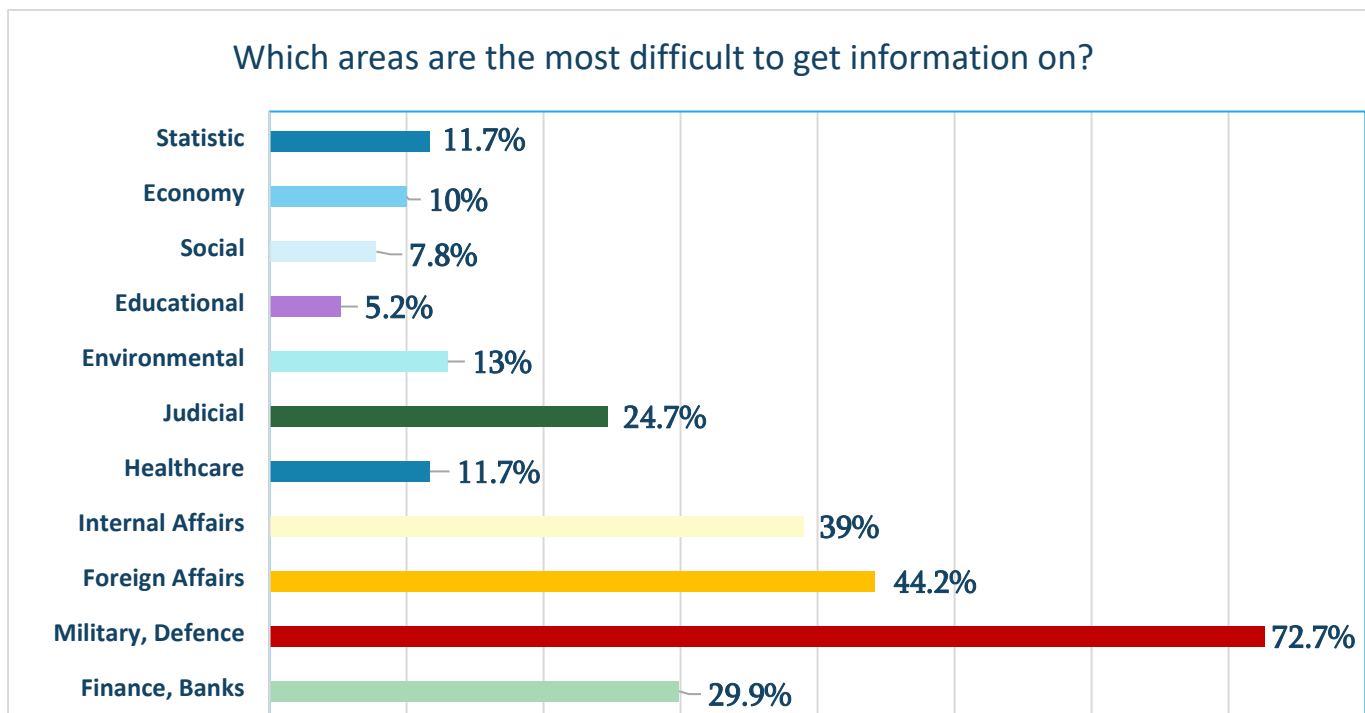
- 1) it refers to emergencies threatening the safety and health of citizens, as well as natural (including officially predicted) disasters and their consequences,
- 2) it represents the general state of the economy of the Republic of Armenia, as well as the real state in the fields of nature and environment protection, healthcare, education, agriculture, trade, and culture,
- 3) failure to provide it will have a negative impact on the implementation of state programs for socio-economic, **scientific-technical, and spiritual-cultural development of the Republic of Armenia.**”

According to Part 3 of Article 11 of the FOI law:

“3. In case of refusal to provide the information requested by a written request, the information holder informs the applicant about this in writing within a **5-day period**, indicating the grounds for refusal (the relevant norm of the law), as well as the procedure for appealing it.”

72.7% of the journalists who have participated in the survey have stated that the most difficult thing is to get information about the military and security sectors (see Chart 13). Foreign affairs and internal affairs follow with 44.2% and 39%, respectively.

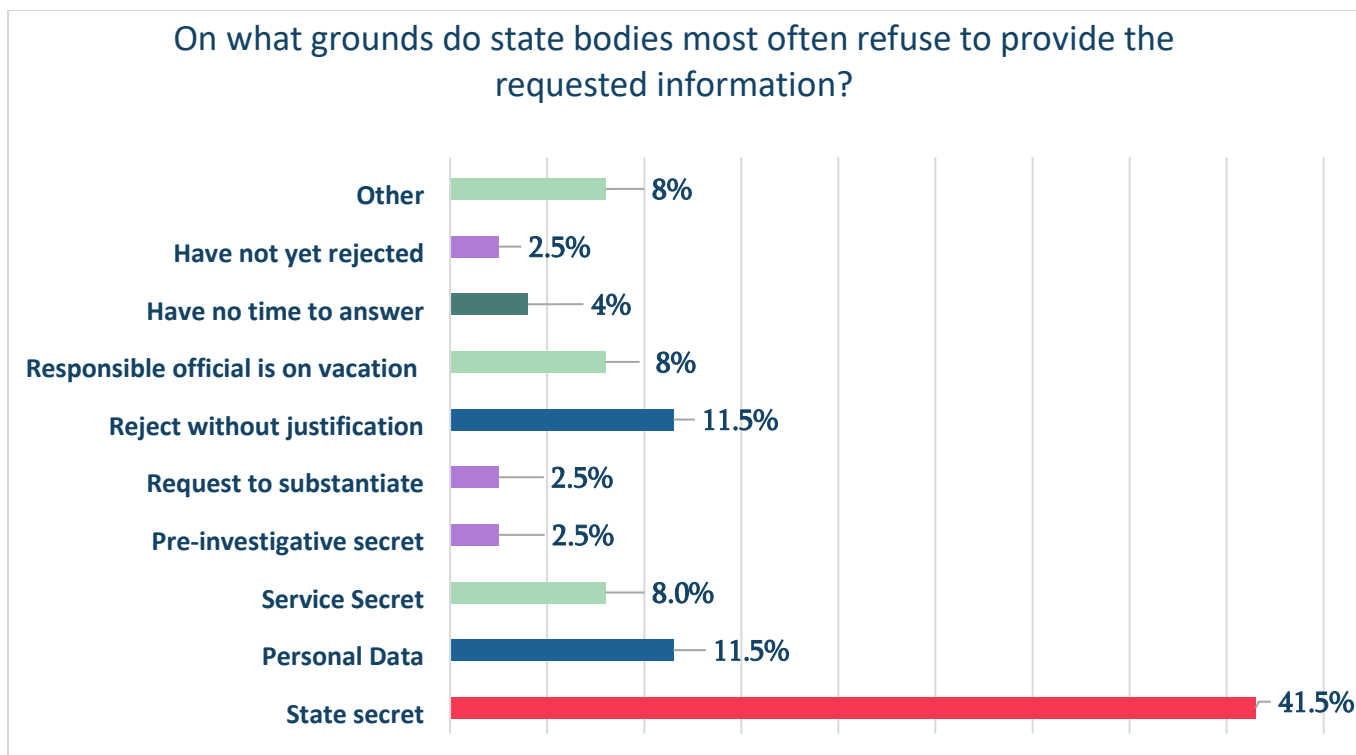
Chart 13



Therefore, it is understandable that the majority of journalists have mentioned state secrets as the most frequently used reason for refusing to provide information: 41.5% (see Chart 14).

11.5% of journalists have stated that most often the provision of information is refused without substantiation.

Chart 14



It is worrying that about 11.5% of the interviewed journalists have reported that the provision of information is refused without substantiation. In one case, the journalist is refused only after sending a second request, in another case, after a judicial appeal.

In addition, the provided refusals do not always contain all the data defined by the law, that is, in the letter of refusal to provide information, both the specific grounds for the refusal defined by Part 1 of Article 8 of the law and the relevant norm of the law must be indicated, according to which the requested information was regarded as a secret. The refusal must also contain the procedure for appealing the refusal. In practice, the majority of refusals do not meet these conditions. In some cases, the 5-day period for providing the refusal, established by law, is violated.

Journalists' complaints about the refusals are numerous:

“State departments often abuse laws on state or military secrets to not provide substantive or valid responses to journalists' requests.”

“There are very important and sensitive topics, on which the public expects comprehensive and clear information, but the state institutions are silent, they do not trust the media, on the other hand, fake news on the same topic spreads quickly on social platforms, misleading people. Now, in which case was more damage caused to our state? We understand that we will not spread information that could harm our state.”

“Once we sent a request with the same content to two different departments, one of them refused it, referring to the secret, and the other gave a partial response. This means that there is a different perception of the law and its interpretation.”

Part 2 of Article 8 of the FOI law establishes the rule for partially refusing to provide the requested information. Although the answers of the journalists who have participated in the survey do not refer to the partial refusal of information, in practice there are often cases when a part of the information requested is some kind of secret defined by the law, and the information holder refuses to provide all the information requested. Such a refusal contradicts the FOI law. If a part of the information requested or some data in the requested document (for example, a number or any name, etc.) is confidential, the information (document) must be provided with the rest of the non-confidential part, making the refused information illegible (covering, blacking out or erasing) and not editing the rest of the information (document). Such procedures are not used in practice, they are not even developed.

2.2 REFUSAL ON GROUNDS OF PERSONAL DATA PROTECTION

The law “On Protection of Personal Data” was adopted in 2015. After the adoption of the law, the new regulations in the field of personal data protection led to the fact that the information holders quite often refuse the journalists' information requests about a person, citing that the requested information is personal data.

11.5% of the journalists who have participated in the survey have stated that state bodies most often refuse to provide the information requested on the grounds that the information contains personal data (*see Chart 14*).

Refusals on the grounds of personal data protection sometimes have funny manifestations. As one of the journalists notes, *“Once we made a request about a fugitive, they said it was personal data, we should ask the fugitive.”* In another example, journalists tried to find out whether the former police chief rewarded himself with a weapon before his dismissal, and if so, what kind of weapon. They received a refusal saying that the information contained personal data. *“Everything in our journalistic materials can be considered personal data and not published if we proceed with this logic, because our materials are about people.”*

Legislative Regulation

According to Part 1 of Article 31 of the Constitution:

“1. Everyone shall have the right to inviolability of his private and family life, honor and reputation.”

According to Part 1 and Part 2 of Article 34 of the Constitution:

“1. Everyone shall have the right to protection of their data. 2. Personal data shall be processed in good faith for purposes stipulated by law, with the consent of the person or without such consent if another legitimate ground stipulated by law is present.”

According to Part 1 of Article 4 of the law “On Protection of Personal Data,”

“1. The processor of personal data is obliged to follow and ensure that the data is processed in compliance with the requirements of the law.”

According to Article 8 of the same law, the processing of personal data is legal if, among others, it is expressly provided by law.

According to Article 8, Part 1, Clause 2 of the FOI law:

“1. The information holder (...) refuses to provide information if it: (...) 2) violates the privacy of a person’s private and family life, including the privacy of correspondence, telephone conversations, postal, telegraphic and other communications.”

The law “On Protection of Personal Data” does not prohibit the processing of this or that personal data, including the provision or publication based on a request, nor does it define the status of this or that personal data as a secret. Personal data is the name of the data type, not the mode. In turn, the FOI law is a law directly providing for the processing of personal data, that is, the publication or provision of personal data based on a request.

Personal data is the name of the data type. However, according to the FOI law, the grounds for refusing to provide information can be that the information is a secret. As a result, it is wrong to base the refusal to provide information on the type of information. The above was also confirmed by the authorized body for personal data protection with its administrative case decision № N-006/01/19.¹² The Agency for Protection of Personal Data has noted that personal data is not a secret in itself, and if it is necessary to limit its availability or public access to third parties, personal data or documents containing personal data should be classified as a secret.¹³

¹² See the Decision of the Authorized Body for Personal Data Protection in the case of FOICA v. Yerevan Municipality, 2019. http://www.foi.am/u_files/file/Voroshum_2019_qaghaqapetaran.pdf

¹³ Personal Data Protection Guide, PDPA, 2019, available at the following link <https://moj.am/storage/uploads/123Uxecuyc-cucumner.pdf>

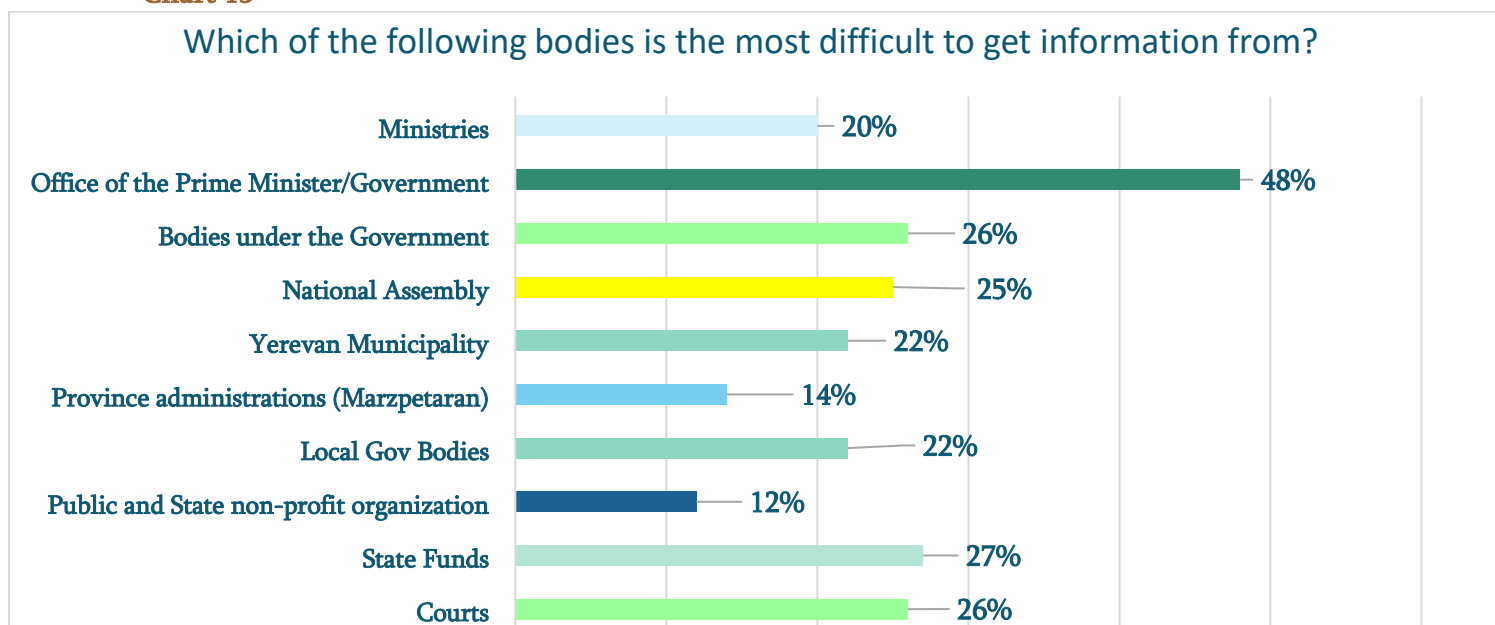
As a result, in all cases where the availability or public access of data on a person obtained or created in accordance with the legislation is not limited by law (if the data is not classified as a secret), this data must be provided upon request in the same way as any other information.

The fact that information contains personal data is not a valid ground for refusing to provide information.

In all cases, when information holders refuse to provide information requested on the grounds of the information containing personal data, they violate the law “On Freedom of Information.”

We have also asked the journalists to present which bodies they think are the most difficult to receive information from. As is seen in Figure 15 below, the top three of these structures are: the Office of the Prime Minister - 48%, state funds - 27%, courts and bodies subordinate to the government - 26%.

Chart 15



Summarizing the practice of refusals, we can state that information requests are most often refused on the grounds of state secrets. Information holders do not always follow the procedure and time frames of refusal established by law. In some cases, the refusals are not properly substantiated or the time frames for submitting the refusal are violated. At the same time, information holders still mistakenly identify personal data with information (confidential) that violates the inviolability of private and family life and use the fact that the requested information is personal data as a ground for refusing to provide the information.

The fact that information contains personal data is not a valid ground for refusing to provide information.

SECTION 3.

APPEALS AND THE AUTHORIZED BODY FOR ACCESS TO INFORMATION VIOLATIONS

3.1 APPEALS OF VIOLATIONS OF THE ACCESS TO INFORMATION RIGHT

Legislative Regulation

According to Part 4 of Article 11 of the FOI law:

“4. Refusal to provide information can be appealed to an authorized state administration body or a court.”

According to Article 8 of the CE Convention:

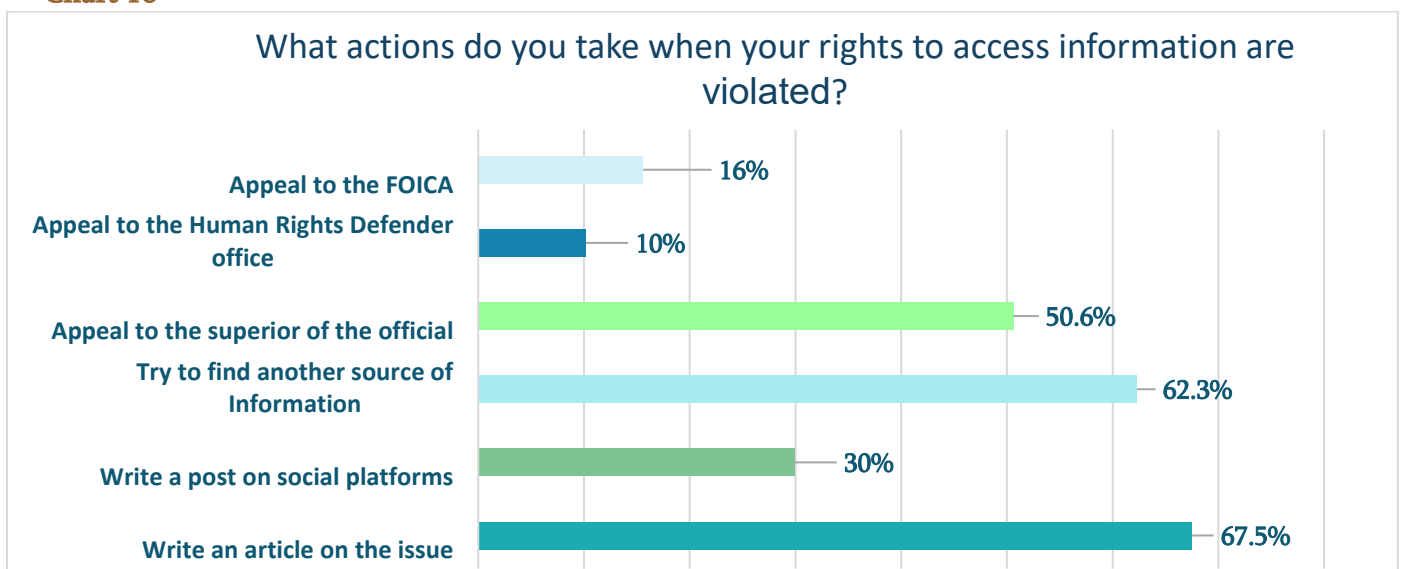
“1. In the event of a direct/indirect or complete refusal of a request for an official document, the requestor shall have access to an appeal procedure in a court or other independent and impartial body established by law.

2. The requestor shall always have the possibility of an expedited and inexpensive appeal procedure.”

67.5% of the journalists who have participated in the survey have said that in case of violation of the access to information right, they prefer to write an article about it or try to find another source - 62.3% (*see Chart 16*). Journalists have also noted that in case of violation of the access to information right, they write about it on social platforms (29.9%), and also apply to the superior of the official who refused to provide information (50.6%), or the Freedom of Information Center (15.6%) or the Human Rights Defender (10.2%).

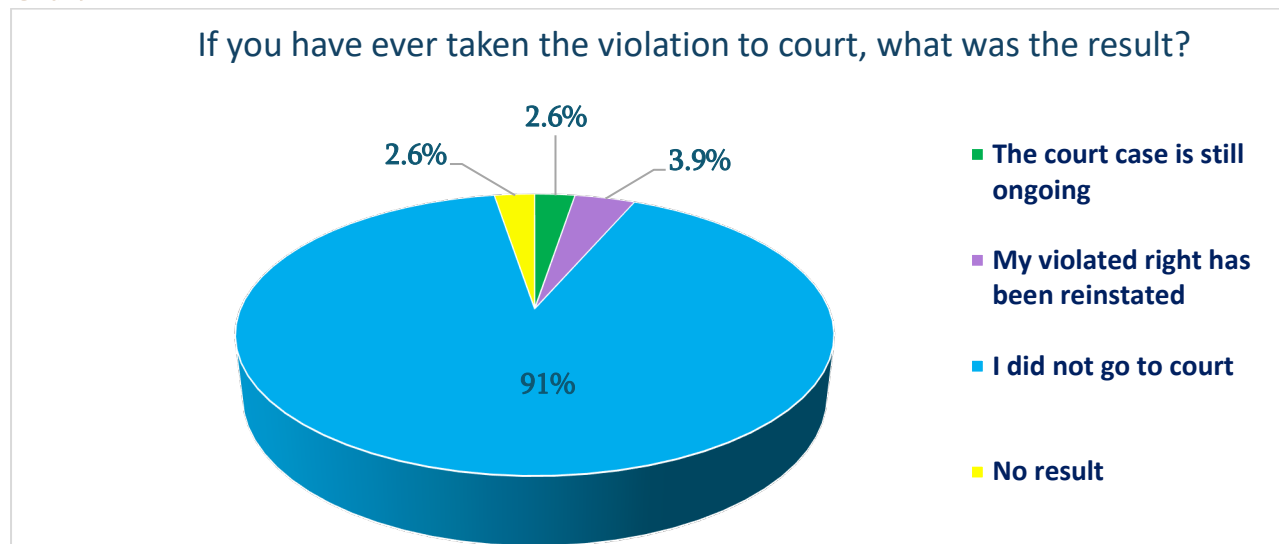
It is noteworthy that in the event of a violation of the access to information right, more often they prefer to turn to the Freedom of Information Center, expecting to receive practical support, than to the Human Rights Defender.

Chart 16



As the law stipulates, in case of not receiving a proper response from the information holder, the main option to restore the violation of the right is to apply to the state authorized body or the court. However, 91% of the journalists who have participated in the survey have stated that they have never applied to the court in case of violation of the access to information right.

Chart 17



Practice and surveys show that the judicial appeal of the access to information right is not advisable in case of media and journalists, when on the one hand the appeal implies costs and is time-consuming, on the other hand, information sought to be used for journalistic purposes usually loses its relevance much earlier than the time frames for judicial appeals.

“Providing the information after a year and a half is out of date and it is impossible and pointless to use it; it is also a waste of time and resources, even if you win the case and get your money back. We do not have the opportunity to constantly hire a lawyer and go to court. There is a court option, but it is not easy for any media to go that way.”

In addition to being costly, going to court is also a very time-consuming process. The study of judicial practice shows that in case of appealing the refusal to provide information in court, the examination of court cases solely in the Administrative Court lasts an average of 1-4 years, and in case of an appeal, sometimes it exceeds that period. For example, the duration of some strategic trials of the Freedom of Information Center exceeded the 5-year period. It is obvious that such practice of applying the right in the absence of the necessary legislative regulations deprives the access to information right of its content and deprives a person of the possibility of an effective legal protection in case of violation of the access to information right, because the effective implementation of the access to information right is primarily due to tight time frames for providing information. At the same time, months or years later, after the violation of the access to information right has been eliminated by a court order, the need for the requested information has already disappeared, therefore, the restoration of the right essentially does not take place.

The RA legislation does not provide for special-tighter-trial periods and procedures for investigating cases regarding the protection of the access to information right, as a result of which the lengthy investigation of these cases often deprives the journalist of an effective legal protection.

Another problem related to the judicial practice is the poorly formed practice of applying the norms of liability for the violation of the access to information right. Although legal norms defining the liability have been adopted since 2003, they are hardly applied in practice, with rare exceptions. Even when in 2022 due to the petition submitted by the FOICA, the amount of administrative liability increased, the practice of application did not improve. Moreover, in rare cases when the courts decided to apply the norms defining administrative liability, high-ranking officials were not involved (for example, in one case a village head was held responsible, in another case a representative of a private company).¹⁴ On the other hand, we should note that the claimant media outlets or non-governmental organizations are not inclined to submit claims regarding the application of the norms of administrative liability during the court appeal.

A judicial appeal can have a preventive function in individual cases. There are cases when the fact of applying to the court already has a positive result, and the defendant who received the claim hurries to provide the requested information to prevent the court act against it. Such an example was the lawsuit initiated by the Freedom of Information Center against the ruling “Civil Contract” party based on the application of the “Infocom” media in 2023 to oblige to provide the required information on pre-election fundraising.¹⁵

Thus, a judicial appeal is often ineffective because it is very costly and time-consuming for journalists. The RA legislation does not provide for special-tighter-trial periods and procedures for investigating cases regarding the protection of the access to information right, as a result of which the lengthy investigation of these cases often deprives the journalist of an effective legal protection. Although the legal norms defining the liability are adopted, they are hardly applied in practice by the courts, with rare exceptions. At the same time, going to court can in some cases have a preventive function or be a way to quickly solve the problem.

3.2 AUTHORIZED BODY FOR ACCESS TO INFORMATION

The FOI authorized body is a guarantee of the protection of access to information and the development of positive practices in the application of the access to information right. Moreover, when mentioning the authorized body, a body in accordance with international best practice and guarantees of independence is meant.

Legislative Regulation

The FOI law stipulates that the refusal to provide information can be appealed to an authorized state administration body or a court.

According to Article 8 of the Council of Europe Convention on Access to Official Documents, a person whose request to receive official information has been refused has the right to appeal the refusal in court or to another independent and impartial state body. In addition, the appeal process should be quick and inexpensive.

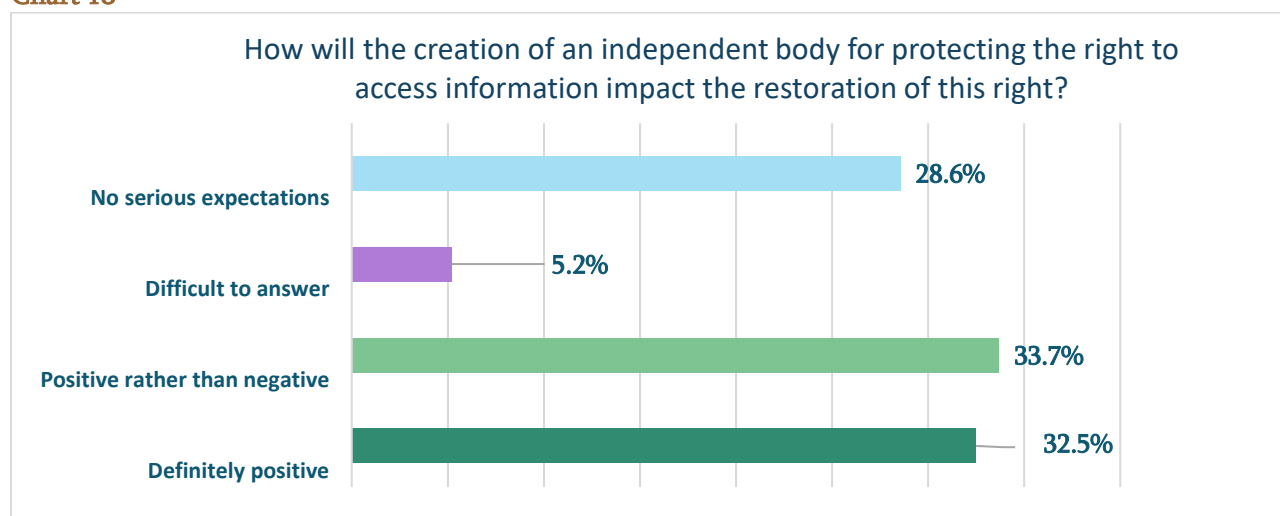
¹⁴ Learn more about the strategic lawsuits initiated by the Freedom of Information Center here <https://foi.am/freedom-of-information/strategic-litigation>

¹⁵ Details of this lawsuit are available here https://foi.am/success_stories/33902

Although the FOI law and the Convention provide for the possibility of an authorized body for access to information, an FOI authorized body has not been formed in Armenia. In such conditions, the alternative for protection of the access to information right in Armenia remains the courts, which do not have the tools typical of an authorized body to practically monitor, analyze, and regulate the problems in the field of access to information without the formation of lengthy court cases and judicial practice.¹⁶

66.2% of the journalists who have participated in the survey have stated that the establishment of an independent body for the protection of the access to information right will have a positive effect on the protection of the access to information right (see *Chart 18*).

Chart 18



International best practice shows that the FOI authorized body should be independent and impartial, a structure created on the basis of law, whose decisions should be binding. The authorized body must at least have the following functions:

- carry out independent and impartial extrajudicial protection of the access to information right,
- accept and examine complaints about the violation of the FOI right,
- monitor, analyze, and introduce best practices in the FOI practice,
- conduct regular trainings of officials on FOI,
- develop recommendations and soft regulations on how to process requests, meet the requirements for proactive information publication, ensure transparency and accountability, etc.
- provide recommendation on the realization of the FOI right for both citizens, journalists, and bodies holding information,
- provide clarification of legislation in the FOI field,
- collect and publish information on the practice of the application of the FOI law and an annual report assessing the situation of FOI in the country, as well as present unified statistical data on FOI requests and decisions.

¹⁶ An article by Toby Mendel, Executive Director of the Centre for Law and Democracy, on the international practice and importance of FOI authorized bodies is available at the following link <https://foi.am/articles/3408>

One of the most important reasons for the establishment of the FOI authorized body is the need to inform about the best practices regarding access to information, give recommendations, and educate information holders and citizens. Article 9 of the Convention on Access to Official Documents establishes the duty of the state to inform the public of the right to access official information, which includes, among other things, the function of educating and informing officials about their responsibility to provide information.

Another main substantiation for the need to have an FOI authorized body is the independent review of violations of the FOI right. As a main goal, the FOI commissioner should receive and examine complaints about violations of the FOI right, and have the authority to appeal violations, regardless of what kind of violation it is: illegal refusal, silent refusal, or other violation of the FOI right. The FOI authorized body should be an independent and impartial structure, and to ensure its independence, guarantees of independence should be defined (appointment/selection mechanisms, financial independence). The role of the FOI authorized body should also be to develop interpretations and soft regulations that promote the formation of unified practice.

International practice shows that most of the states within the European Union have FOI commissioners or equivalent positions. There are two main models:

- a) In several countries, for example, Germany, Slovenia, Great Britain, Estonia, the Federal Commissioner for Data Protection and Freedom of Information is operating with great success, which examines both personal data protection and FOI complaints.
- b) In some countries, specialized bodies-the Office of the FOI Commissioner/Commission-are established specifically to study FOI complaints (for example, in Australia, Canada, France, Sweden, etc.).

Along with that, the institution of human rights defender cannot be considered an effective extrajudicial body from the point of view of protection of the access to information right, considering the problem of lack of imperative powers. It is not by chance that Armenia was given 0 points in the international ranking system of access to information with that indicator (indicator 42 - the decisions of the independent supervisory body have binding legal force).¹⁷

Thus, although the CE Convention and the FOI legislation provide for an FOI authorized body, it has not yet been formed in Armenia. At the same time, international practice proves that the independent extrajudicial review of the protection of the access to information right is the best guarantee for the full protection of this right.

In international practice, there are 2 main models of independent review: the unified model of FOI and Personal Data Protection, which implements the functions of both areas simultaneously, and the second-the independent sectoral model, endowed with FOI functions only. In another, third version, these questions are placed on the Human Rights Defender, but this model is considered ineffective for a number of reasons: first of all, on the grounds that the Defender's decisions are not binding and in case of non-compliance by the state body holding information, the only way to protect the right remains the courts. However, the litigation is costly and time-consuming.

¹⁷ Global Right to Information Rating, Armenia. The index is available at the following link <https://www.rti-rating.org/country-data/Armenia/>

SUGGESTIONS AND RECOMMADATIONS

To solve many recorded problems, a number of proposals and recommendations have been developed, the implementation of which can ensure the effective and stable development of the field of access to information in the coming years, while guaranteeing the progressive experience of Armenia in this field.

Recommendations for information holders

Content of requests

- Information holders must ensure that every information request is responded fully and comprehensively. Answers to each question included in the request must be complete and reliable.
- Employees dealing with requests should be aware (through training and awareness) of the information holder's responsibility to provide sequentially numbered answers to all questions in requests containing more than one question.
- It is necessary to completely exclude unanswered/unresponsive requests.
- The applicant is not obliged to substantiate their request. At the same time, information holders should assist applicants in formulating the request, ways of sending the request, communicating the response to the request, appealing and other matters, if necessary.

Time frames for responding

- It is necessary to take measures to respond to requests immediately or at most within 5 days of receiving them. Monitoring of deadline compliance shall be entrusted to the FOI official.
- It is necessary to ensure that in all cases where it is necessary to perform additional work to provide the information requested, an interim letter must be submitted to the applicant of the request within a maximum period of 5 days, indicating the specific reasons for the delay and the specific deadline for providing the information, not exceeding 30 days.

Non-discrimination

- In the process of providing information, different applicants should be treated equally, excluding discrimination.
- It is necessary to ensure that each request is considered exclusively in accordance with the procedure established by legislation, regardless of who the applicant is.

Refusals of requests

- All refusals to provide information must contain the following three pieces of information:
 - the grounds for refusal (reference to the relevant clause of Article 8, Part 1 of the FOI law),
 - the norm of the law according to which the requested information is considered a secret,
 - the procedure for appealing the refusal.
- Refusals must be provided exclusively within a 5-day period.
- Employees dealing with requests must be informed that the fact that the information is personal data should not be an excuse for refusing to provide information. The provision of any information, as well as information containing personal data, can be refused only in the presence of the grounds established by the FOI law, with appropriate legal substantiation and in accordance with the law.

Document management, administration, and statistics

- It is important that information holders separate requests in internal document management systems (such as the Mulberry system) from other requests and set a 5-day deadline for responding to them. The monitoring of deadline compliance shall be entrusted to the FOI official of the given structure.
- It is necessary that the administration of information requests in the body holding information is carried out separately from other forms of administration.
- It is necessary to list the data (information) received or formed by the information holder according to information considered confidential and non-confidential. For each piece of information considered confidential, it is necessary to have the legal basis for classifying the information as such.
- It is necessary to ensure that once a year the information holders publish the summary statistical data on the received requests on the official website, in accordance with the regulations of the FOI law. For the purpose of unified formation of statistical data, we recommend using the sample developed by the FOICA.
- It is necessary for the bodies holding information to assess the appropriateness of implementing the requirements of the FOI legislation and undertake the elimination of the recorded problems, striving to bring the practice of ensuring access to information into line with the legislation, including international best practices.
- We recommend introducing a self-assessment system of access to information, which will enable information holders to carry out a periodic review of their practice, highlight and prevent problems, as well as improve their practice.
- It is necessary to carry out regular trainings of FOI officials to introduce them to the provisions of the Convention on Access to Official Documents and transfer skills and knowledge of practical application in the FOI field.

Recommendations for information seekers: civil society and journalists

- Civil society and media outlets should conduct regular trainings for journalists to ensure quality skills in exercising the access to information right.
- To ensure the proper practice of exercising the access to information, instead of presenting a substantiation of the request in response to the information holders that require a substantiation of the request, it is necessary to clarify that according to the FOI law and the Convention on Access to Official Documents, the requester is not obliged to substantiate the request. In requests containing more than one question, it is necessary to number the questions, then mention Decision 1204-N, according to which the information holder is obliged to provide the answers to the questions posed in the request with sequential numbering.
- Most journalists are not aware of the provisions of the Convention on Access to Official Documents, and training and consultation in this regard are greatly needed.
- Civil society and media outlets can actively publicize and criticize structures or officials that regularly violate journalists' access to information right (naming & shaming).
- Civil society organizations can provide as much support as possible to journalists in making strategic appeals (including through the courts) for violations of the access to information right.
- Civil society organizations can conduct periodic monitoring of the judicial practice of access to information to highlight the substantive problems of judicial decisions, find out

the statistics of the trial periods of these cases, and reveal the reasons for the limited application of the norms defining liability.

- Civil society can initiate strategic legal cases to appeal the violated access to information right in court on matters of public importance. At the same time, the claimant media outlets or non-governmental organizations, recognizing the inaction of the administrative body and submitting claims for the obligation to provide information, should also actively submit claims for applying the norms of administrative liability.
- Civil society and media outlets should keep active the agenda for the creation of an independent authorized body and work closely with the government to finalize and institutionalize the legal basis for the creation of the authorized body.

Recommendations to the Government and the National Assembly

Legislative and regulatory improvements

- It is necessary for the RA Government in the context of the adoption of the law “On Public Information” to fully resolve the issues of registration, classification, and storage of information, as well as the completeness and reliability of the information carried out by the information holders.
- It is necessary for the RA Government to ensure the same and unified criteria for considering information requests to exclude a differentiated and discriminatory approach to providing information.
- Mechanisms for the formation of unified practice should be clearly defined within the framework of the current reform of Public Communication, ensuring the exhaustive scope of functions of the FOI official, the official’s status, and resources.
- The RA Government should be consistent in publishing statistical and summary data on requests received by state bodies, as a consultation, draw up a unified format, ensuring that within the framework of statistics, each state body publishes the grounds for its refusal of information requests. For this purpose, the [sample](#) developed by the FOICA can be used.
- The National Assembly and the Government should initiate legislative changes to enshrine the proceedings on the protection of the access to information right as a separate type of proceedings in the RA Administrative and Civil Procedure Codes, setting a 30-day period for examining the claim, which will significantly contribute to the prevention of further violations of the rights of access to information and effective judicial protection.
- Within the framework of the initiated legislative changes, the issue of eliminating the signature and citizenship requirements from the valid conditions of the information request should also be considered, except for cases when a person requests information about himself/herself, thus bringing the national legislation into line with the convention requirements. For this purpose, the [draft law](#) developed jointly by the FOICA and the Ministry of Justice in 2019 can be used.

Promoting the applicability of the e-request unified platform among journalists

- Develop and implement informative, practical-cognitive events that will enable journalists to understand the advantages of the platform in terms of organizing their work.
- Develop an accessible online guide specifically for the media community. The guide should present the importance of interaction between state institutions and journalists through the platform and set rules of the game for both sides. Practice shows that employees of state institutions also need complete and clear information.

- Create an environment/mechanism for journalists and media outlets for at least a period of time to test e-request and submit proposals based on their experience.
- Regularly develop and provide consultation and support to media outlets/journalists on the platform by replacing the practice of sending requests from e-mails with the e-request platform. At the same time, through government officials working with journalists convey a clear message to journalists about the preference for sending requests through the platform.
- Technically improve the platform, including in it all possible tools of the FOI field, for example, the platform can include an electronic tool for self-assessment by information holders.
- Minimize or eliminate the human factor and discretionary decision-making opportunities during the application of various tools of the platform.
- Ensure the proper functioning of all sections of the platform by regularly updating and improving its tools.
- Ensure a required discussion of alerts regarding problems on the platform and recommendations aimed at solving them.¹⁸
- Take into account, as much as possible, the specific needs of potential recipients of information in the unified platform for electronic requests.

FOI authorized body

- It is necessary for the RA Government to start the process of establishing the constitutional institution of the authorized body (commissioner) for access to information, ensuring that this body, among others, at least:
 - shall have real guarantees of independence (appointment/selection mechanisms, financial independence),
 - shall carry out FOI protection and independent extrajudicial review of disputes in this field,
 - shall conduct analysis and monitoring of FOI practices,
 - shall provide consultation and awareness on the exercise of the FOI right,
 - shall conduct regular trainings of officials on FOI.
 - At the same time, it can also develop recommendations and soft regulations on how to process requests and meet the requirements for proactive information publication.
 - shall carry out monitoring of the field, including control over the fulfillment of the obligation to timely and completely publish the information subject to mandatory publication by law by information holders,
 - shall provide clarification of the legislation in the FOI field,
 - shall collect and publish information on the practice of the application of the FOI law and the annual report assessing the FOI situation in the country, as well as shall present the unified statistical data of FOI requests and decisions.
- Shall develop interpretations and soft regulations promoting the formation of unified practice.
- It is essential that the RA Government implements all initiatives for the establishment of the constitutional institution of the authorized body (commissioner) for access to information from the beginning exclusively with the involvement of civil society.

¹⁸ See the recommendations of the Freedom of Information Center presented in the results of [the monitoring](#) on the application of the services provided by the Unified Office for Public Services and [www.e-request](#) and [www.e-draft.am](#) platforms, 2019.

Development of skills and knowledge

- We consider that special attention should be paid to raising the level of knowledge on FOI and education of competent officials of information holders and conducting instruction and training on access to information and personal data protection. The government should take all possible measures to improve the professional knowledge and practical skills of information holders in the FOI field, ensuring the continuity of the courses and the uniformity of the methodology.

Recommendations to the Human Rights Defender

- We recommend that the human rights defender make the access to information and the practice of its application the subject of a separate annual report. Although in 2023 in the annual [report](#), the Defender addressed a number of issues in the field, we recommend dedicating a comprehensive report to the access to information, addressing all the issues in the process of exercising the access to information right, including the grounds for refusing to provide information and their appropriateness.

Recommendations to the Supreme Judicial Council, the Judicial Department, and the Courts

- It is preferable to create a group of judges specialized in issues of freedom of expression and access to information that will be fully familiar with the sectoral practice of the European Court of Human Rights, the sectoral case law of the Republic of Armenia, as well as be well acquainted with the characteristics of the work of the press and journalists.
- It is necessary to carry out regular instruction and training of judges (mainly administrative court) in the field of access to information.
- It is also important for the Judicial Department to monitor and publish separate statistics on access to information regarding trial periods of court cases and judicial acts.
- It is necessary for judges to fully apply the norms of administrative liability for violation of the access to information right without discrimination.



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