



ACCESS TO PUBLIC INFORMATION

**GUIDE FOR
CITIZENS**

**GUIDE FOR
CIVIL SERVANTS**



Program
financed by



Program
implemented by



2004



This publication was made possible through support provided by the U.S. Agency for International Development, under the terms of Award No. 186-A-00-02-0017-00. The opinions expressed herein are those of the authors and not necessarily reflect the views of the U.S. Agency for International Development.



ACCESS TO PUBLIC INFORMATION

**GUIDE FOR
CITIZENS**

**GUIDE FOR
CIVIL SERVANTS**

2004

CONTENTS

Introduction	3
What is public information	7
Exemptions from the free access to information	11
Citizen's Guide for the free access to public information	13
Steps towards getting public information	13
a) Request for information	13
b) Receiving an answer	13
c) Steps to be taken if no answer is received	13
d) Steps to be taken if the answer is not suitable	13
What do citizens need to know ?	14
Citizens' rights regarding the access to public information (<i>collection of legal provisions in the field</i>)	15
Forms for information requests and complaints	16
Civil servant's Guide for the free access to public information	19
Procedural steps in providing information	19
The Role of the Information and PR Departments within the Public Institutions	20
Methods to sent out the information requested	20
The Public Servant's Responsibilities under FOIA	24
The Public Servant's Accountability under FOIA	25
Connections with other laws (<i>Transparency Law 52/2003, Ordinance for request resolution OG 27/2002, Emergency ordinance for public procurement 60/2001</i>)	26
Forms for providing information and answering complaints	28
Laws	37
Best practices – Data collection form	47

Why a guide for the access to public information ?

This work is meant to be a useful and friendly tool for both citizens and civil servants concerned with the access to public information.

Access to public information – Citizens' Guide and Civil Servants' Guide is published three years after the mergence of Law 544/2001 on the access to public information. Over these years, both the structures of the Romanian Government and NGOs like the Association for the Protection of Human Rights – the Helsinki Committee (APADOR-CH), The Center for Independent Journalism, Pro Democracy Association, the Romanian Academic Society and the Institute for Public Policies published various materials in order to facilitate the understanding and enforcement of this law. Training programs for civil servants in all public institutions were organized between 2001 – 2003, with a view to secure a more efficient access to public information. Citizens were usually informed about their rights through information materials and a media campaign.

Public administration institutions enforce the law and have set up specialized departments for citizen relations or, in smaller communities, they assigned an individual to take over this duty.

As citizens, the media, the private sector, the political representatives and NGOs started requesting information from public authorities, both the petitioners and civil servants were faced with new situations and topics, information and procedures emerged that connected more than one legal provisions in force.

Although the forms and procedures used in informing the public are more or less standardized by law, each public institution set a certain process of resolving requests for information, in accordance with the structure of the organization and legal provisions.

The aim of this work is that of informing and guiding citizens as petitioners and civil servants as suppliers of public information, to ensure a fair, quick and comprehensive information process, based on the experience of public institutions over the three years since the law was passed.

It is also meant to be a working tool for civil servants, to enable them to provide information in a timely and comprehensive manner, as clearly as possible.

Who are the beneficiaries of this Guide ?

The beneficiaries of this Guide are citizens, who find out about their rights to get public information and become more familiarized with the procedures and forms they need to know in order to receive information from public institutions. Citizens also learn about the intervention procedures, if they did not get the requested information or deadlines for sending the information were not observed.

The guide is useful to civil servants in all public institutions, whose duties include the provision of public information and who are often faced with special situations in their daily activities.

Nonetheless, the guide is useful to the leaders of central administration institutions and all types of public institutions, as it provides accurate information about the way institutions provide information to citizens, according to legal regulations and in line with the provisions of other laws regarding the regime of information.

Information included in the Guide

For citizens

The Guide includes information about the petitioning process, minimum and maximum allowed deadlines for getting the information and complaint procedures if the access to public information is not ensured as required.

For civil servants

The guide includes information about the procedures employed in providing public information, deadlines and conditions, forms used for providing information, accountability to the petitioner and the contents of sent information, answering procedures for administrative complaints, links between FOIA and other laws on: transparency and decision making, public procurement and request resolution.

Contents of the Guide

1. Overview of public information and non-public information.

2. Citizen's Guide

- Steps in getting public information
- Recommendations for citizens
- Citizen's rights regarding the access to public information (collection of legal provisions)
- Forms for information requests and complaints

3. Civil Servant's Guide

- Steps in sending public information
- Civil servants' duties in enforcing the law
- Civil servant's accountability in enforcing the law
- Links with other laws (Transparency law 52/2003, ordinance on request resolution OG 27/2002, emergency ordinance regarding public procurement 60/2001)
- Forms for providing information and answering complaints

How was the guide created ?

The Guide was based on the experience of various officers in charge of providing public information with various city halls around the county, the experience of the expert group with Transparency International, that organized a monitoring program for the implementation of FOIA during 2001–2002 and the experience of the GRASP team in cooperating with local governments for a better communication between citizens and public institutions.

The work has three basic chapters: Presenting public information, Citizens' Guide for the access to public information and Civil Servants' Guide for providing public information. The information was structured in separate sections, depending on the group of beneficiaries, their interests and duties in the supply–demand process.

The language used in the guide is accessible, friendly, easy to understand by citizens without any specialized knowledge in the field of legislation. Nevertheless, there are cases in which the legal language could not be made more understandable, for instance in the group of texts regarding citizens' rights.

How to use the guide ?

Citizens may receive the guide as a whole or copies of the information they are interested in. The forms for getting public information and administrative complaints may be copied directly from the paper and used on the spot, while the petitioner only fills in the personal data.

Officers may use the guide in current practice, to provide public information, to solve special situations that imply the harmonization of laws and procedures, to publicize their rights and obligations in providing public information and to answer administrative complaints. The forms for providing information or answers to administrative complaints may be copied directly from the guide and used on the spot, with the letterhead of the issuing institution.

The guide is useful for all public institution with a department or officer in charge of providing public information. The use of forms in the guide helps the implementation of standardized public information procedures and facilitate communication between institutions and the reporting of institutional performances to the community.

Follow-up steps

The Citizens' and Civil Servants' Guide for the free access to public information will be a regular working tool for the continuous use of civil servants and citizens alike.

The guide will be used as training material for a series of 5 regional workshops focused on the information and exchange of experience between public administration and media representatives, for a better implementation of FOIA. The workshops will also tackle the issue of public information content and supply and demand procedures. The workshops are funded by the GRASP program and will take place in the summer of 2004 in Oradea, Tulcea, Iasi, Miercurea Ciuc and Bucharest, in cooperation with Transparency International and the Center for Independent Journalism.

We hope to see, as a result of the exchange of information between public institutions, based on the use of the guide, a number of proposals emerging for the improvement of current practices, solving various serious matters in connection with public information and a generalization of best practices with most public institutions in the country.

The Citizens' and Civil Servants' Guide for the free access to public information is one among a number of works meant to support local governments in standardizing activities and services, in increasing their responsibility for the citizen information and consultation and reaching higher performances in community serving.

Other titles in the same series:

- ***National Catalog of Citizen Information Centers (CIC)***
- ***Guide of CIC operators,***
- ***Performance Standards for CIC operations,***
- ***Citizens' Participation to the budget process –a guide for local elected officials and civil servants,***
- ***Monitoring guide for public services, with the citizens' support.***

Would you like your institution to take part in the sharing of success stories ?

A data collection form is attached at the end of the work. If the institution has a department or officer in charge with FOIA implementation and they want to publicize certain topics, solutions or procedures that could be useful for other institutions in the country, they can do so by filling in the form and sending it to:

Transparency International

12 Horatiu Street, sector 1, Bucharest

Phone/Fax: 021-222 2886

e-mail: office@transparency.org.ro

www.transparency.org.ro

The guide was created by the joint efforts of the Governance Reform and Sustainable Partnerships (GRASP) program, funded by the United States Agency for International Development – USAID and Transparency International.

GUIDE DEVELOPMENT TEAM

Transparency International – Romania

Codru Vrabie

The Romanian Institute For Training

Ion Georgescu

GRASP

Kristina Creoșteanu – Bucharest
Elena Negrea – Sibiu Regional Office
Eugenia Rotaru – Bucharest

GRASP

11 Grigore Mora Street, sector 1, 011885 Bucharest

Phone: 021-2080600

Fax: 021-2080618

www.grasp.ro



WHAT IS PUBLIC INFORMATION ?

***Public information** is any information regarding or resulting from the activities of a public authority or institution, irrespective of the type of storage, form or expression.*

All information issued and/or managed by public authorities and institutions is considered public information

Public information includes both the information **related to the activity** of a public authority or institution (irrespective of the author) as well as that **resulting from the activities** of the respective institution;

Public information **does not depend on the type of storage, form or expression**. Any type of information storage can be considered a document: paper documents, optical devices, magnetic tape, cassettes, floppy disks, hard disks, microfilms, portable processing devices (electronic agendas, laptops) using a hard disk for information storage.

The public authority or institution provides or sends public information **ex officio** or **on request**.

Types of information to be communicated ex officio

- Laws regulating the organization and operations of the public authority or institution;
- The organization, duties of various departments, business hours, hearings schedule;
- Names and surnames of various individuals in management positions and the officer in charge of disseminating public information;
- Contact data for the public authority or institution: name, headquarters, phone and fax numbers, e-mail and home page address;
- Financial sources, budget and balance;
- Own programs and strategies;
- List of public documents;
- List of documents produced or managed by the said institution, by law;
- Contestation means, if the individual feels that his/her right of free access to public information has been breached.

Reminder!

- Good practice implies indicating **the person/department** of the public institution that needs to be reached by the administrative complaint, as well as the address of the court of jurisdiction where the administrative litigation may be submitted.

- Both the list of public documents and the categories of documents produced and/or managed by the public institution only indicate the place where citizens should go for the information they want. They are not filters for the requests for information.

- A well established, detailed and descriptive list helps public institutions, because it allows citizens to find out if the information they want can be found among those produced/managed by the said public institution.

Step 1: The list of documents produced/managed by the institution is drafted.

Step 2: Taking into account the provisions of art. 12 of Law 544/2001, the documents that do not make the object of free communication will be removed from the list. This new list will be the list of public documents.

- **The list of ex officio documents** provided in the law is by no means comprehensive. The public institution may decide to include other documents on the list, especially if they are often required by citizens.

Ex officio public information must be *presented in an accessible and concise way, to facilitate the individual's contact with the respective public institution*. This information will be published in the full, not only as reference, in an annual newsletter. The local government units with a population of at least 20% ethnic minorities, ex officio information will be provided in Romanian and the language of the respective ethnic minority.

The access to ex officio information is secured by:

PUBLICATION, alternatively or at the same time, by:

- **Billboarding at the headquarters** of the public institution, in an accessible place.
- In the **Official Gazette of Romania**, part IV. (do not overlook printing costs).
- In **own publications**, for instance newsletters, presentation brochures, special brochures including the newsletter or Official Gazette of the local government unit.

- In the **mass media**: if paid publication in the mass media is considered, the public procurement procedures in Ordinance 60/2001 on public procurement should be applied. Do not forget about the cost/benefit analysis for public expenditures, namely if paid publication serves the public interest.
- On the **web page** of the public institution: Law 544/2001 starts from the assumption that each public institution has a web page. This assumption is completed by the explicit requirements of the Law no. 161/2003, referring to the National Electronic System.

CONSULTATION in the public institution, in specially designed rooms and other locations. The rooms and staff of CICs/PR departments in public institutions may be used for this purpose.

The regular activity report of the public institution is public information, although not explicitly included on the list of ex officio information in art. 5 para. 1 of Law 544/2001. It will include at least:

1. The public institution's mission and objectives that need to be reached during the report period;
2. Performance indicators and achievement timetable;
3. Short presentation of the programs and connection to the public institution's objectives;
4. Expenditure reports, broken down on programs;
5. Failures, and reasons for these failures (if the case may be);
6. Suggestions to correct shortcomings.

ATTENTION: The regular activity report of a public institution should not be mistaken for the **Annual Report On The Access To Public Information**. This report should be included in the ex officio information category as well.

Reminder !

■ Public authorities and institutions in charge of issuing authorizations must (according to Emergency Ordinance 27/2003 regarding silent approval) to post the following categories of information at **their headquarters or on their web page**:

1. The request form that must be filled in by the petitioner, as well as instructions;
2. The list with all necessary documents for the issuing of this authorization and the way they must be submitted to the public institution;
3. All the information on the drafting of documents and, if the case may be, indications about the public institution in charge of issuing administrative documents requested for the said authorization (address, phone or fax numbers, business hours).



Exemptions from the free access to information

1. Information in the following fields: national defense, public order and safety, if they are considered classified information, by law;
2. Information about the debates of various authorities as well as those about Romania's economic and political interests, if they are considered classified information, by law;

- Law 182/2002 on the protection of classified information and Government Decision 585/2002 for the approval of national protection standards for classified information regulate exemptions;
- The law forbid classification as state secrets of the information, data or documents in order to hide violations of the law, administrative errors, limitations of the free access to public information, illegal constraints on a person's rights or damages brought to other legitimate interests. It is for the court to decide if a piece of classified information is part of the above-mentioned categories or not.

Reminder !

- **The law refers to classified information and not to wholly classified documents.** As a result, if only part of the document is classified information, this document may be produced on request, but the classified part will be covered by a black tape.

3. Information about commercial or financial activities, if their publicity will impede on the principle of fair competition, by law;
4. Information about personal data, by law;

- The information regarding personal data includes: name, surname, address, phone number, habits, sexual orientation, health, racial or ethnic background, political, religious, philosophical beliefs, trade union membership.
- Personal data may be released and processed only upon the explicit approval of the said individual.
- No consent of the individual is needed in the following circumstances:
 - *Processing/ communication is needed in order for the public entity to meet a legal obligation*
 - *Procesing/communication is needed in order for the public entity or third party whose data are disclosed to meet a legitimate interest, if this interest will not hinder the interests, fundamental rights and liberties of the individual in question;*
 - *Processing/communication regards data obtained from public documents, by law;*
 - *Processing/communication regards personal data that have already been made public by the said individual;*
 - *Processing/communication regards personal data tightly connected to the individual's capacity as a public official or if the acts it is connected to are public.*

5. Information regarding procedures during a criminal or disciplinary investigation, if the outcome of the investigation is thus jeopardized, if confidential sources are disclosed or the life, physical integrity or health of an individual are in danger during the investigations;

The information regarding a criminal investigation or disciplinary inquiry is exempted from the free access to information only if it refers to procedures and:

- it may jeopardize the outcome of the investigation;
- it discloses confidential sources;
- it endangers the life, physical integrity or health of an individual.

6. Information regarding judicial procedures, if their publicity impedes on the fair trial or legitimate interest of each party in the trial.

Information regarding procedures during criminal prosecution may be obtained only from the criminal police or prosecutor's office.

7. Information whose publication may have a negative impact on youth protection measures.

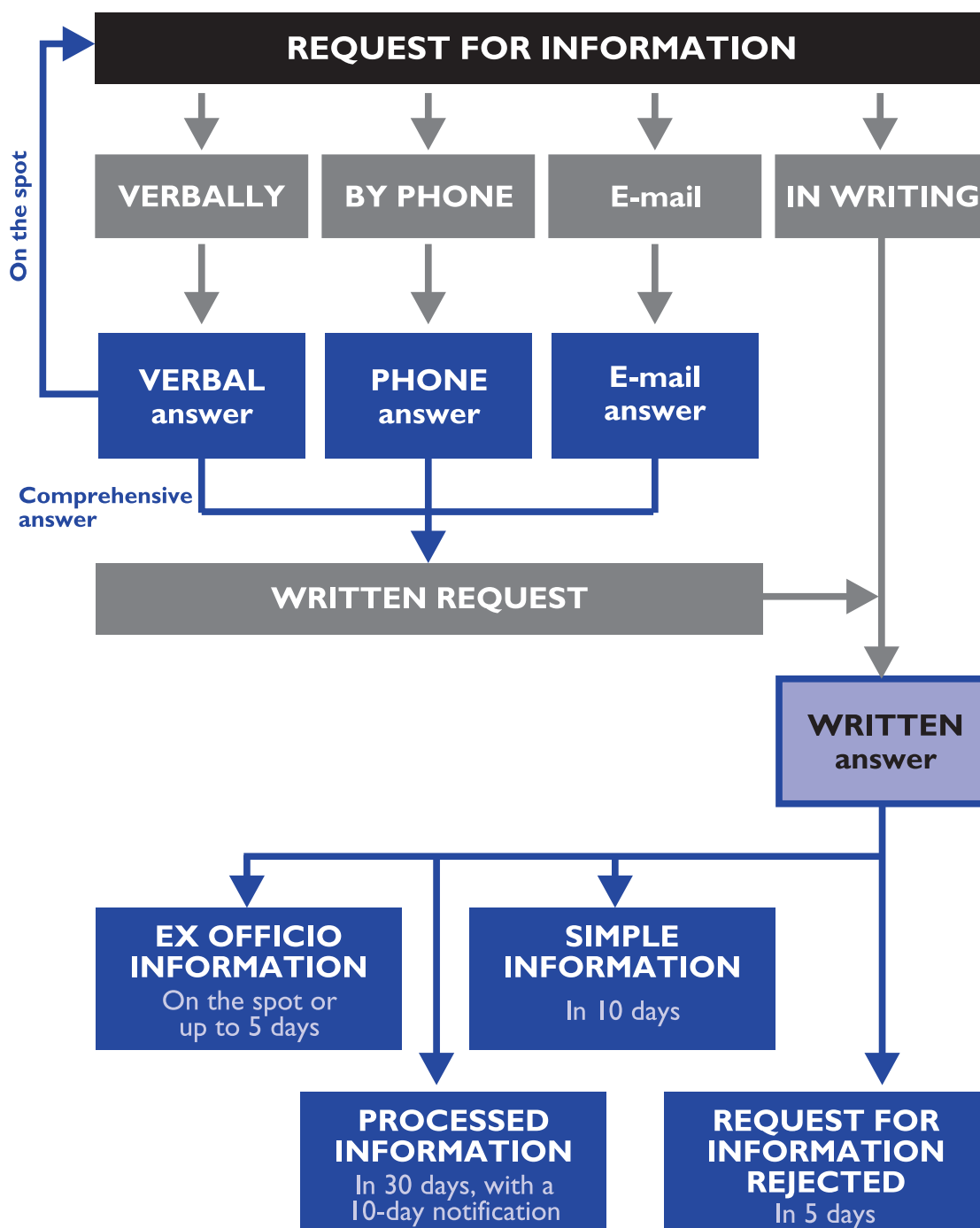


CITIZENS' GUIDE

for the access to public information

Steps in getting public information

1. Requests for information
2. Receiving an answer
3. How to act if you do not get an answer
4. How to act if the answer is not adequate



What do citizens need to know ?

Where to submit your request ?

- In order to get public information, you should submit your request to the Information/PR department of the public institution.
- One or more civil servants with this department can provide the information you want.
- The request for information submitted in writing must be registered with the Information/PR department, or at the reception, if this is a separate department.

How and when to get the answer?

- If you request information verbally or by phone, you will receive an answer on the spot but, if the information is more comprehensive, you will be invited to submit a written request.
- The written request will be answered within 10 days.
- If more than 10 days are needed to collect and process the information, you will receive a notification regarding this situation within 10 days, and the answer within 30 days of submitting the request.
- If the information you requested is exempted from free access or is not under the jurisdiction of the institution you submitted the request to, your request will be rejected within 5 days of submitting the request.

What to do if you are not satisfied with the answer ?

- If you consider that the answer you received is a violation of your right to access free information, you can submit an administrative complaint to the manager of the public institution you submitted your request to. The complaint must be submitted within 30 days of receiving an explicit answer or of the deadline for receiving an answer from the institution.
- If your complaint is considered well-grounded, you will receive the requested information within 15 days of submitting the administrative complaint and you will be informed of disciplinary punishment received by the officer in default.
- If you still consider that your rights are violated, you may submit a complaint to the administrative litigation department of the local court, within 30 days of receiving the answer.
- The court decisions may be appealed in the Court of Appeal. The decisions of the Court of Appeal is final.
- The administrative litigation complaint and appeal in the Court of Appeal are judged under emergency procedures and they are exempted from the stamp tax.

Costs for getting information

The applicant must pay for the photocopying of documents owned by the public institution.

The public institution makes available forms for requests and administrative complaints, free of charge

Citizens' rights regarding access to public information

(collection of pending legal provisions)

- Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
(Universal Human Rights Declaration – article 19)
- The individual's right to have access to any public information cannot be restricted.
- Public authorities, according to their competences, shall secure the correct information of all citizens about public affairs and personal issues.
(Constitution of Romania – article 31)
- The free and unrestrained access of a person to any public information, defined in this way through the present law, constitutes one of the fundamental principles of the relations between persons and public authorities, in accordance with the Constitution of Romania and the international documents ratified by the Parliament of Romania.
- Any person has the right to request and to obtain, from the public authorities and institutions, public information, according to the provisions of the present law.
- The public authorities and institutions are bound to provide to the persons, upon their request, the public information requested in written or verbal form.
- The persons who make studies or do research, for their own interest or in the interest of their service, have access to the public authority's or public institution's documentation fund, on the basis of a personal request, under the existing legal provisions.
- In case that the request of information implies copying of the documents belonging to the public authority or institution, the petitioner shall meet the expenses related to the copying services, according to the law.
(Law 544/2001 on FOIA – articles 1, 6, 9 and 11)
- The principle of transparency: the public authorities and institutions must perform their activity openly to the public, considering that the free access to public information is the rule while the limitation of the access to information is the exception, according to the law.
(Government Decision 123/2002 – For the enforcement of Law no.544/2001 regarding the free access to public information, art. 2. para. a)

Forms for the Citizens

FOIA Request Form (model)

Attn: _____
(Name of the public authority or institution)

(The address of the public authority or institution)

Date: _____

Dear Sir/ Madame,

According to the provisions of Law no. 544/2001 on FOIA, I hereby submit this request.

I would like to receive copies of the following documents:

(a correct and clear list of the documents or information requested):

I would like to receive the information in electronic format at the following e-mail address: _____ .

(optional):

I agree to pay the fees for copying the documents that I requested
(if you ask for paperback copies).

Thank you for your help,

(petitioner's signature)

Petitioner's surname and given name: _____

Address: Street _____ no. _____ block. _____ entrance _____ apt. _____
City _____ County/District _____ Zip code _____

Profession (optional) _____

Phone no. (optional) _____

Fax no. (optional) _____

If you do not receive the answer to your request in due time

Administrative Complaint Form
(model)

Attn: _____
(Name of the public authority or institution)

(The address of the public authority or institution)

Date: _____

Dear Sir/ Madame,

According to the provisions of Law no. 544/2001 on FOIA, I hereby submit this administrative complaint as I have not received in due time the information I asked for in my request filed on _____ under no. _____.

The documents that I asked for are the following:
(a correct and clear list of the documents or information requested):

The documents that I requested fall under FOIA provisions because:

I hereby request that you reconsider the decision of not sending me the documents in paperback/ electronic format. I consider this an infringement of my rights as stipulated by the law.

Thank you for your help,

(petitioner' signature)

Petitioner' surname and given name: _____

Address: Street _____ no. _____ block. _____ entrance _____ apt. _____

City _____ County/District _____ Zip code _____

Profession (optional) _____

Phone no. (optional) _____

Fax no. (optional) _____

If the answer to your request does not satisfy you

Administrative Complaint Form
(model)

Attn: _____
(Name of the public authority or institution)

(The address of the public authority or institution)

Date: _____

Dear Sir/ Madame,

According to the provisions of Law no. 544/2001 on FOIA, I hereby submit this administrative complaint seen the fact that on _____ I received a negative answer signed by _____ to my request registered on _____ under no. _____.

(fill in the name of the public servant who signed the answer)

The documents that I asked for are the following:

(a correct and clear list of the documents or information requested):

The documents that I requested fall under FOIA provisions because:

I hereby request that you reconsider the decision of not sending me the documents in paperback/ electronic format. I consider this an infringement of my rights as stipulated by the law.

Thank you for your help,

(petitioner' signature)

Petitioner' surname and given name: _____

Address: Street _____ no. _____ block. _____ entrance _____ apt. _____

City _____ County/District _____ Zip code _____

Profession (optional) _____

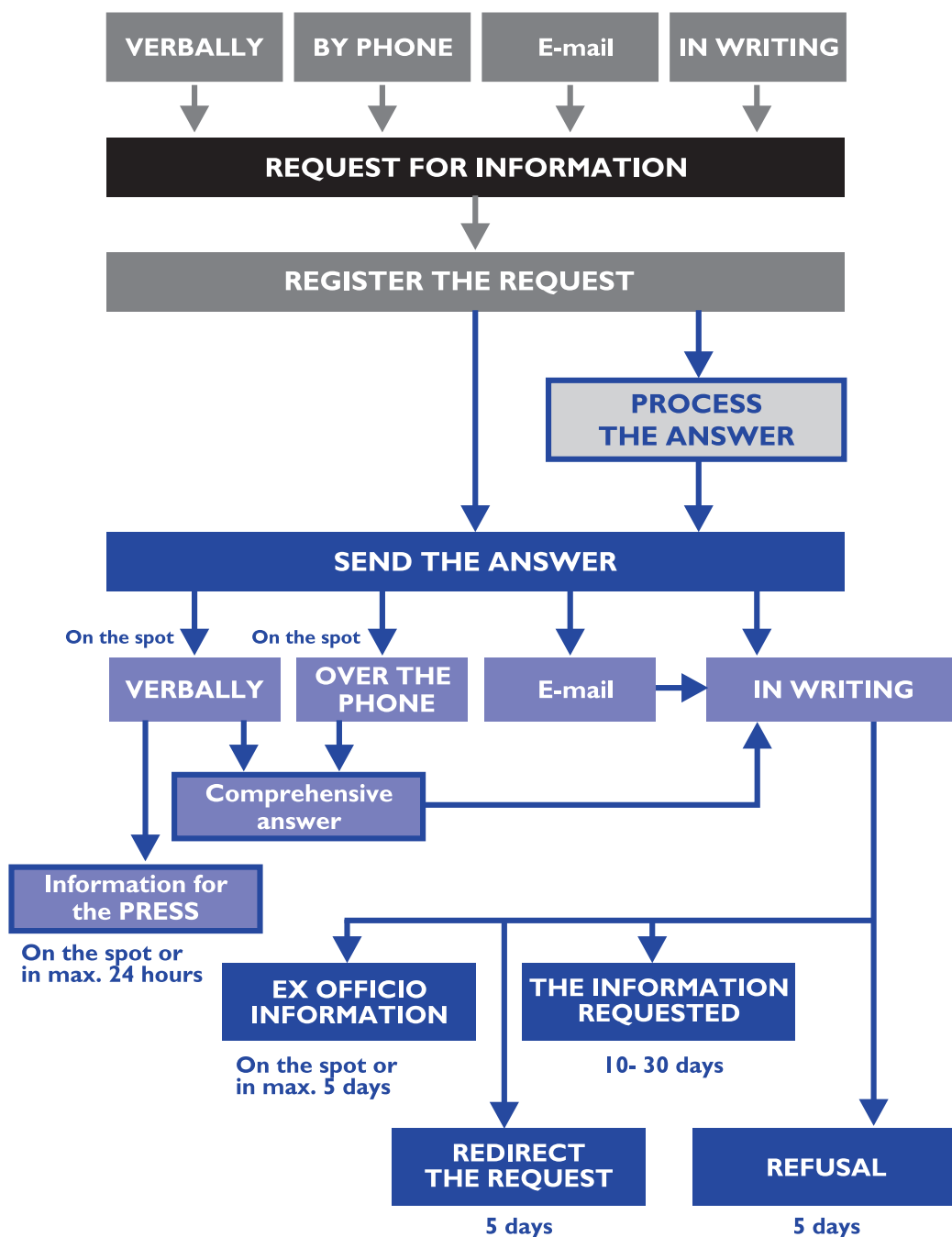
Phone no. (optional) _____

Fax no. (optional) _____

FOIA GUIDE FOR PUBLIC SERVANTS

Procedural steps in providing information

1. Receive and register the request for information
2. Send the answer
3. Steps to be followed in case the institution is not responsible with providing the information requested
4. Steps to be followed in case the information requested does not fall under FOIA provisions
5. Steps to be followed in case it takes more time to process the request



The Role of the Information and PR Departments within the Public Institutions

The information and PR departments provide:

- direct information to citizens;
- information to the press;
- information to the internal staff;
- information to other institutions.

According to the provisions of the law, providing direct information to citizens and to the press are mandatory responsibilities and they do not exclude other components of the information and PR activities.

Methods to sent out the information requested

VERBAL REQUEST

Procedure:

- The information is usually provided on the spot, verbally. For ex officio information, proves to be useful for the public institution to have prepared a number of copies containing the information and available to the citizens.
- If the information requested is not available on the spot, the citizen will be asked to submit a written request and will receive an answer in 10 or maximum 30 days, depending on the complexity of the information and the time needed to process it.
- The request will be registered in the inventory

REQUEST BY PHONE

Procedure:

- The information is provided on the spot, over the phone.
- If the information requested is not available on the spot, the citizen will be asked to submit a written request and will receive an answer in 10 or maximum 30 days, depending on the complexity of the information and the time needed to process it.
- The request will be registered in the inventory.
 - * Some city halls have a special form to register phone requests and track down the answer.
 - * Other city halls have an electronic inventory, on-line, from the moment they receive the request until a written answer is sent to the citizen.

REQUEST BY E-MAIL

Procedure:

- The request is registered and the petitioner is sent the registration number and the date it was registered on.
- The information can be provided on the spot, the same day, the moment the petitioner is sent the registration number, or in 10 days or in maximum 30 days, depending on the complexity of the information and the time needed to process it.
- The request will be registered in the inventory

WRITTEN REQUESTS

Procedure:

- The request is registered and the petitioner is sent a written confirmation including the registration number and the date it was registered on.
- Evaluate the request and decide whether it is *ex officio* information, information which is not public or provided upon request.
 - In case of *ex officio* information, the citizen is sent the source and its location in maximum 5 days.
 - In case of information which is not public, the citizen is sent a written notification in maximum 5 days from the requested date.
 - In case the information is provided upon request:
 1. The request is sent to the department in charge with providing that type of information
 2. The department responsible with enforcing the law collects the answer from the responsible department and writes the petitioner the answer including the information requested and reasons for delays or rejection (if applicable).
 3. The citizen is sent a written answer within 10 days or maximum 30 days, depending on the complexity of the information and the time needed to process it.
 4. Within 10 days the citizen is sent a written notification in case his request needs more time to process. The delay should not go over 30 days.
 5. The answer is registered and sent to the citizen in the requested format in due time
- The requests and the answers will be registered in the inventory.

REQUESTS FROM THE MEDIA

Procedure:

- The information requested verbally or over the phone by members of the media will be usually answered on the spot or in at least 24 hours.
- For written requests or requests received by e-mail, follow the standard procedure.

If the information requested is not available or is not the responsibility of the institution that you represent

Procedure:

- Redirect the request towards the institution responsible with providing the information
- The citizen is sent a written notification that his request was redirected within 5 days from the registration date.

In case the information is exempted from free access

Procedure:

- Register the request
- The citizen is sent a written notification that the information is exempted from free access within 5 days from the registration date. A good practice proved to be to inform citizen why the information is exempted from the free access and, eventually in what circumstances the information becomes accessible.

In the information is complex

Procedure:

- Register the information
- Analyze the request and decide the time needed in order to collect and process the information
- Within 10 days from registering date, the citizen is sent a written notification on extending the deadline for the information at a maximum of 30 days from registration date.
- The request and the answer will be registered in the inventory

Annual Report on FOIA

The report is drafted for the institution's manager by the information department within the public institution, the document is public and it includes:

- the total number of FOIA requests;
- the total number of requests per field of interest;
- the number of solved requests;
- the number of rejected requests, broken down on reasons for rejection (information exempted from access, inexistent information);
- the number of written requests: 1. on paperback, 2. electronic format;
- the number of requests from physical persons;
- the number of requests from legal persons;
- the number of administrative complaints: 1. solved; 2. rejected;
- the number of legal complaints: 1. solved; 2. rejected; 3. currently under works;
- total expenditures of the information and PR department;
- total amounts cashed for copying the information requested under FOIA;
- the estimate number of visitors within the information department;

The Public Servant's Responsibilities under FOIA

- To provide public information according to the procedures and the provisions of the law
- To organize and run the information–documentation department
- To provide access to ex officio information within the information–documentation department
- To identify and update the public information which is not exempted from free access, according to the provisions of the law
- To keep a record of answers and receipts given to petitioners for copying the requested documents
- To publish the public institution's newsletter which will include ex officio public information (as stipulated under art. 5 of Law no. 544/2001)
- To publish the activity report of the public authority or institution in Romania's Official Record, part 3
- To provide ex officio information in paperback (on the notice board, in a brochure or in electronic format – on floppy, CD, web page)
- To participate in drafting the annual report on FOIA for the institution's manager and make it public
- To promptly provide journalists with complete public access information on the activity of the public authority or institution that they represent;
- To advertise events and public activities organized by the public authority or institution that they represent in due time and provide full access to journalists;
- To send out press releases and organize press conferences periodically or whenever the activity of the public authority or institution is of immediate public interest;
- To distribute to journalists press folders on all events or activities organized by the public authority or institution.

Reminder !

- According to the provisions of the law, providing direct information to citizens and to the press are mandatory responsibilities and they do not exclude other components of the information and PR activities
- These two activities can be run separately within the information and PR departments

The Public Servant's Accountability under FOIA

1. If the public servant explicitly or silently refusing to enforce the provisions of the law on FOIA, than the petitioner submits to the attention of the institution's manager an administrative complaint within 30 days from receiving the refusal.
2. If following the administrative research the complaint proves to be well-founded, the petitioner receives, 15 days from registering the complaint, a written answer including the information requested and a note on the penalties enforced upon the culpable.
3. The disciplinary punishments of public servant responsible with enforcing the provisions of Law no. 544/2001 will be decided according to the Statute of the Public Servants, the special statutes, or the Labor Code. The employer will enforce the punishments.

Insofar as the public servants are concerned, (according to the provisions of Law no. 188/1999 on The Statute of Public Servants) the disciplinary misconduct may be punished by:

- Written reprimandation,
- Decrease the salary by 5–20% for a period of 1– 3 months,
- Suspend the right to be given a raise or be promoted in the public function for a period of 1– 3 years,
- Demotion for a period of up to a year, together with decreasing the salary accordingly,
- Firing the person from the public service.

Insofar as the employees of the public institutions who are not public servants, the punishment will be established according to the Labor Code as follows:

- Written warning,
- Labor contract suspension for a period of up to 10 working days,
- Demotion and salary decrease accordingly, for a period up to 60 days,
- A base salary decrease of 5–10% for a period of 1–3 months,
- Decrease the base salary and the management allowance (if applicable) by 5–10% for a period of 1–3 months,
- Disciplinary contract termination

Under the provisions of Law no. 29/1990 on administrative disputed claims, one file a suit against the institution and **against the public servant** who drafted the document or who is responsible for rejecting the request, in case the petitioner asks for a compensatory payment for damage caused by delays in processing the request. If the petitioner wins the case, the public servant and the administrative authority will have to pay for damages. He may call upon his superior who gave him a written disposition to sign the document whose – total or partial – legal grounds are on trial. If there is no record of such written disposition, the public servant cannot call upon his superior.

Connections with other laws

Connection with Government Ordinance No. 27/2002 that regulates resolution of petitions

- ✓ Any person can request access to public information. Given that FOIA makes no distinction among different types of persons, requests of access to public information may come from Romanian or foreign individuals or legal persons (business companies, NGO's, political parties, trade unions, etc.).
- ✓ This is also something covered by Government Ordinance No. 27/2002 that regulates resolution of requests, which points out that *the right to request is recognized as well for legally incorporated organizations, that can file requests on behalf of the groups that they represent.*
- ✓ Requesting public information is a special type of request and the public institution answers this request in compliance with FOIA deadlines, which are shorter, because they refer to providing information and not to the entire process whereby citizens' problems are settled.
- ✓ According to FOIA, written requests should cover the *full name and signature of the petitioner*, meaning that any persons associated to a company or institution may request information on behalf of that particular entity.

Reminder !

- **The public institution does have the right to call into question the reason for which the person requests the respective information.**

Connection with Government Ordinance No. 60/2001 On public procurement

- ✓ The Government Decision on Public Procurement was issued before FOIA. For that matter, the ordinance only contains regulations about the transparency of public procurement initiatives that are in progress and makes no explicit reference to transparency of information contained in contracts signed after the procurement process.
- ✓ According to the regulations in force, the purchasing authority is obliged to show the procurement file to any public institution that is interested in studying that file.
- ✓ Information may not be disclosed if in violation of a piece of legislation, or if obstructs the enforcement of the law or if it affects the public interest, brings prejudice the legitimate business interest of the parties or affects free competition. Bodies empowered to *investigate fraud, infraction or crime have the right to obtain this kind of information too.*
- ✓ Citizens do not have access to information about commercial and financial information whether information – if published – would harm fair competition, according to the laws in force.
- ✓ Given that free access to public information is a rule, we consider that the procurement file and the procurement contract, once it has been signed and involves use of public funds, should be accessible to every applicant as per the conditions mentioned above.

Connection with Law No. 52/2003 on transparent decision making of local governments

Transparency Law secures the openness of central and local government activities to citizens by means of two important mechanisms:
n participarea publicului la procesul de luare a deciziilor;

- Participation of public to the decision-making process;
 - Participation of the public to preparing normative acts.
- ✓ Public institutions are obliged to publish draft normative acts before having them adopted.
 - ✓ All interested persons (beneficiaries of regulations, people who enforce them or who control the enforcement thereof, etc.) can propound suggestions and recommendation about draft documents presented to them.
 - ✓ Suggestions are analyzed by the initiating institution, that decides on the need, legality and opportunity of including such proposals in the final text of the respective regulations.
 - ✓ According to the law on transparent decision making of local governments, draft normative acts and community events should be published at the head-office of the institution, in own publications and in the mass-media and citizens should be consulted through the information and communication departments and the citizen information centers.
 - ✓ Regarding the participation of the public to the decision-making process, FOIA provides that all people concerned can take part in this and can express their views in public hearings held by the public authorities.

Connection with Law No. 161/2003 – anti-corruption package

- ✓ In order to secure free access to public information, authorities and public institutions must organize – depending on the workload involved – specialized information and PR departments or to assign persons having responsibilities in this line of work (Article 4, par. 1 of Law No. 544/2001).
- ✓ Law No. 161, *a.k.a. Anti-Corruption Package* imposed less public management positions, including senior public servants, down to at most 12% of the overall public positions inside an institution or public authority (Article XVI, par. 4). Reinstatement in public offices corresponding to high officials and public management services has caused some **services, bureaus and departments being absorbed or merged** that thereby lost their identify within the institution. Favorite targets of such absorption or mergers were Citizen Information Centers/Information and PR Offices.
- ✓ Taking into account the complex activity conducted within these departments, as well as the provisions under Article 3, par. 1 and 2 of the Methodological Norms that govern the enforcement of No. 544 according to which specialized information and PR departments may be organized into bureaus, services, directorates or general directorates, we recommend that the **identity of these structures should be preserved** as a necessity to reach the targets envisaged for the relationship with citizens, the mass-media, other institutions and public authorities and the other players involved in the social and economic life of the administrative unity which is thereby served.

Standard Information Answer Forms

Answer to your request of public information (model)

From: _____
(Name of authority or public institution)

(Address of the authority or public institution)

Contact person: _____

Date: _____

To: _____
(Full name of petitioner)

Address: _____
(Petitioner's address)

Dear Madam/Dear Mr. _____

Further to your request No. _____ dated _____ whereby, according to FOIA Law No. 544/2001, you request copies of the following documents:

(list of required documents or information, listed clearly and to the point):

please find attached hereto the information that you requested.

The information that you requested has been sent to you electronically to the following e-mail address: _____
(optional)

Fees chargeable on copying the documents that you requested are the following: _____ ROL.
(if applicable):

Best regards, _____
(signature of the public servant)

If the answer cannot be sent in 10 days:

Answer to information request
(model)

From: _____
(Name of authority or public institution)

(Address of the authority or public institution)

Contact person: _____

Date: _____

To: _____
(Full name of petitioner)

Address: _____
(Petitioner's address)

Dear Madam/Dear Mr. _____

Further to your request No. _____ dated _____ whereby, according to FOIA Law No. 544/2001, you requested copies of the following documents:

(list of required documents or information, listed clearly and to the point):

Please be advised that the information that you requested could not be found and sent within 10 days, yet we will send it to you within 30 days from the date when your request was registered in;

The information that you requested has been sent to you electronically to the following e-mail address: _____

(optional)

Fees chargeable on copying the documents that you requested are the following:
_____ ROL.

(if applicable):

Best regards, _____

(signature of the public servant)

If your request should be answered by another institution

Answer to information request (model)

From: _____
(Name of authority or public institution)

(Address of the authority or public institution)

Contact person: _____

Date: _____

To: _____
(Full name of petitioner)

Address: _____
(Petitioner's address)

Dear Madam/Dear Mr. _____

Further to your request No. _____ dated _____ whereby, according to FOIA Law No. 544/2001, you request copies of the following documents:

(list of required documents or information, listed clearly and to the point):

Please be advised that your request should be addressed to the following institution:

(name of institution)

(Address and telephone of that institution)

because our institution does not have the information that you requested.

The information that you requested has been sent to you electronically to the following e-mail address: _____

(optional)

Best regards, _____
(signature of the public servant)

If the information is exempted from the free access

Answer to information request (model)

From: _____
(Name of authority or public institution)

(Address of the authority or public institution)

Contact person: _____

Date: _____

To: _____
(Full name of petitioner)

Address: _____
(Petitioner's address)

Dear Madam/Dear Mr. _____

Further to your request No. _____ dated _____ whereby, according to FOIA Law No. 544/2001, you request copies of the following documents:

(list of required documents or information, listed clearly and to the point):

Please be advised that the requested information is not a piece of public information than can be released with no restrictions and it is exempted from the free access of citizens, based on art. 12, line 1, letter _____ and based on Law/Government Decision no. _____ from _____ concerning

Best regards, _____
(signature of the public servant)

**If the institution does not have
the required information**

**Answer to information request
(model)**

From: _____
(Name of authority or public institution)

(Address of the authority or public institution)

Contact person: _____

Date: _____

To: _____
(Full name of petitioner)

Address: _____
(Petitioner's address)

Dear Madam/Dear Mr. _____

Further to your request No. _____ dated _____ whereby, according to FOIA Law No. 544/2001, you request copies of the following documents:

(list of required documents or information, listed clearly and to the point):

Please be advised that the information that you requested is not in our database.

Best regards, _____
(signature of the public servant)

**Answer to administrative complaint
If the information is not of public interest**

**Answer to information request
(model)**

From: _____
(Name of authority or public institution)

(Address of the authority or public institution)

Contact person: _____

Date: _____

To: _____
(Full name of petitioner)

Address: _____
(Petitioner's address)

Dear Madam/Dear Mr. _____

Further to your complaint No. _____ dated _____ according to FOIA Law No. 544/2001, following the negative answer that you received/the belated answer to request No. _____ dated _____ whereby you request copies of the following documents:

(list of required documents or information, listed clearly and to the point):

Please be informed that the decision not to send (in due time) the documents that you requested falls within the terms of the law as this is information that citizens cannot have free access to;

Best regards, _____
(signature of the public servant)

Answer to administrative complaint if due to error of the public servant

Answer to information request (model)

From: _____
(Name of authority or public institution)

(Address of the authority or public institution)

Contact person: _____

Date: _____

To: _____
(Full name of petitioner)

Address: _____
(Petitioner's address)

Dear Madam/Dear Mr. _____

Further to your Complaint No. _____ dated _____ according to FOIA Law No. 544/2001, following the negative/belated answer that you have received to your request No. _____ dated _____ whereby you request copies of the following documents:

(list of required documents or information, listed clearly and to the point):

Please be advised that the decision not to receive (in due time) the documents that you requested does not fall under the terms of the law, as it is an error of a public servant.

We apologize for that and please rest assured that the public information that you requested will reach you within the legal 15-days term.

The public servant that committed this error in connection to your request was penalized as follows _____.

Best regards, _____
(signature of director of the authority or public institution)

REGISTER
Of requests and answers
Regarding access to public information

(model)

No. and date of request	Full name of applicant	Requested information	Answer	No. and date of answer

TYPES OF ANSWER:

- ✓ YES – Free access;
- ✓ Deadline: 30 days;
- ✓ Sent to _____ (name of institution);
- ✓ NO – exempted information.
- ✓ NO – information does not exist.



Law no. 544 on the Free Access to the Public information

CHAPTER I

General provisions

Art. 1. – The free and unrestrained access of a person to any public information, defined in this way through the present law, constitutes one of the fundamental principles of the relations between persons and public authorities, in accordance with the Constitution of

Romania and the international documents ratified by the Parliament of Romania.

Art. 2. – In the sense of the present law:

- a) by public authority or institution it is understood any public authority or institution, as well as any state company (régie autonome), which uses public financial resources and carry out its activities on Romania's territory, in accordance with the Constitution;
- b) by public information it is understood any information regarding or resulting from a public authority's or a public institution's activities, irrespective of the support, or the form, or the way of presenting the information;
- c) by information regarding personal data it is understood any information regarding an identified or identifiable physical person.

CHAPTER II

The organization and functioning of the access to the public information

SECTION I

Common Provisions Regarding

Art. 3. – The ensuring, by the public authorities and institutions, of the free access to the public information is accomplished "ex officio" or by request, through the agency of the compartment for public relations or of the person especially appointed with this view.

Art. 4. – (1) In order to ensure person's access to the public information, the public authorities and institutions are bound to organize specialized information and public relations compartments or to appoint persons to perform such functions.

(2) The responsibilities incumbent to the public relations compartments, as well as their organization and functioning are established, on the basis of the present law provisions, through the organizational and functioning regulations of each respective public authority or institution.

Art. 5. – (1) every public institution or authority is bound to communicate "ex officio" the following public information:

- a) the normative documents establishing the organization and functioning of the respective public authority or institution;
- b) the organizational structure, the responsibilities incumbent to the respective departments, the functioning program, as well as the hearings schedule of the public authority or institution;
- c) the full name of the persons belonging to the management of the public authority or institution, as well as the full name of the employee responsible for the dissemination of the public information;
- d) the contact coordinates of the public authority or institution, respectively: the name, address, phone numbers, fax numbers, e-mail address and the web page address;
- e) the financial sources, the budget and the accounting statement;
- f) the programs and development strategies of the respective public authority or institution;

- g) the list of documents of public interest;
- h) the list of categories of documents produced and/or handled according to the law;
- i) the ways of contesting a public authority's or public institution's decision whenever a person considers that his/her right to access to the requested public information was infringed.

(2) The public authorities and institutions are bound to publish and update, on a yearly basis, an informative bulletin that will contain the information stipulated under paragraph (1) above.

(3) The public authorities are bound to release, ex officio, a periodical activity report, at least every one year, which will be published in the Official Journal of Romania, the 2nd Part.

(4) The access to the information stipulated under paragraph (1) above is provided through:

- a) display on the premises of the public authority's or the public institution's headquarters, or publishing in the Official Journal of Romania or in the mass media, own publications or web page;
- b) consultation on the premises of the respective public authority or institution, in especially-designated spaces.

Art. 6. – (1) Any person has the right to request and to obtain, from the public authorities and institutions, public information, according to the provisions of the present law.

(2) The public authorities and institutions are bound to provide to the persons, upon their request, the public information requested in written or verbal form.

(3) The request in written form of the public information will contain the following elements:

- a) the public authority or institution to which the request is addressed;
- b) the requested information, in a way to enable the public authority or institution to identify the public information;
- c) the petitioner's full name and signature, as well as the address to which the answer is requested.

Art. 7. – (1) The public authorities and institutions are bound to answer in written form to the request of public information in 10 days' time, or, as the case might be, in maximum 30 days since the request registration, function of the difficulty, complexity, volume of documentary researches and urgency of the respective request. Should the duration necessary for identifying and delivering the requested information exceed 10 days, the answer will be communicated to the petitioner in maximum 30 days time, under the condition that the petitioner is informed in writing about this situation in 10 days time.

(2) The refusal to communicate the requested information will be justified and communicated in 5 days time since the date of receiving the request.

(3) The request and acquiring of public information could be performed in an electronic format if the necessary technical conditions are met.

Art. 8. – (1) As regards the information requested in a verbal form, the employees of the information and public relations compartments are bound to specify the conditions and forms under which the access to the public information is taking place and will supply on the spot the requested information.

(2) In the case that the requested information is not available immediately, the petitioner will be guided to request the public information in a written form. The request will be then treated following the terms stipulated under Art. 7.

(3) The public information requested verbally is communicated within a minimal program, established by the public authority's or public institution's management and displayed at the public authority's or institution's headquarters. This program will be carried out

compulsorily during the institution's functioning hours, including a day per week after the functioning hours.

(4) The registration activities regarding the requests cannot be included in this schedule and they will be carried out separately.

(5) The public information requested verbally by the mass media will be communicated, as a rule, immediately, or in 24 hours time the latest.

Art. 9. – (1) In case that the request of information implies copying of the documents belonging to the public authority or institution, the petitioner shall meet the expenses related to the copying services, according to the law.

(2) If, as a result of the received information, the petitioner requests further information related to the documents detained by the public authority, this request will be dealt with as a new request and the answer will be sent within the terms stipulated under articles 7 and 8.

Art. 10. – The provisions of the articles 7–9 are not applied to the public authorities' and public institutions' activity of answering the requests and hearings, carried out according to the specific competences of the respective authorities, if this activity regards formal approvals, authorization, services performance and any other requests apart from public information.

Art. 11. – (1) The persons who make studies or do research, for their own interest or in the interest of their service, have access to the public authority's or public institution's documentation fund, on the basis of a personal request, under the existing legal provisions.

(2) The copies of the documents belonging to the public authority or the public institution are done according to the provisions stipulated under Art. 9.

Art. 12. – (1) The following information makes an exception relative to the free access of the citizens stipulated under Art. 1:

- a) the information regarding national defense, public security and order, if this type of information belongs to the categories of classified information, according to the law;
- b) the information regarding the authorities' debates, as well as the information regarding Romania's economic and political interests, if this type of information belongs to the categories of classified information, according to the law;
- c) the information regarding economic or financial activities, if their publicity jeopardizes the principle of fair competition, according to the law;
- d) the information regarding personal data, according to the law;
- e) the information regarding the procedure in a penal or disciplinary investigation, if this way the result of the investigation is jeopardized, the confidential sources are disclosed, or the life, physical integrity or health of a person are jeopardized in the course of or as a result of the investigation.
- f) the information with respect to the judiciary procedures if their publicity jeopardizes the ensuring of a fair trial or the legitimate interest of any of the parts involved in the trial.
- g) the information that, being published, will jeopardize the measures intended to protect the youth.

(2) The responsibility for applying measures of protecting the information stipulated under paragraph (1) rests upon the public persons and authorities holding the mentioned type of information, as well as upon the state institutions entrusted by law to ensure the security of information.

Art. 13. – The information favoring or hiding the infringement of a law by a public authority or institution cannot be included in the category of classified information and will constitute public information.

Art. 14. – (1) The information regarding the personal data of a citizen may become public information only to the extent it affects that citizen's capacity of exercising a public function.

(2) The public information of personal interest cannot be transferred among the public authorities but on the basis of a legal obligation, or on the basis of previously written consent of the person who has access to that information according to Art. 2 of the present law.

SECTION 2

Special Provisions Regarding the Access of Mass Media to the Public Information

Art. 15. – (1) The access of mass-media to the public information is guaranteed.

(2) The activity of gathering and disseminating public information, carried out by mass-media, constitutes a materialization of citizens' right of access to any public information.

Art. 16. – (1) In order to ensure the access of mass-media to the public information, the public authorities and institutions are bound to appoint a spokesperson, pertaining, as a rule, to the information and public relations compartments.

Art. 17. – (1) The public authorities are bound to organize periodically, once a month as a rule, press conferences in order to make known public information. At press conferences, the public authorities are bound to provide answers relating to any public information.

Art. 18. – (1) The public authorities are bound to grant, without discrimination, the accreditation of journalists and other mass-media representatives.

(2) Accreditation is granted, upon request, within 2 days' time since its registration.

(3) The public authorities may refuse to accredit a journalist or withdraw one journalist's accreditation only on account of acts which hinder the normal carrying out of the public authority's activity and which does not relate to the respective journalist's opinions expressed in the press, in accordance with the law provisions and limits.

(4) The refusal to grant accreditation to a journalist and the withdrawal of a journalist's accreditation are communicated by writing and will not affect the respective press organ's right to obtain accreditation for another journalist.

Art. 19. – (1) The public authorities and institutions are bound to inform the mass media in due time about the press conferences or any other public actions organized by them.

(2) The public authorities and institutions cannot deny, in any way, the access of mass media to the public actions organized by them.

(3) The public authorities, which are bound, due to their own functioning and organizational law, to carry out specific activities in the presence of the public, are bound to allow the press access to the respective activities. The dissemination of materials thus obtained by the journalists will have to observe only the professional deontology.

Art. 20. – The mass media are not bound to publish the information provided by the public authorities or institutions.

CHAPTER III

Penalties

Art. 21. – (1) The explicit or tacit refusal by the employee appointed by a public authority or institution to carry out the provisions of this law, constitutes a violation of the law and will bring about the culprit's disciplinary responsibility.

(2) Against the refusal mentioned under paragraph (1) a complaint can be addressed to the respective public authority or institution's manager, within 30 days time since the prejudiced person took note of the respective refusal.

(2) If, after the administrative investigation, the complaint proves justified, an answer will be transmitted to the prejudiced person within 15 days time since the complaint was registered. The answer will contain both the initially requested public information and the mention of the disciplinary penalties taken against the culprit.

Art. 22. – (1) In case that a person considers that his/her rights provided by this law were prejudiced, the respective person may register a complaint with the administrative contentious section of the Court where the respective person resides or where the respective public authority or institution has its headquarters. The complaint shall be registered within 30 days time since the expiry of the period stipulated under Art. 7.

(2) The Court can force the public authority or institution to provide the requested public information and pay moral and/or patrimonial damages.

(3) The Court's decision is subject to appeal.

(4) The Court of Appeal's decision is definitive and irrevocable.

(5) The complaint and the appeal are judged by Court according to the emergency procedure and are exempted of stamp fee.

CHAPTER IV

Transitory and final provisions

Art. 23. – (1) The present law will enter into force within 60 days after its publishing in the Official Journal of Romania.

(2) Within 60 days after the publishing in the Official Journal of Romania, the Government will elaborate, upon an initiative of the Ministry of Public Information, the methodological norms of application of this Law.

Art. 24. – (1) Within 60 days after the entering into force of the present Law, the Ministry of Public Information, the Ministry for Communication and Information Technology and the Ministry of Public Finance will submit to the Government proposals regarding the measures necessary to make the public information progressively available, through the agency of computerized data bases, accessible to the public on a national level.

(2) The provisions stipulated under paragraph (1) shall refer inclusively to the endowment of the public authorities and institutions with adequate computing technique equipments.

Art. 25. – On the date of the entering into force of the present law, any contrary provisions are abrogated.

Această lege a fost adoptată de Senat în ședința din 13 septembrie 2001, cu respectarea prevederilor art. 74 alin. (2) din Constituția României.

Decision no. 123

for the approval of the Norms of enforcement of Law no.544/2001 regarding the free access to public information

According to art.107 of the Constitution of Romania and to art.23 paragraph 2 of Law no.544/2001 regarding the free access to public information,

The Romanian Government hereby adopts this decision.

Single article – We approve the Norms of enforcement of Law no.544/2001 regarding the free access to public information, published in the Official Gazette of Romania , Part I, no.663 of October 23, 2001, provided in the following annex, which constitutes part of this decision.

Norms

CHAPTER I

General provisions

Art.1 - (1) These Norms regulate the principles, procedures and rules of enforcement of Law no.544/2001 regarding the free access to public information.

(2) The provisions of these Norms shall be applied to all public authorities and institutions, as defined by Law no.544/2001.

Art.2 - The enforcement of Law no.544/2001 shall be performed in accordance with the following principles:

- a) The principle of transparency: the public authorities and institutions must perform their activity openly to the public, considering that the free access to public information is the rule while the limitation of the access to information is the exception, according to the law.
- b) The principle of uniform enforcement: the public authorities and institutions ensure the observation of the law in a uniform manner, according to the provisions of the law and of these norms.
- c) The principle of autonomy: each public authority and institution shall prepare its own regulations in order to create departments for public relations and information, according to the provisions of the law and of these norms.

CHAPTER II

The obligation to ensure free access to public information

Art.3 - (1) In order to ensure and organize free access to public information, the public authorities and institutions must create special departments for public relations and information or must appoint empowered personnel who shall have the said prerogatives.

(2) The special departments for public relations and information within the central or local public authorities and institutions may be organized as bureaus, services, departments or general departments, subordinated to the head of the said public authorities and institutions who may empower another person of the leading staff to coordinate the activity of the said departments.

(3) The creation, operation and prerogatives of the said departments shall be regulated by the internal rules of the said public authorities and institutions, according to the law and to these Norms.

Art.4 - (1) In order to ensure proper functioning within the public authorities and institutions, the information and public relations activity shall be structured as follows:

- a) Informing the press;
- b) Publicly and directly informing the natural and legal persons;

- c) Internal information of the personnel;
- d) Inter-institutional information.

(2) The information activity concerning natural and legal persons and the press is mandatory and it does not exclude the other said elements of the information and public relations activity.

Art.5 - The information activity concerning natural and legal persons and information of the press may be separately organized within the departments of the public authorities and institutions.

Art.6 - (1) The actual communication structures within the Presidency, the staff of the Chamber of Deputies, of the Senate, of the Government, of the ministries, of other bodies of the central administration, of the headquarters of the autonomous regies, of other central public institutions, as well as within the autonomous administrative authorities, the prefect's office, the departmental, municipal and town councils, and the Bucharest sectors councils shall be re-organized in departments of public relations and information and shall include at least a bureau (a structure) for public information and a bureau (a structure) for relations with the press.

(2) Bureaus of public relations and information shall be created within the decentralized structures of the public authorities and institutions and especially empowered persons shall separately fulfill the prerogatives concerning the information to the press and the direct information to natural and legal persons.

(3) A person especially empowered by the town council shall separately fulfill the prerogatives concerning the information to the press and the direct information to natural and legal persons within the communes.

Art.7 - Each public authority and institution shall determine according to its type of activity the number of persons required for the proper fulfillment of the prerogatives that the respective public authority or institution has been empowered with.

Art.8 - (1) For the access of the public to public information which is distributed ex officio, each public authority and institution shall create within its headquarters departments of public relations and information, information-documentation spots.

(2) The electronic presentation of the information communicated ex officio by the public authorities and institutions provided in art.6 paragraph 2 and 3 shall be done gradually, considering the IT endowment of the said public authorities and institutions.

CHAPTER III

The procedures ensuring free access to public information

Art.9 - The public authorities and institutions ensure access to public information ex officio or upon demand, according to the law.

Art.10 - (1) The public information communicated ex officio shall be presented in an accessible and concise form, facilitating the contact of the interested persons with the respective public authority and institution.

(2) The public authorities and institutions are obliged to annually publish and update an informative bulletin containing the information provided in art.5 paragraph 1 of the law.

(3) The public authorities and institutions must publish ex officio, at least yearly, a periodical report of activity in the Official Gazette of Romania, Part II. The report of activity shall be prepared according to the provisions of Annex 6 to these Norms.

Art.11 - (1) The access to public information communicated ex officio shall be ensured by the following means:

- a) Posting up at the authority's headquarters or publishing in the Official Gazette of Romania or in the press, in the authority's papers as well as on the authority's Internet page;
- b) Consulting at the authority's headquarters, at the information-documentation spots created in suitable locations.

(2) The posting up at the authority's headquarters is the minimal compulsory obligation of the said authority or public institution in order to disseminate public information communicated ex officio.

Art.12 - Should a ethnic minority detain at least 20 per cent of the population of a administrative-territorial unit, the information communicated ex officio shall also be disseminated in the language of such minority.

Art.13 - The requests for public information, other than communicated ex officio, shall be addressed to the authority or institution according to art.6 of the Law.

Art.14 - (1) In order to facilitate the drafting of the request for information and of the administrative complaint, the public authorities and institutions shall provide the interested persons with free patterns thereof.

(2) The patterns of the request for information and of the administrative complaint are provided in annexes no.1, 2a and 2b.

(3) The patterns of an answer and of a letter responding to an administrative complaint, together with the pattern of the register for the recording of the documents indicated in paragraph 2 are provided in annexes no.3, 4 and 5.

Art.15 - (1) The public information may also be required and communicated in electronic format.

(2) The request for information and the administrative complaint may also be transmitted by e-mail, using the patterns provided in annexes no.1, 2a and 2b.

(3) The public information required in written electronic format may also be communicated by e-mail or saved on disk.

Art.16 - The terms for the communication of an written answer to the persons requesting public information are provided in Law no.544/2001:

- a) 10 business days to communicate public information, if such information was identified within this period;
- b) 10 business days to announce the petitioners that the original delay provided in paragraph 1 was not sufficient to identify the required information;
- c) 30 business days to communicate the public information identified after the term provided in lit.a);
- d) 5 business days to communicate the refusal to provide the required information and the motives of such refusal.

Art.17 - The daily program of the public relations and information departments is identical to the program of the respective public authorities and institutions, determined by internal regulations; such program shall include supplementary hours in one day of the week.

Art.18 - (1) The access to public information is free of charge.

(2) The petitioner shall pay for the copying service, according to the law.

(3) The payment for the copying service shall be performed at the pay office of each authority or public institution.

CHAPTER IV

The structures in charge of the direct public informing

Art.19 - The structures or persons in charge of the direct public informing shall ensure the answer to the requests for public information and the well functioning of the information-documentation spots.

Art.20 - (1) The structures and persons in charge of the direct public informing shall receive the requests for public information.

(2) The request for public information represents the verbal or written deed (on paper or in electronic format) by which a person (natural or legal, Romanian or foreign) asks for public information.

(3) In the case of verbal request, the information shall be communicated on the spot, if possible; if not, the petitioner shall be advised to file a written request.

(4) The written requests on paper or in electronic format (e-mail), including those provided in paragraph 3, shall be registered with the competent structures or persons, who shall provide written confirmation of such registration, indicating the date and registration number of the request.

Art.21 - (1) After receiving and registering the request, the competent structures or persons in charge with the direct public informing shall perform a primary evaluation of the request, determining if the information requested can be released ex officio, communicated upon request or cannot be freely accessed.

(2) Should the requested information be already communicated ex officio in one of the ways indicated in art.5 of the Law, the petitioner shall be informed about such communication and about the actual location of the information as soon as possible, but no later than within 5 days.

Art.22 - (1) If the requested information is not communicated ex officio, the request shall be transmitted to the competent structures of the public authorities and institutions in order to verify the observation of art.12 of the Law.

(2) Should the requested information be restricted, the petitioner shall be informed about such restriction within 5 days of the date of application.

(3) The structures indicated in paragraph 1 must identify and update the restricted public information according to the law.

Art.23 - (1) The structures or persons in charge with direct public information shall receive the answer to the request for information from the structures provided in art.22 paragraph 1 and shall draft such answer addressed to the petitioner along with the requested public information or with the motives of delay or of refusal to hand over such information.

(2) The answer shall be registered and transmitted to the petitioner on the requested support within the term provided by the law.

Art.24 - Should the request exceed the competence of a public authority or institution, the structures in charge with direct public information shall transmit the request for information within 5 days of the date of application to the competent public authorities or institutions and shall inform the petitioner about such transmission.

Art.25 - The structures in charge with direct public information shall keep records of the answers and receipts proving the payment for copying the requested documents, filed by the petitioners.

Art.26 - The structures and persons in charge with direct public information shall organize the information-documentation spot as follows:

- a) by publishing an informative bulletin of the public authority or institution, including public information communicated ex officio, provided in art.5 of the Law;
- b) by ensuring the publishing of the activity report of the respective public authority or institution in the Official Gazette of Romania, Part II;
- c) by making public in written format the information communicated ex officio provided by art.5 of the Law (at the institution's headquarters, as brochure or in electronic format-disks, CD, Internet page);
- d) by organizing the access of the public to information communicated ex officio at the information-documentation spot.

Art.27 - (1) The structures in charge with information and public relations of each institution or public authority shall annually prepare a report concerning the access to public information that shall include:

- a) the total number of requests for public information;
- b) the total number of requests, defalcated by interest fields;
- c) the number of the requests solved in favor of the petitioner;
- d) the number of rejected requests, defalcated by motives of rejection (information excepted from free access, inexistent information, etc.);
- e) the number of requests filed in written: 1. on paper and 2. in electronic format;
- f) the number of requests filed by natural persons;
- g) the number of requests filed by legal persons;
- h) the number of administrative complaints: 1. solved in favor of the petitioner; 2. rejected;
- i) the number of judicial complaints addressed to the courts: 1. solved in favor of the petitioner; 2. rejected; 3. pending;
- j) the total costs of the department for information and public relations;
- k) the total amounts paid by the petitioners for the copying services;
- l) the estimated number of visitors to the information-documentation spot.

(2) The said report shall be addressed to the head of the public authority or institution and shall be made public.

(3) The central authorities and institutions shall collect the local reports and the centralized data shall be transmitted to the Minister of Public Information.

CHAPTER V

The structures in charge with the information of the press

Art.28 – The special provisions concerning the access of the press to public information, as provided by Law no.544/2001, explicitly refer to the obligations of the public institutions and authorities and do not apply to the activity of the medias.

Art.29 – The structures or persons in charge with relations to the press within the public authorities or institutions have the following prerogatives:

- a) to provide the press with any public information concerning the activity of the public authority or institution that he/she represents, as soon and as completely as possible;
- b) to grant accreditation to the journalists and representatives of the press within maximum 2 days of the date of application, without any discrimination whatsoever;
- c) to inform in time the press and to ensure their access to the public activities and actions of the respective authority or institution;
- d) to ensure the dissemination of press releases and statements, press conferences, interviews or briefings, periodically or each time the activity of the respective institution reveals an immediate public interest;
- e) to disseminate press dossiers related to the events or activities performed by the respective authority or institution;
- f) not to refuse or withdraw a journalist's accreditation unless obstructive behavior of the journalist, impeding the normal operation of the said authority or institution and which is not related to the journalist's opinion revealed in the press;
- g) in case of withdrawal of the accreditation, to ensure the accreditation of another journalist representing the same press unit.

Art.30 - (1) The accreditation shall be granted upon request of the journalists or press institutions. The accreditation permits are not transmissible and they allow the physical presence of the journalist within the headquarters of the public authority or institution granting the permit or at the location of its activities open to the press.

(2) The accreditation does not trigger the right of the public authority or institution to control the material published by the accredited journalists.

(3) The participation of the press to the activities of the public institutions cannot be limited or restricted by internal regulations exceeding the provisions of Law. No.544.

CHAPTER VI

Sanctions

Art.31 – The disciplinary liability of the officer in charge with the enforcement of Law no.544/2001 shall be determined according to the Public Officer's Statute, to the special statutes or, as the case may be, according to the Labor Code.

Art.32 – The persons alleging a breach of their right to access public information may file an administrative complaint addressed to the head of the public authority or institution possessing the requested information.

Art.33 – The above-mentioned prejudiced person may file the said administrative complaint indicated in art.32 within 30 days of the date when he/she acknowledged the explicit or implicit refusal of the officers to grant access to the requested information according to the Law and to these Norms.

Art.34 – Should the complaint be well founded, the answer of the public authority or institution shall be transmitted to the petitioner within 15 days of the date when the complaint was filed. The said answer shall include the public information initially requested and shall also mention the disciplinary sanctions applied to the guilty officer, according to the law.

Art.35 - (1) Each public authority and institution shall create a commission for the analysis of the complaints related to the non-observation of Law. No.544/2001 and of these Norms.

(2) The said commission shall have the following prerogatives:

- a) to receive and analyze the administrative complaints filed by the individuals;
- b) to perform an administrative inquiry;
- c) to determine the well-founding of the administrative complaints related to the breach of the right to access public information;
- d) should the complaint be well founded, to propose a sanction against the guilty officers and to transmit the requested information to the petitioner. In case a public officer is found guilty by the said commission, it shall trigger the notification of the disciplinary commission within the respective public authority or institution, which shall propose a sanction according to the law;
- e) to draft and transmit the answer to the petitioner.

Art.36 - (1) Should the petitioner still consider himself/herself prejudiced even after receiving the answer to his/her administrative complaint, he/she may file a judicial complaint with a court-administrative litigations section, within 30 days of the expiry of the term provided in art.7 of Law no. 544/2001.

(2) The exemption to pay judicial fees for the complaint filed with the court and for the appeal filed with the Court of Appeal does not imply the exemption to pay the copying fees for the requested public documents.

CHAPTER VII

Final provisions

Art.37 - Within 30 days of the enforcement of these Norms, the central and local public authorities and institutions shall ensure the necessary location and the modification of their internal schedule of personnel in order to enforce the provisions of Law. no. 544/2001.

Art.38 - Within 60 days of the entry in force of these Norms, the public authorities and institutions shall create departments for information and public relations and shall prepare the internal regulations thereof.

Art.39 - The network endowment of the above-mentioned departments shall be ensured by the public authorities and institutions, upon propositions approved by the Government, according to art.24 of the Law.

Art.40 - Annexes no.1-6 constitute an integrant part of these Norms.

Best practices - Data collection form

Department or person in charge of enforcing Law 544	Department <i>(full name)</i>	Person
Locality <i>(name, county)</i>		
Does the City Hall have an ISO (9001 9002, etc.) certification?	NO <input type="checkbox"/>	YES <input type="checkbox"/> since _____
Type	M <i>(Municipality)</i>	O <i>(Town)</i> C <i>(commune)</i>
Population	Population: _____ inhabitants	
Contact person <i>(Name and surname, title, phone and fax)</i>	<i>Name</i> _____ <i>Phone:</i> _____ <i>Fax:</i> _____ <i>E-mail:</i> _____	
Address, phone, fax, e-mail, web page o the department	<i>Address:</i> _____ <i>Phone:</i> _____ <i>Fax:</i> _____ <i>E-mail:</i> _____ <i>www.</i> _____	
Special/unusual issue solved <i>(short description)</i>		
Efficient procedure <i>(short description)</i>		
Best practice <i>(short description)</i>		
Department products	<i>Examples:</i> <input type="checkbox"/> Regular report on the implementation of Law 544 <input type="checkbox"/> Articles in the City Hall newsletter <input type="checkbox"/> Other <i>(detail)</i>	
Performance monitoring results <i>(procedures used for performance monitoring and relevant results for the citizens, if any)</i>	<i>Examples:</i> <input type="checkbox"/> Service description <input type="checkbox"/> Job descriptions <input type="checkbox"/> Opinion poll <input type="checkbox"/> Questionnaire <input type="checkbox"/> Regular activity reports <input type="checkbox"/> Other <i>(detail)</i>	



PUBLISHED BY:
ARTH Services - BUCHAREST
arths@arths.ro www.arths.ro

PRINTED BY:
OMEGA PRINT - BUCHAREST
promoprint@rdslink.ro

