

## RIGHT TO INFORMATION IN BiH: TOWARDS EFFECTIVE INSTITUTIONAL DESIGN

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Implementation of the access to information laws in BiH has been largely undermined due to weaknesses in the mechanisms intended to ensure compliance with the laws. Based on this policy analysis, two sets of recommendations for improving the enforcement and oversight of access to information have been formulated. One of the proposals points to improvements within the current institutional set-up, while the second set of recommendations refers to creating a new institutional oversight mechanism as a potentially transformative solution to these problems.

**SUMMARY**

### 1. INTRODUCTION

The ability to obtain information is essential for making informed decisions on matters that affect people's lives. In particular, the significance of access to information lies in the promotion of political participation. Citizens need to have the mechanisms to initiate public debate on matters of public concern and scrutinize the actions of elected representatives. Thus, access to information is a crucial instrument for making governments responsible and accountable to citizens.

However, it is not enough to adopt a law giving citizens the right to access government-held information. This right needs to be operationalized and enforceable. Therefore, the right to access to information imposes obligations on the state to undertake proactive measures to give effect to this right. In most cases, this implies adequate institutional design, i.e. a public body with powers and responsibilities to receive appeals and review disputed public body decisions on access to information requests. Along with enforcement, such a body is also commonly tasked with raising awareness, by educating the public about their right to know, on the one hand, and providing technical assistance to public bodies

and the training of public officials in the field, on the other.<sup>1</sup>

The Freedom of Access to Information Act (FoAIA) in Bosnia and Herzegovina, as well as the FoAIA adopted in the two entities - Federation of BiH and Republika Srpska - guarantees every person the right to request information from public bodies, as well as a means of redress if this information is denied. The law stipulates three enforcement mechanisms: a) internal review by the institution that initially refused the request, b) appeal to an external body - the Institution of Human Rights Ombudsman of BiH, c) challenging the decision in the court. The three FoAIAs in BiH are considered to be rather advanced, requiring public authorities and institutions to grant access to information to the largest possible extent. However, despite very progressive legislation, implementation of the laws has been largely undermined due to weaknesses in the mechanisms intended to ensure compliance with the law.

This policy paper reviews the existing institutional set-up for access to information in BiH, highlighting the main deficiencies of this system. In order to assess the quality of current institutional arrangements, this paper first

<sup>1</sup> "Information Commission/ers and Other Oversight Bodies and Mechanisms," Right2INFO <http://www.right2info.org/information-commission-ers-and-other-oversight-bodies-and-mechanisms> (Accessed on September 14, 2015).

Table 2.1. *The enforcement models for access to information*

INSTITUTION	CHARACTERISTICS	BENEFITS	DOWNSIDES	COUNTRIES
Courts	The appeals go directly to the judiciary, which undertakes a wide range investigation and issues a binding decision and, where appropriate, sanctions the institution for non-compliance.	Power to order the release of information if inappropriately denied, giving sanctions for non-compliance, and determining the procedural and substantive matters <i>de novo</i> .	For most citizens, the courts are neither accessible nor affordable. Often, resorting to courts requires hiring an attorney or advocate and involves significant costs.	USA, South Africa, Bulgaria
Ombudsman	Intermediary body responsible for enforcement vested with the power to issue recommendations to institutions or a functionary.	Accessibility for complainants, highly valued and respected, relying more on persuasion and dialogue, thus potentially leading to greater compliance with recommendations.	No order-making powers, weaker powers of investigation, such as investigating cases <i>sua sponte</i> (without prompting from an outside party).	Canada, Hungary, Sweden, New Zealand
Commissioner	Reviews the decision of the public institution, can order agencies to act or apply sanctions.	Accessible, no need for legal representation, affordable (there are no court-related costs), highly independent, allows specialization.	The costs of the setting up of a new institution.	Mexico, Scotland, India, Croatia, Slovenia, Serbia

looks into the principles of an optimal institutional design for access to information and presents existing models in different countries. The goal of this paper is to explore to what extent the current enforcement model in BiH meets these principles. The theoretical and comparative considerations provide the framework for an assessment of the role and the competences of each institution mandated to ensure the implementation of access to information laws in BiH. To that end, different sources have been consulted, including provisions of access to information laws and other relevant legislation, monitoring reports of public institutions and non-governmental organizations active in this field. In addition, interviews with representatives of the two main institutions in the field – the Institution of Human Rights Ombudsman of BiH and the Personal Data Protection Agency in BiH – were held. Based on the main findings, the policy brief formulates recommendations for improving enforcement and the oversight function in the context of access to information in BiH, aimed at decision-makers at different

levels of government, experts and activists in the field.

## 2. ENFORCING THE RIGHT TO INFORMATION: PRINCIPAL MODELS AND APPROACHES

Most experts agree that access to information is compromised without proper enforcement of the law that gives meaning to this right.<sup>2</sup> Enforcement of the law primarily includes reviewing and deciding on complaints from requesters who have been denied access to information.<sup>3</sup> Broadly speaking, enforcement also entails the oversight/supervision of the implementation of the law – more specifically, monitoring compliance, ensuring the proper functioning of the law by training of civil servants, designing policies and guidelines for public institutions, public campaigns, annual reporting, etc.<sup>4</sup>

Regardless of the type of institution, key factors for a successful and well-functioning

<sup>2</sup> See for example: Laura Neuman and Richard Calland, “Making the Access to Information Law Work: The Challenges of Implementation,” in *The Right to Know: Transparency for an Open World*, ed. Ann Florini (New York: Columbia University Press, 2007), pp. 179-213; Tobi Mendel, *Designing Right to Information Laws for Effective Implementation, Working Paper* (Washington: The World Bank, 2015); John McMillan, “Designing an effective FOI oversight body - Ombudsman or independent Commissioner?” (paper presented to the 5th International Conference of Information Commissioners Wellington, New Zealand, November 27, 2007).

<sup>3</sup> Access to information can be denied in many ways: explicitly when the public body informs the requester that access to information will not be granted, and implicitly in cases of so called administrative silence in which the requester receives no response from the institution. Access to information is also considered to be denied when the information is not published in a timely fashion or when only partial access is granted.

<sup>4</sup> Laura Neuman, *Enforcement Models: Content and Context, Access to Information Working Paper Series* (Washington: The World Bank, 2009).

enforcement/oversight model are commonly considered to be the following<sup>5</sup>:

1. **Political independence** implies sufficient autonomy to make decisions about the release of information, while not being influenced by particular interests. The independence of the institution depends on various factors, such as the appointment procedure of the head of the institution, term of office and premature dismissal provisions, the branch of government from which they receive their powers and to whom they report, as well as autonomy in budgeting.
2. **Compliance** refers to the ability to issue binding decisions in the form of written rulings and in some cases, the power to sanction institutions that fail to abide by the final decision of the supervising body.
3. **Accessibility and affordability** is related to the need for timely and affordable means to appeal against a negative decision of the institution. In this case, citizens can go directly to the institution to seek redress, without hiring an attorney or paying fees.
4. **Specialization** is important bearing in mind that access to information appeals often deal with complex and sensitive issues and involve the application of the public interest test and striking a balance with other legitimate interests of the society, such as protection of privacy, security, commercial secrets, etc.

Some of these principles have been incorporated in the Council of Europe Convention on Access to Official Documents, which stipulates that “an applicant shall always have access to an expeditious and inexpensive review procedure, which involves either reconsideration by a public authority or review procedure before a court or another independent and impartial body established by law.”<sup>6</sup>

The choice of the enforcement model depends on various factors, including the

political context and history, administrative culture, political commitments to maintain open government, etc. In most countries, citizens can first appeal internally, that is to the senior official in the institution which refused to provide information. In the case of a negative outcome of the internal review, the appeal can be directed to an external body. There are three most common models for external review when access to information is denied. The common characteristics, benefits and downsides of the three models, as well as selected countries that have adopted these models, are presented in the chart below.<sup>7</sup>

The latest trend, especially in Europe, is combining the functions of information commissioner and personal data protection commissioner into one office. These are two complementary, sometimes conflicting rights that require striking the right balance between the protection of persons’ privacy and the right to access to information of public interest. European countries that have established such joint bodies include Germany, Great Britain, Slovenia and Serbia.

### 3. BOSNIA AND HERZEGOVINA: MANY INSTITUTIONS, LITTLE ACTION

Bosnia and Herzegovina adopted a very liberal, Scandinavian-type freedom of information law in 2000 at the state level and in 2001 at the entity level.<sup>8</sup> Under the auspice of the High Representative in BiH, the law was drafted by a group of prominent international and domestic experts and developed based on the highest standards and best practices at that time.<sup>9</sup> The FoAIA granted requesters the right to lodge an external appeal with the Institution of Human Rights Ombudsman of BiH (hereafter: the Ombudsman), an independent institution tasked with protecting the rights of individuals and legal entities.<sup>10</sup> After receiving the complaints of the aggrieved party, the



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<sup>5</sup> Ibid.

<sup>6</sup> Council of Europe, Council of Europe Convention on Access to Official Documents, CETS no. 205 (Strasbourg: Council of Europe, 2009), <http://conventions.coe.int/Treaty/EN/Treaties/Html/205.htm> (Accessed on October 10, 2015), Article 8.

<sup>7</sup> See more in Neuman, *Enforcement Models: Content and Context*.

<sup>8</sup> “Zakon o slobodi pristupa informacijama u Bosni i Hercegovini” [Law on Freedom of Access to Information in Bosnia and Herzegovina], *Official Gazette of BiH* 28/00, 45/06, 102/09, 62/11 i 100/13; “Zakon o slobodi pristupa informacijama u Federaciji Bosne i Hercegovine” [Law on Freedom of Access to Information in the Federation of Bosnia and Herzegovina], *Official Gazette of the Federation of BiH* 32/01 and 48/11; “Zakon o slobodi pristupa informacijama u Republici Srpskoj” [Law on Free Access to Information in Republika Srpska], *Official Gazette of Republika Srpska* 20/01.

<sup>9</sup> Mirjana Nadaždin-Defterdarević, “Normative Framework of the Right to Information in Bosnia and Herzegovina,” in *Media Law in Bosnia and Herzegovina*, eds. Mehmed Halilović and Amer Džihana (Sarajevo: Internews in Bosnia and Herzegovina, 2012), p. 103.

<sup>10</sup> The institution of the Ombudsman BiH was established in 1996 on the basis of Annex 4 of the Dayton Peace Agreement, the Constitution of BiH. The Ombudsman reform was finalized in 2010, after the entity offices ceased to exist and a unified BiH Ombudsman Institution continued to operate.

Ombudsman has the power to demand justification from the institution, along with all the documents which are deemed relevant to reach a final decision on the complaint.

Given the mandate of the institution, the Ombudsman has no authority to pass binding decisions in these cases, but instead issues recommendations to the public institution in breach of the access to information law.<sup>11</sup> The legally non-binding nature of the recommendations gives considerable discretion to the public institutions to avoid implementation of final decisions brought by the Ombudsman. In 2014, the Ombudsman issued 40 recommendations in response to appeals in access to information cases, out of which 20 have not been implemented, or have been implemented only partially.<sup>12</sup> This certainly brings into question the effectiveness of Ombudsman recommendations as a mechanism to ensure compliance with FoAIA.

Apart from dealing with complaints related to access to information, the FoAIA granted the Ombudsman the possibility to act as the supervising body for access to information in BiH. In that regard, public institutions are obliged to deliver reports to the Ombudsman, on a quarterly basis, which should contain information about the number of requests received, the type of information requested, and exemptions and final decisions made during the procedure. However, in practice the Ombudsman has very limited insight into the implementation of the law, given the fact that only a small number of institutions deliver these reports.<sup>13</sup> In addition, those institutions that do submit reports often fail to include all

the elements of the report requested by the Act.<sup>14</sup> As a consequence, the absence of timely and comprehensive statistical data prevents the Ombudsman from systematically monitoring and contributing to improving the implementation of the law.

The FoAIA also stipulates that the Ombudsman may, inter alia, consider creating and disseminating information (such as guidelines and general recommendations about the implementation and application of this law) and giving instructions to the ministries and other public bodies on how to comply with this act. However, these types of promotional activities have been minimal in practice to date. The Ombudsman so far has not developed any practical guide or manual that would help the public institutions to comply with FoAIA laws, or to educate the public about their right to seek public information. With few exceptions, not even the recommendations issued following a complaint, which could serve as a guide for future decisions on freedom of information requests, are being published on the website of the Ombudsman. In sum, the BiH Ombudsman is occupied with covering a wide range of human rights violations and lacks the capacity to extensively work on the complex and broad FoAIA issues, including systematic monitoring of implementation of the law, public campaigns, providing assistance to public institutions and training for public officers etc.<sup>15</sup>

In order to improve enforcement, in 2013 the Parliamentary Assembly of BiH adopted amendments to the FoAIA giving the authority to the Administrative Inspectorate of the

<sup>11</sup> "Zakon o Ombudsmanu za ljudska prava Bosne i Hercegovine" [Law on the Human Rights Ombudsman of Bosnia and Herzegovina], *Official Gazette of BiH* 19/02, Article 32.

<sup>12</sup> Institution of Human Rights Ombudsman of BiH, Godišnji izvještaj o rezultatima aktivnosti Institucije ombudsmena za ljudska prava Bosne i Hercegovine za 2014.godinu [Annual Report on results of the activities of the Institution of Human Rights Ombudsman of BiH for 2014], (Banja Luka: Institution of Human Rights Ombudsman of BiH, 2015), p. 42.

<sup>13</sup> According to the Ombudsman report for 2014, 26 state level institutions, six from the Federation BiH and only two from the Republika Srpska have delivered statistical reports. In addition, only 17 municipalities out of 141 reported to the Ombudsman on the implementation of this law. See Institution of Human Rights Ombudsman of BiH, Annual Report on results of the activities of the Institution of Human Rights Ombudsman of BiH for 2014, p. 118. These numbers are rather inadequate and worrying given that the FoAIA covers a wide range of public bodies. The FoAIA applies to information held by all public organs (legislative, judiciary, executive and administrative) as well as to all legal persons owned or controlled by public organs such as public institutions, public enterprises, state agencies, schools, faculties, hospitals, etc.

<sup>14</sup> Institution of Human Rights Ombudsman of BiH, Izvještaj o rezultatima aktivnosti Institucije ombudsmena za ljudska prava Bosne i Hercegovine za 2012. godinu [Annual Report on result of the activities by the Human Rights Ombudsman of BiH for 2012], (Banja Luka: Institution of Human Rights Ombudsman of BiH, 2013), p. 34.

<sup>15</sup> Personal interview with Almedina Karić and Irma Salčin, representatives of the Institution of Human Rights Ombudsman of BiH. October 23, 2015, Institution of Human Rights Ombudsman of BiH, Godišnji izvještaj o rezultatima aktivnosti Institucije ombudsmena za ljudska prava Bosne i Hercegovine za 2013.godinu [Annual Report on results of the activities of the Institution of Human Rights Ombudsman of BiH for 2013], (Banja Luka: Institution of Human Rights Ombudsman of BiH, 2014), p. 35.

Table 3.1. *The FoAIA BiH enforcement model assessed against the main principles of an optimal system*

	Political Independence	Compliance	Accessibility and Affordability	Specialization
Human Rights Ombudsman	✓		✓	
Administrative Inspectorate		✓	✓	
Courts	✓	✓		

Ministry of Justice BiH to supervise the implementation of the law. However, this institution deals only partially with access to information disputes – given that the Inspectorate receives complaints only in the case of administrative silence, when an institution does not reply to the requester. In other words, if the institution notifies the requester that his/her request has been denied, there has been no violation from the Inspectorate’s point of view. The Inspectorate is a part of the executive branch and thus lacks the independence necessary to carry out FoAIA supervision.<sup>16</sup> In the same manner, internal appeal to the senior officer or head of the institution has been proven to be ineffective, because in practice it is often the same person who refused to give information in the first place who decides on the appeal.<sup>17</sup>

The courts in BiH, especially in the last few years, have significantly contributed to the affirmation and interpretation of access to information laws in BiH. The courts have made several important decisions in favor of the disclosure of information. The most prominent cases include those that relate to imposing the obligation of the Parliamentary Assembly to disclose the salaries of members of Parliament in the period from 2010 until 2014<sup>18</sup> as well as to those pertaining to the release of information on service contracts of employees working in public institutions.<sup>19</sup> Still, as mentioned above, this remedy remains too

inaccessible, expensive and time consuming for most citizens.

Based on the review of the institutional set-up for FoAIA supervision in BiH, the following list assesses the mandate of the different institutions dealing with access to information in BiH against the background of key factors necessary for its successful enforcement.

#### 4. ACCESS TO INFORMATION IN BIH: A WAY FORWARD

Deficiencies of existing mechanisms to enforce the right to information in BiH have sparked debates about different models that have been successfully applied in other countries. Recently, debates have been focused on the possibility and the need to establish an information commissioner’s office in BiH, which a number of experts and activists in this field see as the most effective enforcement mechanism. The advantage of such an institution is that it provides an accessible, timely and non-costly option for a requester to lodge a complaint and that its decisions are legally binding for the public institutions.<sup>20</sup> The information commissioner model also enables specialization in the right to information issues and various activities aimed at improving the realization of the right to information such as training of officials, standard setting and awareness raising campaigns.<sup>21</sup> The benefits

<sup>16</sup> Personal Data Protection Agency in Bosnia and Herzegovina, Izvještaj o zaštiti ličnih podataka u BiH za 2011 [Report on Personal Data Protection in Bosnia and Herzegovina for 2011], (Sarajevo: Personal Data Protection Agency in Bosnia and Herzegovina, 2012).

<sup>17</sup> Institution of Human Rights Ombudsman of BiH, Annual Report on result of the activities by the Human Rights Ombudsman of BiH for 2012.

<sup>18</sup> “Sudska presude u korist CIN-a” [Ruling in CIN’s Favor], Centar za istraživačko novinarstvo, April 27, 2015, <https://www.cin.ba/sudska-presuda-u-korist-cin-a/> (Accessed on September 18, 2015).

<sup>19</sup> “TI BiH dobio 14 sporova protiv institucija u 2014. godini” [TI BiH won 14 cases against institutions in 2014], Transparency International BiH, June 9, 2015, <http://ti-bih.org/tokom-2014-godine-ti-bih-je-podnio-32-tuzbe-protiv-javnih-institucija-zbog-kršenja-zakona-o-slobodi-pristupa-informacijama-od-kojih-je-14-presudeno-u-korist-tibih/> (Accessed on September 18, 2015).

<sup>20</sup> Anupama Dokeniya, *Implementing the right to information: Lessons from experience* (Washington: World Bank, 2013).

<sup>21</sup> “Information Commission/ers and Other Oversight Bodies and Mechanisms,” Right2INFO; Mendel, *Designing Right to Information Laws for Effective Implementation*, p. 12.

of such a model have been recognized in many countries, especially in the region. At this point, Bosnia and Herzegovina remains the only country in the region which does not have such a body established.

Although a dedicated oversight body which would impose minimal transparency standards for all public bodies and champion the idea of openness has some support in expert and activist circles in BiH, where it is seen as a big step forward, applying this model also raises some concerns. First, this model presupposes allocating significant resources for establishing and staffing such an institution. In addition, costs tend to be higher in the case of institutions which have powers to issue orders, since their decisions require satisfying due process, careful deliberation on each decision and, as a rule, more extensive investigations.<sup>22</sup> In that sense, the costs become an important factor when considering this type of institutional arrangement, especially in contexts such as BiH where resources are scarce.

Less demanding in terms of funding, but an equally effective alternative, is to have a joint office for access to information oversight and personal data protection. In Europe, there is a clear trend towards the adoption of this model, and many countries in the region have also opted for a joint office, including Slovenia, Serbia, Montenegro and, most recently, Albania. The main argument supporting combining these two functions is the need to balance these two complementary, but sometimes conflicting, rights. The rationale for choosing this arrangement is that there may be fewer clashes between the two rights and decisions may be more balanced if one office is tasked with protecting both of them. One of the advantages of this model is also sharing costs between the two departments in one office. In addition, the order making powers that bodies for personal data protection usually possess, can be beneficial

for protecting the right to information, once these competences are joined.

As noted above, in BiH one part of this potential joint office is operational. The Personal Data Protection Agency (hereafter: the Agency) was established in 2008 to monitor the way different institutions process the personal data of citizens. The agency operates as an independent agency and has a wide range of powers to monitor, enforce and promote the right to personal data protection, including the inspection and monitoring of compliance with relevant legal acts on data protection, receiving complaints from citizens, restricting the publishing and processing of personal data, developing rules and regulations, guidelines and other legal acts, as well giving advice and opinions regarding the implementation of this right.<sup>23</sup>

Taking over the role of information commissioner by the Agency in BiH would meet all the criteria necessary for the successful oversight of the FoAIA: the director is appointed by the BiH Parliament and the agency reports directly to the Parliament, which satisfies at least the formal preconditions for political independence. The decisions of the Agency are binding, which potentially leads to greater compliance with the law. There is no need for paying fees or hiring a professional lawyer in order to start an appeal process before the Agency, which makes this remedy affordable and accessible, especially given the fact that complaints are generally processed in a timely fashion.<sup>24</sup>

Still, there have been several initiatives from the Agency that civil society organizations in BiH deemed harmful to the public interest in this field.<sup>25</sup> For example, in 2012 the Agency proposed a set of amendments to the FoAIA, which included restrictions of the right to public information that contain any personal data.<sup>26</sup> These proposals have provoked strong and adverse reactions from civil society who pressured the government to reject the

<sup>22</sup> Neuman, *Enforcement Models: Content and Context*, p. 13.

<sup>23</sup> "Zakon o zaštiti ličnih podataka" [Law on Protection of Personal Data], *Official Gazette of BiH* 49/06, 76/11 and 89/11, Article 40.

<sup>24</sup> Personal interview with Petar Kovačević, the director of Personal Data Protection Agency, October 21, 2015.

<sup>25</sup> Helen Darbshire, *Analysis of amendments to the Law on Freedom of Access to Information of Bosnia and Herzegovina* (Vienna: OSCE, 2013), <http://www.osce.org/fom/102256?download=true> (Accessed on October 22, 2015); Selma Učanbarlić, "Zaštita institucija i uvođenje cenzure" [Information Law Changes Alarm Bosnian Journalists], BIRN, May 23, 2013, <http://www.justice-report.com/bh/sadr%C5%BEaj-%C4%8Dlanci/za%C5%A1tita-institucija-i-uvo%C4%91enje-cenzure> (Accessed on October 22, 2015).

<sup>26</sup> Mehmed Halilović, "Analiza Nacrta zakona o slobodi pristupa informacijama BiH" [The Analysis of the Draft Law on Freedom of Access to Information], (Sarajevo: Internews, 2013).

proposed changes to the law.<sup>27</sup> Such activities of the Agency may have undermined its authority and reputation among civil society and other actors.

Nonetheless, the Agency has also initiated several positive changes, especially in regard to harmonization of the FoAIA with the provisions of the Council of Europe Convention on Access to Official Documents. The Agency was one of the first public institutions to point out the lack of provisions on obligatory proactive disclosure of information. In addition, the Agency brought to the attention of the Parliament the weak enforcement mechanisms that need to be strengthened in order “give teeth” to the law. In that regard, the Agency also advocated for forming an independent body with the powers of issuing binding decisions and overseeing the implementation of the FoAIA,<sup>28</sup> although the proposal itself did not explicitly state whether this body should be a new information commissioner office or the Personal Data Protection Agency with an expanded mandate. Although the amendments to the FoAIA have not been adopted, the Agency still plays a role in implementing freedom of information legislation in BiH, since it is often approached by public institutions with inquiries about responding to freedom of information requests.<sup>29</sup>

On balance, the potential of strengthening the right to information by delegating the FoAIA oversight role to the Personal Data Protection Agency are not to be underestimated. It can be argued that a single institution dealing with access to information and protection of personal data is more likely to accommodate both the public and private interest in balancing the two values. In addition, the instruments that the Personal Data Protection Agency in BiH has at its disposal – binding decisions and inspection control – would likely

contribute to enforcing the right to information more effectively than has been the case so far. Moreover, transforming the Agency into a body that protects both personal data and access to information would increase the understanding and proper regulation of the ways personal data should be regulated and protected in practice. Most importantly, a unified approach to these issues would reduce opportunities for public institutions to use personal data to limit access to information, without relying on the public interest test. Thus, the new mandate would strengthen the expertise and the reputation of the Agency to deal with the two values on equal terms. This has been the rationale behind establishing similar joint offices for access to information and a personal data commissioner in the countries in the region, such as Slovenia, Serbia and Montenegro.<sup>30</sup> The latest changes in institutional arrangement have been made in Albania, where the Ombudsman who performed the role of access to information oversight for more was replaced with the joint office of the commissioner for right to information and personal data protection.<sup>31</sup>

Nonetheless, it is important to point out that the oversight mechanisms stipulated in the existing legal framework have not been exhausted. As previously noted, the Institution of the Ombudsman in BiH has the mandate to undertake a broad set of activities that could promote and advance the access to information, including developing guidelines, trainings and standard setting for public institutions. Despite relatively broad competences in the field, the Ombudsman has not been engaged in these activities, mainly due to lack of resources. Although remedying these problems would not necessarily revolutionize access to information in BiH, it would still result in significant improvements in enforcing this right.

<sup>27</sup> “Ne dam svoje pravo na informaciju!” [I will not give up on my right to information], Mediacentar\_Online, May 24, 2013, <http://www.media.ba/bs/magazin-medijska-politika-regulativa/ne-dam-svoje-pravo-na-informaciju> (Accessed on October 22, 2015).

<sup>28</sup> Personal Data Protection Agency in Bosnia and Herzegovina, Report on Personal Data Protection in Bosnia and Herzegovina for 2011.

<sup>29</sup> See website Personal Data Protection Agency in Bosnia and Herzegovina, section “Opinions,” [http://www.azlp.gov.ba/misljenja/Archive.aspx?langTag=bs-BA&template\\_id=149&pageIndex=1](http://www.azlp.gov.ba/misljenja/Archive.aspx?langTag=bs-BA&template_id=149&pageIndex=1) (Accessed on October 22, 2015).

<sup>30</sup> “Information Commissioner Act,” *Official Gazette of the Republic of Slovenia* 113/2005, <https://www.ip-rs.si/index.php?id=325> (Accessed on October 22, 2015); “Zakon o slobodnom pristupu informacijama od javnog značaja” [Law on Free Access to Information of Public Importance], *Official Gazette of the Republic of Serbia* 120/04, 54/07, 104/09 I 36/10; Zakon o zaštiti podataka o ličnosti, *Official Gazette of the Republic of Serbia* 97/08, 104/09, 68/12 and 107/12; “Zakon o slobodnom pristupu informacijama” [Law on Free Access to Information], *Official Gazette of Montenegro* 44/2012.

<sup>31</sup> “Albania Rewrites Access Law: Changes Considered Positive” Freedom Info, October 30, 2014, <http://www.freedominfo.org/2014/10/albania-rewrites-access-law-changes-considered-positive/> (Accessed on October 23, 2015).

## 5. RECOMMENDATIONS

The access to information laws in BiH mandate different institutions with overseeing the implementation of the legal framework, but as this paper indicates, none of these institutions fully meets the requirements of an optimal enforcement model. Based on this policy analysis, two alternative sets of recommendations for improving the enforcement and oversight of access to information have been formulated. One of the proposals points to improvements within the current institutional set-up by strengthening the capacities and the role of the Institution of Human Rights Ombudsman of BiH, while the second set of recommendations refers to creating a new institutional oversight mechanism as a potentially transformative solution to these problems.

### 1. Strengthening the capacities and the role of the Institution of Human Rights Ombudsman of BiH in the field of access to information;

- It is necessary to increase the funding to the Institution of the Ombudsman, in order to ensure capacities for monitoring and promotional activities, including developing guidelines for public bodies, providing technical assistance and training to public officers, awareness raising campaigns, etc.;
- A new department specialized in access to information should be established within the Institution of the Ombudsman. This department would focus exclusively on dealing with complaints, monitoring the implementation of the law, standard setting, providing support to the public institutions and citizens in the area of access to information;
- The Ombudsman should publish online the recommendations related to access to

information, which would serve as guidelines for public institutions when dealing with specific requests;

- The Ombudsman should publish special reports on access to information, placing a special focus on violations of the law and non-implementation of their recommendations, which would have both promotional value and policy relevance.

### 2. Transforming the Personal Data Protection Agency into a commissioner for access to information and personal data protection

- The Agency should be transformed into a commissioner for access to information and personal data protection by adopting a law which would define the mandate, status, budget, appointments, procedure, competences, etc. of the new body;
- It should be ensured that the commissioner is appointed by the Parliamentary Assembly of BiH and that the post is assumed by a person with high integrity, expertise, and independence. In addition, civil society organizations should be given the possibility to nominate candidates for the post;
- Sufficient financial and human resources should be allocated to the new institution in order to meet the needs of effective oversight;
- While setting up an institution with an expanded mandate, it is necessary to comply with standards of political independence, compliance, affordability, accessibility and specialization in the field of access to information and personal data protection;
- The Commissioner should be obliged to actively engage in public discourse by raising awareness on the ways the public can access information of interest, and the requirements and implications of protection of their personal data.

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This policy brief has been prepared in the framework of the TRAIN Programme 2015 (Think Tanks Providing Research and Advice through Interaction and Networking), which is supported by the German Federal Foreign Office (Stability Pact for South East Europe) and implemented by the German Council on Foreign Relations (DGAP).