

Analysis of Implementation Track Record for the New Law on Free Access to Public Information



ANALYSIS OF THE EXERCISE OF FREE ACCESS TO INFORMATION
PURSUANT TO THE NEW LAW ON FREE ACCESS TO PUBLIC
INFORMATION

**The institutional agony is over,
but free access to information remains limited**

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Analysis of the Exercise of Free Access to Information Pursuant to the new Law on Free Access to Public Information

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Цивика мобилитас е проект на Швајцарската агенција за развој и соработка (СДЦ) кој го спроведуваат НИРАС од Данска, Македонскиот центар за меѓународна соработка (МЦМС) и ФЦГ Шведски развој АБ (ФЦГ Шведска)

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KEY FINDINGS

The new Law on Free Access to Public Information was adopted on May 16, 2019, **but its enforcement started on November 30, 2019**. The Agency for Protection of Free Access to Information started its work on December 26, 2019.

This analysis is based on FOI responses to **460 information requests** lodged by the Center for Civil Communications in the first six months of the law's implementation, i.e. **1 December 2019 to 31 May 2020**.

Only 51% of information requests were responded **within the maximum law-stipulated deadline**, while the **average period** in which institutions responded to information requests is calculated at **23 days**.

There are **major differences in terms of the response period among institutions**, ranging from **2 days to 154 days**.

70% FOI responses were complete, i.e. they contained information requested, while **22%** of FOI responses **were incomplete**, and **no responses were obtained** for 8% of information requests submitted.

The Agency for Protection of the Right to Free Access to Public Information was presented with **60 appeals**, accounting for **13%** of the total number of information requests (n=460).

In the case of **three quarters of appeals**, the reason for lodging an appeal implied the fact that institutions have not provided any response, also known as **administration silence**. The remaining **one quarter of appeals** were lodged due to **incomplete responses** from institutions.

For all appeals lodged, the Agency has adopted **decisions within the law-stipulated deadline of 15 days**.

The Agency approved 90% of appeals, tasking relevant holders to disclose information requested. **10% of appeals were rejected** by the Agency as inadmissible because the relevant institution has ceased to exist as legal entity.

Half from the total of 460 information requests were submitted **during the coronavirus crisis**. **46% of institutions responded within the law-stipulated deadline** during the crisis (unlike 56% of FOI responses observed before the crisis).

The corona crisis **did not have a major impact** on the exercise of free access to information.

During the crisis, the average response period among institutions is calculated at **24 days**, compared to 23 days before the crisis.

INTRODUCTION

For 15 years already, the Center for Civil Communications struggles daily to secure information in order to enable citizens, companies, interested individuals and groups to have fast, easy and free access to information and documents they need and are disposed by state institutions. Information that will help them obtain access to and benefit from services provided by institutions; give them knowledge how their taxpayer funds are spent; allow them to monitor cost-effectiveness of public spending; facilitate their participate in decision-making and policy-shaping; ensuring they make informed election decisions....

This struggle for information is neither easy, nor simple. There are successes, but battles must be fought day in and day out, no moment of rest: from smallest victories like publication of particular information by relevant institutions, to major successes like systemic changes. In the absence of system for publication of information and lack of broadly developed awareness why such system is needed, including the prerequisite will to engage in such process, even the smallest glitch in our everyday struggle could result in reduction of previously achieved level of transparency.

Unchallenged is the fact that more public information and documents are available nowadays compared to the situation one and a half decade ago, including budgets, laws, statutes, lists of competences, decisions, tender procedures, procurement notices, contracts, lists of employees with relevant authorizations and contact details, templates, price lists, plans, reports, statistics, historic data, etc. Fifteen years ago, only a small portion of such information was publicly available. However, there are thousands of other documents that should be, but are still not publicly available.

Public information and documents help detect and reveal certain problems or state-of-affairs, as well as manners in which these could be resolved and would otherwise remain undetected and unsolved. For the purpose of its research endeavours, the Center for Civil Communications relies on publicly available information from institutions, but also engages in daily and continuous quest for other, unavailable information, which makes it one of the most active users of the instrument for lodging information requests to institutions in our country.

All this information is sought through the instrument for free access to information, established by the eponymous law.

In its struggle to make more information publicly available, the Center for Civil Communications uses various instruments to encourage and to exert pressure on institutions to publish information, i.e. it develops parameters and standards for information and documents that must be published; offers institutions pre-designed self-assessment tools in respect to the degree to which information is published; processes and analyses information and documents obtained; and publishes them in open format for further use by those that need such information; continuously proposes

legislative amendments and changes to institutional practices on the basis of its experience and research, etc.

More specifically, in the referenced 15-year period, the Center for Civil Communications has conducted hundreds of research studies and has proposed numerous legislative changes in respect to public procurements, including the obligation for publication of specific information and documents; has conducted several research that resulted in drafting amendments to the Law on Free Access to Public Information; has created and has developed the Index of Active Transparency that measures the degree of proactive publication of relevant information by ministries and municipalities; has created and has developed rank lists of institutions (ministries and municipalities) according to their transparency, accountability and integrity in public procurements; has designed a special website (opendata.mk), which hosts research conducted and all data therefrom in open format, etc.

Just when it was thought that matters are starting to untangle, they got entangled again

Not having to dwell well back in time, i.e. beyond 2019, it appears relevant to indicate that, only in the last several years, the exercise of free access to information was additionally restricted by inconsistent performance on the part of the commission that decides upon appeals lodged by information requesters in cases when they are unsatisfied with information (not) disclosed as part of responses from relevant institutions.

This commission was not functional for years due to insufficient number of members appointed in order to be able to adopt decisions in full composition, and there were several failed attempts in the Parliament (responsible for appointment of commission members) to complete the commission's composition. This failure was not corrected with the adoption of the new law, which entered into effect in May 2019 and whose enforcement started in November 2019, because there was no mechanism in place for the commission to start its work until its definitive transformation into agency, which happened on the day when the Agency Director and Deputy Director were appointed in late December 2019.

As complicated as it might seem, this does not exhaust all hardships encountered by this law in the course of 2019.

At the time when the proposal for new law (drafted in participatory process) was already finalized by the Government and its adoption was pending in the Parliament, in March 2019, five MPs submitted amendments to the law in effect at that time, now referred as the old Law on Free Access to Public Information¹ in order to ensure

¹ [Law on Amending the Law on Free Access to Public Information](#), "Official Gazette of RNM" no. 98 from 21.05.2019

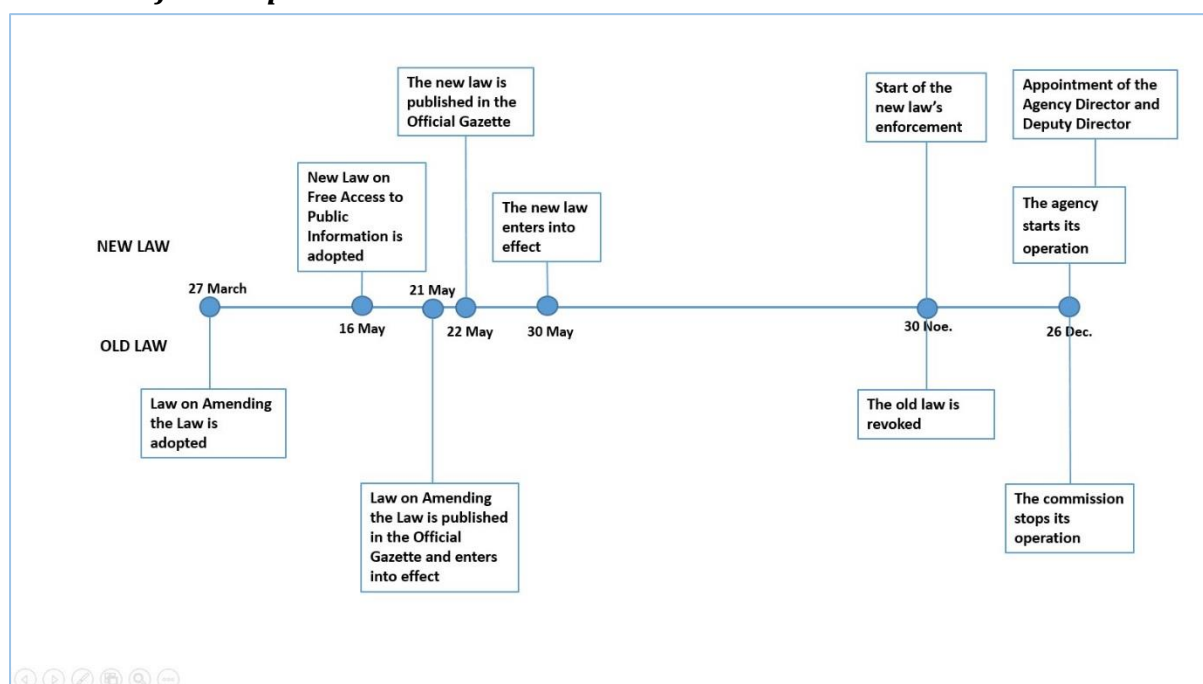
publication of treasury payments by budget beneficiaries, which was part of the project “Open Finances”. These amendments were adopted by the Parliament overnight, on March 27, 2019.

In the meantime, while publication of said in the Official Gazette was still pending in order for these changes to have legal effect, the completely new Law on Free Access to Public Information² was adopted on May 16, 2019, in spite of the fact that amendments to the old law were still not published. That happened on May 21, one day before publication of the new law in the Official Gazette on May 22.

Be that as it may, enforcement of the new law started on November 30, 2019, and the old law’s effect was revoked. This did not terminate work of the Commission for Protection of the Right to Free Access to Public Information (anticipated under the old law), because a relevant condition for that implied appointment of Director to the Agency for Protection of the Right to Free Access to Public Information (as the commission’s successor).

However, the Parliament - and all political parties represented therein - was in no hurry to appoint the Agency Director, as condition for its official start of work and official end to the agony created by non-functionality of the Commission for Protection of the Right to Free Access to Public Information. That did not happen for more than six months after the new law was adopted, which anticipated transformation of this commission into agency, whose start of work was conditioned with appointment of the Agency Director.

Timeline of developments in 2019



² [Law on Free Access to Public Information](#), “Official Gazette of RNM” no. 101 from 22.05.2019

On December 26, 2019, the Parliament finally appointed the Agency Director and Deputy Director,³ thereby marking the official start of its operation and putting an end to the dysfunctional commission.

All these developments and the several years of agony speak volumes about the attitude on the part of the government and opposition (under the previous and under the current composition) towards the right of citizens to free access to information.

MONITORING THE NEW LAW'S IMPLEMENTATION TRACK RECORD

From the first day when the new Law on Free Access to Public Information was enforced, the Center for Civil Communication engaged in monitoring the law's implementation track record, on the basis of information requests submitted to institutions for disclosure of information relevant for its various research endeavours.

In the period **1 December 2019 - 31 May 2020**, i.e. in the first six months of the new law's implementation, the Center for Civil Communications submitted a total of **460 information requests** to different institutions. Analysis of the new law's implementation is conducted on the basis of responses to these information requests and institutions' attitude towards them.

Also, it should be noted that the Center for Civil Communications does not immediately lodge appeals in cases of non-disclosed information or incomplete responses from institutions. Having in mind that CCC, as civil society organization, uses the law to collect data and documents for its research, the ultimate goal is to obtain such documents, not to test the law's implementation.

Hence, it should be noted that, in cases when responses to information requests are not provided within the law-stipulated deadline of 20 days or in cases when disclosed information are incomplete, the first step implies efforts, in direct communication, to remind institution or to indicate the actual situation, and only after these efforts do not result in obtaining information requested, the next step is lodging an appeal before the Agency for Protection of the Right to Free Access to Public Information.

COMPLIANCE WITH THE MAXIMUM DEADLINE FOR FOI RESPONSES

Among all 460 information requests, **responses for only 51% of them (n=234) were obtained within the maximum law-stipulated deadline**. As regards 48% of information requests (n=221), responses were obtained within the law-stipulated deadline, while institutions did not provide any response for 1% of information

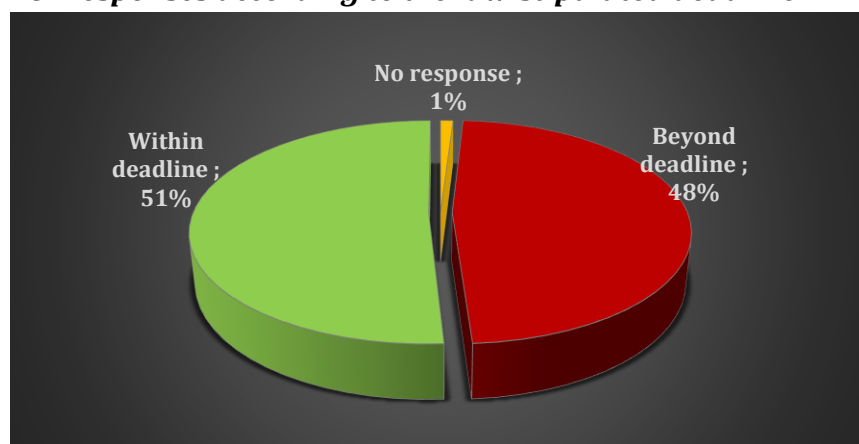
³ [Decision on appointment of Director and Deputy Director to the Agency for Protection of the Right to Free Access to Public Information](#), "Official Gazette of RNM" no. 271 from 26.12.2019

requests (n=5), even after positive decision from the Agency for Protection of the Right to Free Access to Public Information.

Deadline in which institutions are obliged to respond to information requests was among key changes under the new law and was advocated by the Center for Civil Communications. Unlike before, when the maximum deadline for response to information requests was set at 30 days, the new law shortened this deadline to 20 days. However, it should be noted that the law-stipulated deadline for response is immediately, but no longer than 20 days after the receipt of information requests.

The average period in which institutions responded to information requests that are subject of this analysis is calculated at **23 days**.

FOI responses according to the law-stipulated deadline



In order to be able to establish the actual state-of-play in respect to compliance with deadlines for disclosure of information requested, we used two mean values, as follows: positional middle value, i.e. median, and frequency middle value, i.e. mode.

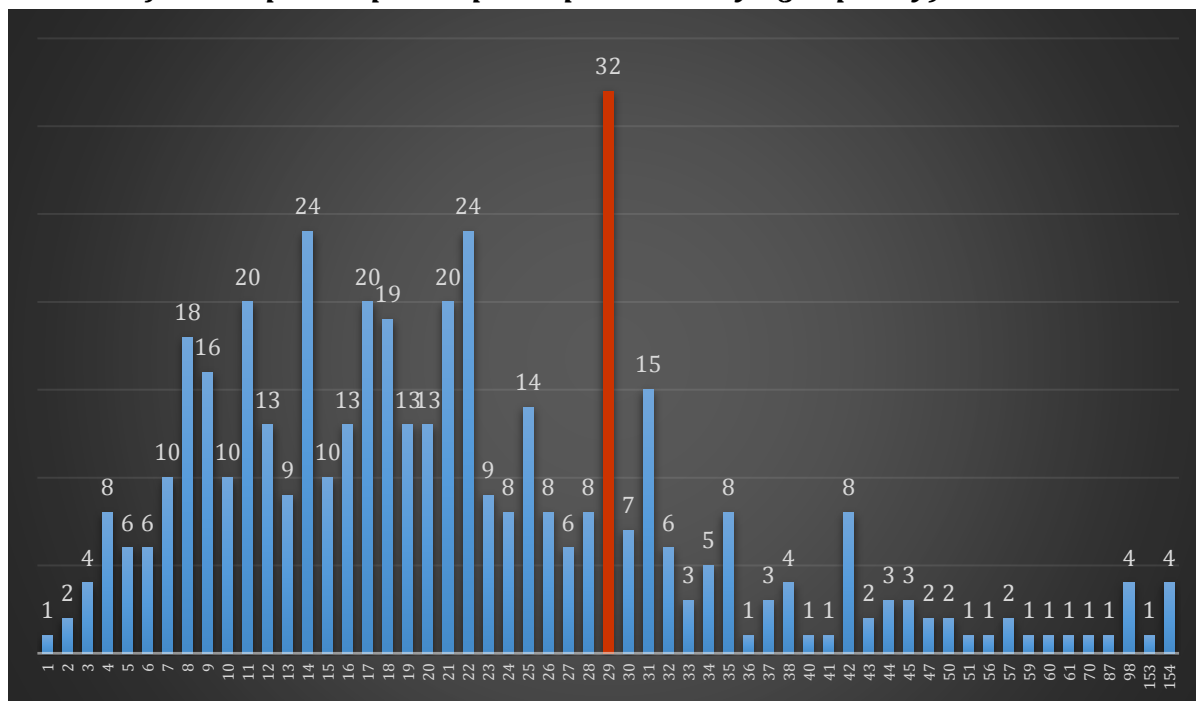
The median, i.e. **positional middle value** in a line of days for individual FOI responses is **20 days** and overlaps with the maximum law-stipulated deadline.

The mode, i.e. **frequency middle value** or, in this case, the dominant number of days for individual FOI responses is **29 days**. This number marks the typical size, i.e. the typical number of days in which institutions responded to information requests.

Not only on the basis of this indicator, but also on the basis of experiences from direct communication with institutions during the process for collection of information needed, it could be concluded that significant portion of institutions addressed with information requests were unaware that the new Law on Free Access to Public Information is in effect and that the maximum deadline is shortened from 30 to 20 days. Hence, it could be concluded that the overlap between the frequency middle value for

FOI responses (29 days) and the maximum deadline from the old law (30 days) is actually due to lack of knowledge about the new law.

Number of FOI responses per response period in days (frequency)



Led by unequal distribution and major differences in respect to the response period (in days) of institutions, ranging from 2 days to 154 days, we applied another statistical method to establish the deviation of individual values from the mean, i.e. the standard deviation. In this case, this was the deviation in respect to the period (number of days) in which institutions responded to individual information requests from the average response period calculated at 23 days.

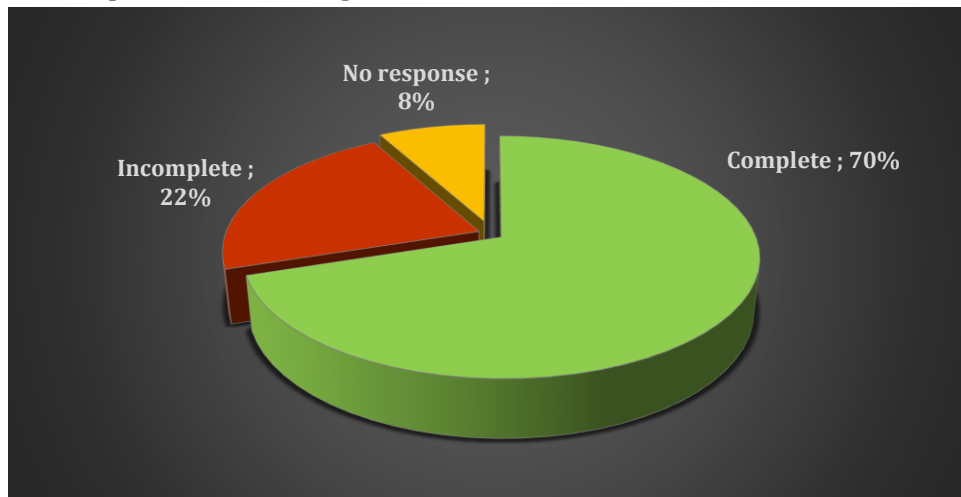
Hence, **the standard or average deviation** is calculated at 84%, i.e. at 19.3 days. Although there are no established norms, it is believed that deviations above 20% are indicative of great variations, i.e. non-homogeneity in behaviour of individual values, which in this case concerns institutions' behaviour towards FOI responses. This indicates the need for further, more detailed analyses of institutions grouped according to their response period (in days), for example 10 to 20 days, 20 to 30 days, and 30+ days.

COMPLETENESS OF FOI RESPONSES

As regards the **content of initial responses, i.e. their completeness**, 70% of responses (n=320) were complete, which means they contained the information requested. 22% of responses (n=101) were incomplete, which means they did not

include all information requested, and no response was obtained to 8% of information requests (n=39).

FOI responses according to the content



APPEAL PROCEDURE

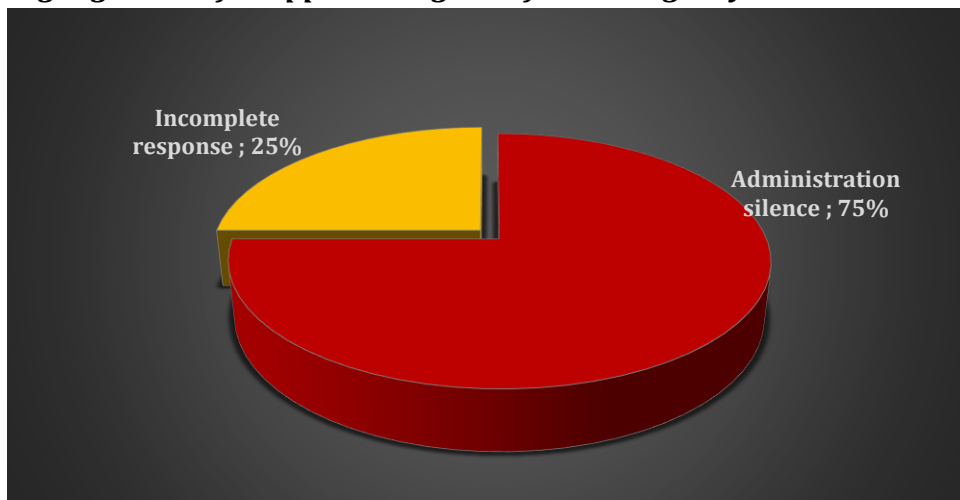
Among 460 information requests, the Center for Civil Communications ultimately, i.e. after indications to institutions concerning non-responded requests or incomplete responses, lodged a total of **60 appeals** before the Agency for Protection of the Right to Free Access to Public Information, accounting for **13% of information requests**.

Most appeals, i.e. **75%** of them were lodged due to the fact that institutions have not provided any response upon information requests, which is also known as **administration silence**. The remaining **25%** of appeals were lodged on the grounds that institutions have not disclosed all information requested, i.e. they have provided **incomplete responses**.

21 of initial 60 appeals lodged before the Agency for Protection of the Right to Free Access to Public Information were withdrawn and relevant procedures led before the Agency were discontinued because institutions responded to information requests after the Agency presented them with appeals lodged and requested their response thereto.

Among the remaining 39 appeals, **the Agency approved 90% of them** (n=35) and tasked relevant holders to disclose information requested. 10% of appeals (n=4) were rejected by the Agency as inadmissible because the institution addressed with information requests, i.e. Inter-Municipal Public Enterprise *ProAcqua* from Struga, has ceased to exist as legal entity and was removed from the Agency's list of information holders. Nevertheless, the legal successor of this enterprise, i.e. PE Water Supply and Sewage – Struga, responded to our requests and disclosed the information requested.

Legal grounds for appeals lodged before the Agency



The Agency acted upon all appeals by adopting decisions within the law-stipulated deadline of 15 days.

Ultimately only four information requests remained non-responded, as institutions did not respond even after they were presented with the Agency's decision tasking them to disclose the information requested.

IMPACT OF THE CORONAVIRUS CRISIS ON FREE ACCESS TO INFORMATION

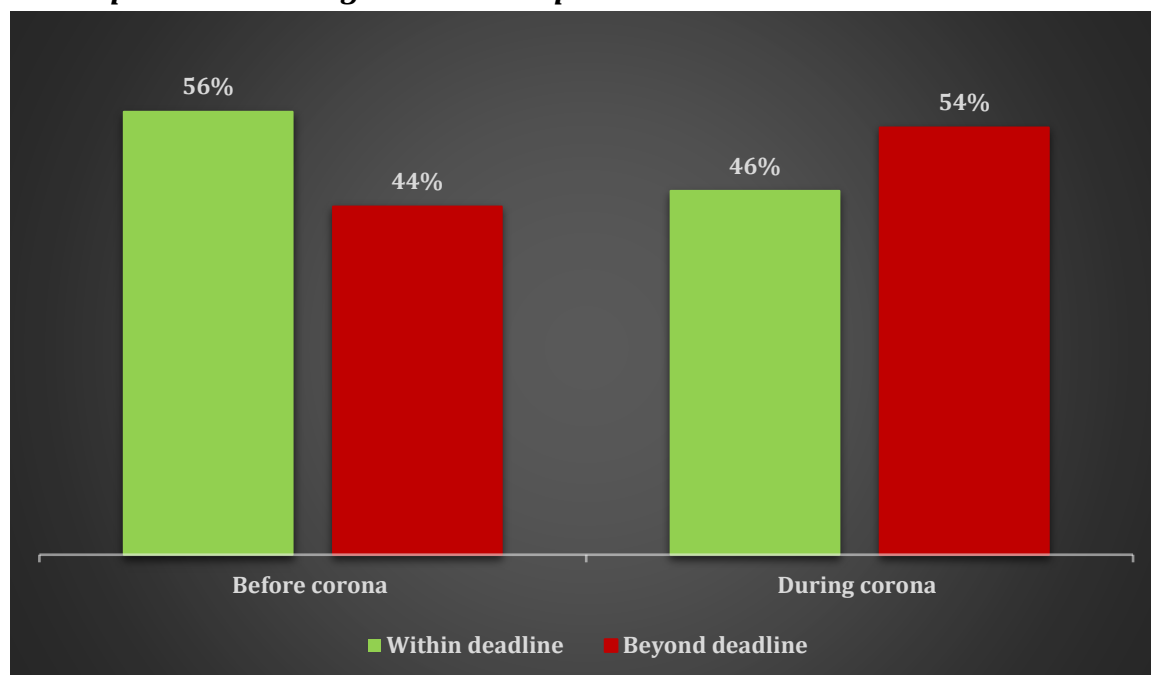
Having in mind the consequences on regular operation of state institutions caused by the COVID-19 pandemics and the declared state of emergency, and for the purpose of assessing the coronavirus' impact on the exercise of free access to information, information requests submitted after March 1, 2020, and responses thereto were analysed separately.

Among total of 460 information requests submitted in the first six months of the law's implementation, exactly half (n=231) were submitted before and the other half (n=229) after the onset of the coronavirus crisis.

Analysis of information requests submitted during the crisis generally shows small impact of the corona crisis on the exercise of free access to information.

As regards the deadline in which institutions responded to information requests before the crisis, 56% of responses were obtained within the maximum law-stipulated deadline of 20 days, while **during the crisis** the share of **responses obtained within the maximum law-stipulated deadline** is lower and stands at **46%**.

FOI responses according to the law-stipulated deadline



As regards the average period in which institutions responded to information requests, before the coronavirus crisis this period was calculated at 23 days, while during the crisis **the average period for disclosure of information requested** was increased by only one day and stands at **24 days**.

Otherwise, only two responses to the total of 229 information requests during the coronavirus crisis officially indicated that relevant institutions are unable to respond due to the crisis. One institution, i.e. one municipality in the City of Skopje, has enlisted absence from work of employees in the department competent to provide information requested as specific reason for non-disclosure, mainly due to emergency measures introduced by the government. Nevertheless, this institution disclosed information requested immediately after internal organizational conditions allowed that.

Another institution, which is part of the government, did not elaborate the reason for its inability to disclose information requested, enlisting that: “having in mind the declared state of emergency, we would like to inform you that the information request will be responded immediately after the crisis”. This was followed by an appeal lodged before the Agency, whose decision tasked the institution to disclose the information requested, but was not complied with.

In this context, a minor confusion was created by the decree with law effect for implementation of the Law on General Administrative Procedure during the state of emergency,⁴ which the Government adopted early into the crisis, on March 23, 2020. In particular, the decree stipulated that deadlines for administrative procedure, with the

⁴ [YDecree with law effect on implementation of the Law on General Administrative Procedure during the state of emergency](#), “Official Gazette of RNM” no. 76 from 24.03.2020

exception of public procurements, will stop to expire during the state of emergency and will resume after expiration of the state of emergency, for the number of days in which they were suspended.

Although some institutions reconsidered application of this decree to deadlines for response to information requests, the dilemma was resolved by then incumbent justice minister Renata Deskoska, whose line ministry is responsible for implementation of the Law on Free Access to Public Information. She made clear that the law is enforceable, that no changes are planned and that transparency and access to information is of particular importance during the state of emergency.⁵ This was confirmed by the Agency Director, Plamenka Bojcheva, who assessed that the crisis impacts untimely responses, but the law and the right to free access to information is also exercised under corona conditions.⁶

⁵ ["The Corona Crisis Reduces Transparency of Institutions"](#), PRIZMA, 24 April 2020

⁶ ["Plamenka Bojcheva: We are open for cooperation in respect to protection of free access to information"](#), META, 23 June 2020