

Institute for Development of Freedom of Information



Access to Public Information in Georgia Informational Bulletin № 5 2012-2013

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I Project – „Database of Public Information - www.opendata.ge“

In June 2012 N(N)LP Institute for Development of Freedom of Information - IDFI (hereinafter – the Institute/IDFI) recommenced the Project “Database of Public Information - www.opendata.ge”, which is a series of corresponding projects. Implementation of the idea began in 2010 as a pilot project “Database of Public Information”, which was continued in March 2011, as well as July 2012. The purpose of the Project is the development of freedom of information and availability of public information in Georgia. The Project was supported and financed by the “Open Society Georgia Foundation”.

Within the scope of the Project, the following actions are carried out: requesting public information from administrative bodies, further public information processing in electronic form, uploads to the Project web-site - www.opendata.ge – and analysis of access to public information. Using the above-mentioned web-resource, any interested person has an opportunity to familiarize oneself with downloading and processing obtained data.

The web-site contains a list of public institutions that received requests from the Institute. Thus, any interested person can select a topic from the list and see the response sent by the agency (e.g. salaries, bonuses paid to the employees of the public institution, etc.).

In order to develop the research component of the Project, IDFI has created a special blog: opendatablog.wordpress.com, where analytical findings and articles prepared based on the obtained data are regularly published. At the same time, two studies have been prepared within the framework of the project – “Construction Costs and Financing Scheme of the New Parliament” and “Special Transfers Made in the Regions During Pre-Elections Period”, available on the IDFI web-site in the section “Research”: www.idfi.ge/?cat=researches&lang=ka. The Institute was also involved in legal activities – points at issue/omission of some public institutions that were appealed under administrative rule, including four cases the Institute appealed to the court.

The Public Information Database is significant for development of the following:

- 1) Development of **freedom of information** as a legal institution;
- 2) **One more step towards the creation of civil society in Georgia**, by means of which any person will be able to request public information existing in an agency;
- 3) **Analysis of the practice of claiming and release of public information**, identification of main tendencies and problems;
- 4) **Societal control of public institutions**, establishment of commitments to comply with legal norms.

II Freedom of Information in Georgia

The Project is implemented under the legislation of Georgia, in particular, on the basis of powers granted by the Constitution of Georgia and General Administrative Code of Georgia.

Article 24 of the Constitution of Georgia refers to the right of an individual to use information. It states that any individual shall have the right to receive and impart information. Notwithstanding, reading the article in the Constitution of Georgia as such, receiving and imparting information may not be understood as an absolute and unrestricted right. It may be restricted, i.e. it has certain binding limits. This issue is specifically addressed in Article 41 of the Constitution of Georgia, narrowing the operation area of freedom of information through a concrete framework, vesting obligation of its release on the public institutions. In the first place we should demarcate Articles 24¹ and 41-1² of the Constitution. Where paragraph 4 of Article 24 refers generally to restrictions of information dissemination (restriction of the right with the purpose of protecting others rights is meant), paragraph 2 of Article 41 makes the restriction of said right more explicit by protecting other individuals rights through recognition of concrete information as secret. Secrecy itself may be divided into three types: state, professional and commercial secrets. Legislative treatment of confidentiality is established in relation to the personal data of an individual.

The enumerated norms of the Constitution of Georgia are defined in the General Administrative Code of Georgia (hereinafter – the GACG). In other words, the GACG defines in details the general norms of behavior prescribed by the Constitution. Chapter III of the said Code prescribes the legal opportunities available for a person requesting public information from public institutions. Furthermore, the Code refers to the liabilities of public institutions' obligations when an individual requests public information existing in the agency.

¹ Constitution of Georgia Article 24

1. Everyone shall have the right to receive freely and impart information, express and impart his/her opinion orally, in writing or in any other means.
2. Mass media shall be free. The censorship shall be impermissible.
3. Neither the State nor particular individual shall have the right to monopolise mass media or means for dissemination of information.
4. The exercise of rights enumerated in first and second paragraphs of this Article may be restricted by the law on such conditions, which are necessary in a democratic society for ensuring state security, territorial integrity or public safety, prevention of offence, protection of rights and dignity of others, avoidance of information disclosure recognized as confidential or ensuring the independence and impartiality of justice.

² Constitution of Georgia Article 41

1. Every citizen of Georgia shall have the right, in accordance with the procedure prescribed by the law, to familiarize with the information available on him/her at the public agencies, as well as with the official documents, unless they contain public, professional or trade secret.
2. Information in the official records relating to the health of an individual, his/her finances or other private issues shall not be accessible without the consent of the individual in question, except in the cases defined by the law, when it is necessary for ensuring of state security or public safety, protection of the health, rights and freedoms of others.

Issues of freedom of information in Georgia are detailed in the “Guide to the Freedom of Information” issued by IDFI in 2012, available in the “Research” section of the Project www.opendata.ge.

III N(N)LP – Activities of IDFI in the Framework of Project

1. Public Information Request

One component of the Project carried out by the Institute was requesting public information from public institutions. Legal basis for requests is guaranteed under part 1 of Article 37 of the GACG, according to which **any person may request public information**, i.e. any natural and/or legal person. For this purpose, a written application is submitted to the public institutions, provided for by part 2 of the same Article.³ It should be noted that the sample form of the application is not prescribed by the legislation, although, Article 78 of GACG states the contents of the application in case of applying to the administrative authority.⁴ Within the framework of the project, the Institute applied to public institutions with the application made in compliance with the noted legislative norms.

In relation with the process of requesting information from public institutions by the Institute, it should also be mentioned the option of choosing the form of receipt of public information, defined by part 1 of Article 37 of GACG. IDFI requested information be supplied as either a hardcopy or an electronic document. By specifying alternatives for the form, an opportunity to simplify and accelerate the process of requesting public information was provided, though, in certain cases, public institutions completely neglected the above legislative norm – the agencies offered the Institute the form of receiving the specified public information under imperative rule.

³ Article 37 of GACG

1. Everyone may request public information irrespective of its physical form and storage condition, and choose the form of receiving of the public information, where it is available in different ways, as well as familiarize with the information in original copy. Where there's a danger of damaging the original, a public agency shall be obliged to provide access to the original under supervision or ensure the duly certified copy.
2. To receive the public information the person shall submit a written application. It shall not be obligatory to indicate in an application the reason or purpose of claiming the public information. Where the application claiming other persons trade secret is submitted, the applicant, in addition to the cases provided for by the law, shall submit consent of the relevant person duly certified by the notary or an administrative authority.. (25.05.2012. N6327)

⁴ Article 78 of GACG

1. An application shall be writing and include the following information:
 - a) the name of an administrative authority to whom the applicant has applied;
 - b) the identity and address of the applicant;
 - c) the claim;
 - d) date of application submission and signature of the applicant;
 - e) the list of documents, if any.
2. The application shall contain all the documents submission of which is required by the law from the applicant.
3. The applicant shall be entitled to submit to the respective administrative authority all the other document, that may serve as grounds to issue the individual administrative legal act claimed by the applicant. (24.06.2005.N1801)

Under the legislation of EU,⁵ the Agencies shall have the opportunity to indicate the way of obtaining the desirable document to an applicant, if the document has been issued and easily accessible for them but, **the legislation of Georgia gives the unambiguous prerogative of choosing the form of information receipt (where it is available in different forms) to the applicant.**

For example, in reply to the request supplying biographical data of officials, the Ministry of Finances of Georgia referred the Institute to the official web-site of the Ministry of Finances.⁶ A similar response was received from the Ministry of Defense of Georgia.⁷ The Office of the State Minister for Employment, while abstaining from providing the list of social and cultural events carried out in 2012, informed the Institute that the requested information was uploaded to its official web-site.⁸ Avoidance of supplying the document from a number of agencies was performed not only by redirection to its web-sites, but by also referring to other electronic resources. For example, in response to request of information on procurements, the Assembly of the Gori Municipality redirected the Institute to the web-site of the Agency of Competition and State Procurements,⁹ and the City Hall of Tbilisi recommended the Institute to see the Statements on 2010-2011 Budget and Execution on the official web-site of the City Hall.¹⁰

With the purpose of easing the process of claiming the public information for the interested persons, the Institute has developed a downloadable **sample of the public information request**, accessible on the following link of the Project web-site:

http://www.opendata.ge/#!lang/ka/cat/how_to_ask_for_public_information

It should be noted that such answers cannot be considered as complete; moreover, they cannot even be considered as providing public information. Under GACG, any person shall have the opportunity to choose the kind and form for receiving public information, at the same time, if the person requesting information has no access to the Internet, his/her right to receive the public information is violated.

In spite of the versatile prima facie legal right, receiving public information shall not be considered an absolute right and it may be restricted by various means. Limits of restriction are defined by the Constitution of Georgia,¹¹ General Administrative Code of Georgia¹², Law of Georgia “On State Secret” and Law of Georgia “On Protection of Personal Data”.

⁵ The Regulation (EC) 1049/2001, Article 10 concerning access to the public documents of the European Parliament, European Council and European Commission.

⁶ Redirected to the web-site: www.mof.ge

⁷ Redirected to the web-site: www.mod.gov.ge

⁸ Redirected to the web-site: www.employment.gov.ge

⁹ Redirected to the web-site: www.tenders.procurement.gov.ge

¹⁰ Redirection was performed to the web-site: www.tbilisi.gov.ge

¹¹ See the footnote №2, Constitution of Georgia Article 41.

Right to receive public information may be restricted legally, which means that the Georgian legislation does not ensure the opportunity to familiarize with and receive the information containing **secret information, personal data or trade secret** available in an administrative authority, or copies thereof.

2. Requested Public Information

In the framework of the project, the Institute requested from the public institutions information not expected to contain any secret information or closed personal data. At the same time, the Institute intended to employ the right granted under Article 37 of GACG to claim any public information in spite of its physical form and condition of storage.

Unfortunately, as in the previous years, the Institute still had to face two main problematic interpretations connected with the process of receiving-requesting public information in Georgia; erroneous interpretation of terms, restricted information and public information.

2.1 Restricted Information

Under the legislation in force, certain types of public information are restricted, i.e. right to access the information does not apply.¹³ Five types of such information can be emphasized:

- 1) **State Secret** is governed by the Law of Georgia “On State Secret”;
- 2) **Personal data** is governed by the Law of Georgia “On Protection of Personal Data”;
- 3) **Commercial secret** is governed by Article 27² of GACG;
- 4) **Professional secret** is governed by Article 27³ of GACG and the Law of Georgia “On the Freedom of Speech and Expression”;
- 5) **Data protected under executive privilege** is governed by Article 29 of GACG.

Taking into account the condition during the period of its existence, the Institute has not received a rejection to release public information from the public institution on account of protecting the requested information’s professional secret¹⁴ or being protected by executive privilege,¹⁵ the main

¹² Articles 27¹, 27², 27³, 27⁴, 28, 42 of GACG.

¹³ *Jorbenadze S.*, Freedom of Information - Guide, Tbilisi, Institute for Development of Freedom of Information, first edition, 2012, 23. Accessible: <http://www.opendata.ge/userfiles/files/FoI%20guidebook%20IDFI.pdf>

¹⁴ **Article 1 of the Law of Georgia “On Freedom and Expression”**

n) Professional secrets – confession secret, disclosed information to Member of Parliament, a doctor, a journalist, human rights advocate, defender in terms of their professional activities as well as the information of the professional value of which the person became aware of provided keeping confidentiality, in connection with professional duties

attention will be focused on the remaining types of restricted information, as well as aspects where the Institute considers the rejection by a public institution to release specific information requested in the framework of the Project as groundless.

While refusing to release public information, public institutions often suffice by pointing to the reasons of rejection. This shall be considered as an **infringement of the obligation vested to them by the General Administrative Code of Georgia, as the public institution is obliged to explain in writing, to the person his/her rights and rule of appeal, as well as indicate the structural subdivision or public institution it has been consulting with at making the decision rejecting to issue the public information, within three days from making the decision.**

In regard to state secret information, the response of the Ministry of Defense of Georgia to the request of the Institute concerning the list of vehicles purchased in 2012 (indicating model, purchase price and model year of the vehicles) should be noted. Even though the Ministry referred to the by-law,¹⁶ on the basis of which the vehicles were purchased, it did not specify an article which the release of claimed information was restricted. At the same time, the Ministry did not provide the Institute with a written explanation of its rights and rule to appeal the rejection to release public information, which was its obligation according to Article 41 of GACG. Neither the Special Service of State Protection made clear for the Institute its rights, when in response to the requested list of employees, the Institute was informed in general terms that according to Georgian legislation, such a list was classified as “Secret”; however, the public authority did not specify any legal act on the basis of which the classification of the information was made.

On December 28, 2011, the Law on Protection of Personal Data, maximally close to the European Union treatment for processing personal data, was adopted in Georgia. Whereas, on May 25, 2012 the relevant amendment was made in the Article 27¹ of GACG, specifying the concept of personal data in relation with the freedom of information, relations connected with its protection and processing, is governed by the Law of Georgia on Protection of Personal Data. The Law established a wide interpretation of personal data - any information relating to the identified or identifiable natural person.¹⁷ In addition, the term of data Processing was defined fully enclosing the release of public information.¹⁸

performance and disclosure of which could impair damage to a person’s professional reputation. Information that does not contain personal data, state or commercial secrets, as well as the information about an administrative body is not a professional secret. (25.05.2012 N 6328)

¹⁵ **Article 29 GACG**

Names of the public servants (with the exception of positions occupied by the public political figures) participating in the preparation of a decision by an official shall be protected from disclosure by means of executive privilege.

¹⁶ The reference was made to the Decree of the President of Georgia N42 of January 21, 1997 On Approval of Enacting the Regulations relating to the Law of Georgia “On State Secret”.

¹⁷ The Law of Georgia „On Protection of Personal Data” Article 2, paragraph a).

¹⁸ **The Law of Georgia “On Protection of Personal Data” Article 2.**

d) data processing – any operation performed upon data, whether or not by automatic means, such as collection, recording, photographing, audio or video recording, organization, storage, alteration, restoration, consultation, use or

In relation to public information openness, the grounds specified by legislation for processing personal data are also significant. Under Article 5 of the Law of Georgia “On Protection of Personal Data” data processing shall be permissible, if:

a) **The data subject has given his/her consent;**

b) **Processing of data is envisaged by the law;**

c) Processing of data is necessary for compliance with the obligations, compelled by the legislation, to which a data processor is subject;

d) Processing of data is necessary in order to protect the vital interests of a data subject;

e) Processing of data is necessary for the protection of legitimate interests of a data processor or a third party, except where such interests are overridden by the advanced interest of protecting the rights and freedoms of a data subject;

f) According to the law, data is publicly accessible or a data subject has made them publicly accessible;

g) Processing of data is necessary for protection of important public interest, in accordance with the law;

h) Processing of data is necessary for the consideration of an application of a data subject (for providing service to him/her).

As it was revealed, consent of data subject (a person whose data is being processed) represents only one of the legal grounds for data processing, including the releasing of public information by a public institution. If data processing about the person is provided for by the law (e.g. liability to disclose the personal data of an official, declaration by the official of his/her property status ¹⁹, etc. specified by Article 44 of GACG), then the mechanism of consent in regard to data processing is never applied.

The reservation of paragraph 2 Article 41 of the Constitution of Georgia should also be mentioned in the same context:

“The information existing in official papers pertaining to individual’s health, his/her finances or **other private** matters shall not be accessible to anyone without the consent of the individual in question except in the cases determined by law, when it is necessary for ensuring the state security or public safety, for the protection of health, rights and freedoms of others.”

disclosure by transmission, dissemination or otherwise making data available, alignment or combination, blocking, erasure or destruction;

¹⁹ The Law of Georgia “On the Conflict of Interest and Corruption in Public Service.”

The concept, “private matters,” shall also be taken into account covering information pertaining to an individual’s health and finances. A simple logic and knowledge of antonyms dictate that public information shall not belong to private matters, such as salary and bonuses received while performing of public duties, official visit expenses of the state servants, etc. The simple suggestion is supported by the relevant legal literature:

Paragraph 2 of Article 41 of the Constitution does not specify what one means under private matters. We can suppose the contents of “private matters” are defined by relationships pertaining to intimate spheres of a human being.²⁰

Within the framework of the project, IDFI requested to the **Investigation Service of Ministry of Finances** to supply public information on the amount of bonuses heads and their deputies received. The Service refused to release the public information on the grounds that the information pertaining to the amount of bonuses granted to managers and their deputies is identifiable information regarded as restricted personal data under Article 28 of GACG. According to the example, the Service neglected the existence of GACG Article 44 under which a public institution is obliged to disclose the personal data of officials. The judgment of the responsible persons of Service contradicts with the Law of Georgia “On Protection of Personal Data” in the part where it considers inadmissible processing/release in the form of public information of the data provided for by the Law (Article 44 of GACG).

The Institute has faced the case of direct neglect of Article 44 of GACG on the response received from the **Center of Development of Election Systems, Reforms and Education**, when the latter considered the biographic data of officials appointed after the Parliament Elections of 2012 to be the information containing personal data, which should not be disclosed.

A paradoxical precedent was created by the **Georgian National Energy and Water Supply Regulatory Commission**, when, on the basis of paragraph 2 Article 41 of the Constitution and Article 44 of GACG, they refused to disclose information on costs for official and work visits of the Commission Chairman abroad (who is a public official under current legislation) on the grounds of confidentiality specified by above articles. At the same time, it is logical that the Commission in its letter of rejection is unable to reason why the requested information is restricted and what does the term “confidential” mean. We may say that with such response, the Commission in fact points to the circumstance that a) it does not want to recognize its manager as a public official for the purposes of GACG, and b) official visit costs of its manager financed by the civil society is an issue of private financing. With the same logic and on the same grounds, in the same letter of rejection the Commission does not wish to disclose the information on amount of bonuses charged separately to the manager and his deputies (as well as officials).

²⁰ Levan Izoria, Konstantine Korkelia, Giorgi Khubua Comments on the Constitution of Georgia, Tbilisi 2005, p. 360.

When the public institution refuses to release any kind of information connected with exercise of authority of public officials, this shall be considered as an **infringement of the Constitution of Georgia** (information does not contain personal data), **the General Administrative Code of Georgia** (personal information of the public officials is open) **and Law on Personal Data Protection** (release of information is already considered in the law and does not need further consent of the person)

The practice of incorrectly interpreting the main element of personal data protection- the concept of personal data,²¹ on part of public institutions should also be underlined. In this respect **the Georgian National Energy and Water Supply Regulatory Commission** stands out again. The commission has refused to provide information to the Institute on the total amount spent on bonuses of its employees, on the grounds that public institutions are not obliged to disclose personal data without consent of the individual or reasoned judgment of the court in cases stipulated by law.²² The question is how can the total amount of the unfixed sum related to the group of individuals directly or indirectly identify any individual member of the group.

In one case, the Institute received refusal to release information for reasons of commercial secret. Namely, IDFI has addressed the City Hall of Tbilisi, with the request to release copies of all the agreements made between the City Hall and “CT Park”, LLC, as of January 2013. The person responsible for release of public information of the City Hall sent the request to the Legal Entity governed by the Public Law “Property Management Agency” which, for further consideration of the issue asked to submit consent of the company, based on part one of Article 37¹ of the GACG. Firstly, it should be mentioned that the request provided with reference to this Article is deprived of any legal grounds, because it regulates the mechanism of exchanging between public institutions information containing commercial secret. Besides, obligation to submit written consent is vested on a public institution claiming the information.²³ In relation with the information containing commercial secret, reservation of part 2 Article 37 of GACG should be noted. According to this reservation, while sending the request to obtain other person’s commercial secret, the applicant, with the exception of cases stipulated by the Law, shall submit consent of the relevant person certified

²¹personal data mean any information relating to an identified or identifiable natural person. An identifiable person is the one who may be identified directly or indirectly, in particular by reference to an identification number or to the factors specific to his/her physical, physiological, mental, economic, cultural or social identity. Law of Georgia “On Protection of Personal Data”, Article 2, paragraph a).

²²Article 44 of GACG.

²³ **Article 37¹ of GACG**

1. A public agency shall be obliged on the basis of duly submitted written claim, issue for the other public agency in the form of a reference, stored in the Agency personal data or information considered as commercial secret. Necessary for the public agency to resolve the issue, if it presents the written consent of the person, to the personal data or commercial secret of whom pertains the corresponding information.
2. The written consent referred to in the first part of this Article shall be considered granted, if the person in a statement or other written document expresses his/her consent on that the public agency, from which he/she is requesting resolution of the issue, itself claims his/her personal data or an information relating to the commercial secret from the relevant public agency.
3. The authorities issuing or claiming personal data or information regarded as a commercial secret of the other person shall be obliged to protect the data or information as secret.

under notary rule or by an administrative authority. Even though the Law obliges the applicant to obtain and submit the consent, it is interesting what is meant under the cases stipulated by law. Information is regarded as a commercial secret when it contains data available on the legal entities governed by the public law and other entrepreneurs,²⁴ or the public institution keeps the information significant for the subjects carrying out private and legal relations, or for their competitive ability. Under part 2 of Article 27² of GACG, information on administrative authority shall not be regarded as a commercial secret. Thus, when the information of administrative authority carries commercial character, it cannot be regarded as containing secret, respectively referring to secrecy, mechanisms of acquisition, and serving consent when procedure of making secret, etc. are meaningless.

In the opinion of the Institute, the example of refusal from the Legal Entity governed by the Public Law “Agency of Property Management” can be regarded as a violation of the right of Institute to receive information. In particular: Article 2 paragraph a) interprets the term “administrative authority”. Together with the state and local self-government agencies and legal entities governed by the public law, the administrative authority shall be **any other person that exercises public authorities under the legislation of Georgia**. Under part 8 of Article 125 of the Administrative Offences Code of Georgia, non-compliance of the requirement of prohibitory signs “No Stopping” and “No Parking”, as well as violation of the requirements provided for other rules of stopping and parking will result in penalty in the amount of 10GEL, and under Article 125² of the same Code, parking of motor vehicles within the territory of capital by the self-governing entity has also established a fee. Stopping a motor vehicle without payment of the fee or with violation of parking rules shall result in sanctions. The legislation grants the right to transfer the motor vehicle to the special protected parking place, as well as blocking its wheels, to the relevant body of a local self-government agency or to a person authorized by the agency. The Mayor of Tbilisi with his order²⁵ grants the authority to draw up the check (report) for the offences stipulated under above articles to “CT Park”, LLC. The Institute considers that this is sufficient for the “CT Park”, LLC, from the functional point of view, to represent an administrative authority meant in “any other person”, to whom enforcement public and legal powers was delegated. **Resulting from the mentioned, information claimed by the Institute was information on administrative authority, which under the law may not be regarded as a commercial secret**. In addition, if we admit theoretically that “CT Park”, LLC is not an administrative authority, rejection of the Agency of Property Management violates the law all the same, as the “CT Park”, LLC is a sole player in the market, and correspondingly has no competitor,²⁶ and the term “Commercial secret” interpreted by part one of Article 272 of GACG is meant for information, disclosure of which,

²⁴ *Jorbenadze S.*, Freedom of Information - Guide, Tbilisi, Institute for Development of Freedom of Information, first edition, 2012, 29. Available: <http://www.opendata.ge/userfiles/files/FoI%20guidebook%20IDFI.pdf>

²⁵ February 11, 2009 corresponding Order of the Tbilisi Mayor N17 „On Approval of the Form of Penalty Check, Rule of its Completion, Entering Records and Accounting-Reporting in the Cases Provided for by Part 8 Article 125² of the Code of Administrative Violations of Georgia.“

²⁶ From the official web-site of “CT Park”, LLC it can be learned that “the Company won the auction announced by the Government of Tbilisi in 2007. After winning the auction to the “CT Park” was granted an exclusive right to manage the parking during 15 years.“ Available: <http://ct-park.ge/about>

may impair the competitive ability of a person²⁷ - an element missing in the example of “CT Park”, LLC. Groundlessness of refusal may be discussed from the different angle, if we suppose that “CT Park”, LLC is not an administrative authority, the claimed information referred to the copies of agreements concluded between Tbilisi City Hall and the Company, which can be regarded as information requested on administrative authority, shall not be a commercial secret under the law.²⁸

Even when the refusal of public institutions to release information containing state or commercial secret, as well as restricted personal data is valid, it is required to inform the applicant of the specific legal norms, on the basis of which his/her request was refused, also, any additional information that will enable the applicant to validate the refusal or appeal against. For example, in case of state secret, information such as degree and classification of the state secret, as well as reference to the official who classified the information as a state secret; in relation to the personal data – refer to the fact that after receiving the relevant information, the subject of specific data has not given consent to the release of data, and regards the commercial secret as essential or any other kind of information, confirming that the public institution, under Article 27³ of GACG, classifies the claimed information as a commercial secret on the specific date.²⁹

When a private company is **funded from the budget**, it is obliged to release any information connected with this funding³⁰ and if the private company is carrying out **powers under the public law**, information about the company shall **not be regarded as a commercial secret**.³¹

Lastly, let us consider additionally two types of information that may be perceived as restricted. The first is reservation based on the principal of non-intervention in the activities of the executive power, according to which GACG and hence, request to public information, do not apply to those activities of executive agencies connected with the criminal prosecution of a person due to the offence and

²⁷ Article 27² of GACG

1. Commercial secret – information on plan, formula, process, facility having commercial value or any other information used for production, manufacturing, processing of goods or rendering services and/or is considered novel or as a significant result of technical creativity, as well as other information disclosure of which may impair the competitive ability of a person.

²⁸ See *Jorbenadze S.*, Freedom of Information – Guide, Institute for Development of Freedom of Information, first edition, 2012, 30 – „Information available on administrative authority may not be considered as containing secret, resulting from the mentioned, where a public agency refuses to impart the public information on such basis, the answer will be contradicting with the legislation of Georgia and the person claiming the public information shall enjoy the legal right of appealing against. *For example: the Agreement concluded between the City Hall and one of LLC-ies on landscape gardening of the city cannot be considered as commercial secret*“. Available: <http://www.opendata.ge/userfiles/files/FoI%20guidebook%20IDFI.pdf>

²⁹ [. . .] At submission of information a person shall be obliged to indicate that the information is his/her commercial secret. The public agency shall be obliged within 10 days term consider as secret the information provided for by the first part of the Article, with the exception cases, when openness of information is stipulated by the law [. . .].

³⁰ Paragraph a) Article 27 of GACG.

³¹ Paragraph a) Article 2 and part 2 of Article 27² of GACG.

criminal proceedings with operative and investigative actions.³² Despite the rather general character of the norm, the Institute thinks that in a number of cases we have had to deal with the erroneous interpretation of its purposes. The example of **Investigation Service of the Ministry of Finances of Georgia** can be considered. Already within the framework of the previous project, the Service considered the list of real estate requested by the Institute as an issue connected with operative and investigative activities, refusing to release the information³³. During the current project, the Institute addressed the same Service to release the information on quantity of solicitations to the Tbilisi City Court “for concealed break-in and recording of telephone conversations” from November 1, 2012, quantity of up-holdings by the court of such solicitations, as well as quantity of legal and unlawful recognition of such operative and investigative activities of the type implemented without authorization of a judge. The Service has still refused to release information, but this time considered the issue relating not only to the operative and investigation activities, but regarded the information connected with the criminal prosecution of a person due to the offence and criminal proceedings.

It should be noted that the essence of the issue lies in the reservation of legislative norm that enables the operative and investigation bodies, courts and other agencies to reject the relevant requests in simple manner. It is incontestable that there exists a high interest of the public to such fields as protection of human rights and freedoms from offensive and other illegal impairment, statistics of offences in the country, *etc.* The object of the mentioned interest is recognized by the state itself, which is clearly expressed, for example, by statistics of offences developed and made public by the Ministry of Internal Affairs³⁴, which if widely considered, is connected with criminal proceedings. However, the mentioned interest should not exclude the possibility of releasing such public information if requested. The Institute suggests that release of the information which may in any aspect impede or create any threat to the investigation process, relevant arrangements or officials, identification of crime or unlawful actions, prevention or avoidance thereof shall be inadmissible. Probability of any such threat caused by releasing the public information, without any doubt, shall be interpreted in favor of such authority.

One more type of information that can be regarded as restricted is the so-called intradepartmental documentation. Article 99 of GACG specifies the right to familiarize with the materials of administrative proceedings. According to part one of this Article, the concerned party participating in administrative proceedings shall enjoy the right to familiarize with the materials of administrative proceedings, **with the exception of documents that represent documentation of intradepartmental character connected with preparation of an individual administrative-legal act.** In the scope of the Project, the Institute supplied a citizen with concrete intradepartmental documentation with the purpose of clarifying the legal aspect of his dismissal from one of the public institutions, which he

³² Paragraphs “a” and “b” of part 4 Article 3 of GACG. In addition on non-intervention in activities of executive power see *Jorbenadze S.*, Freedom of Information - Guide, Tbilisi, Institute for Development of Freedom of Information, first edition, 2012, 34. Available:

<http://www.opendata.ge/userfiles/files/FoI%20guidebook%20IDFI.pdf>

³³ Ibid p. 35.

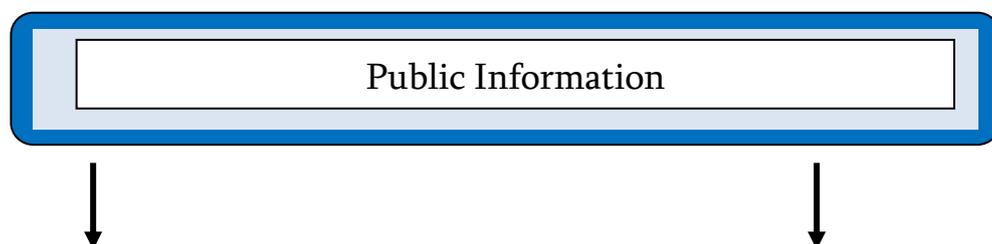
³⁴ Available: <http://police.ge/index.php?m=199>

needed to familiarize himself with in order to develop an individual administrative-legal act. To acquire the document, the Institute advised the citizen to apply to the court with the claim of action implementation and support the claim on part 2 of Article 99 of GACG – the interest to familiarize with the document exceeds the interest of protection of secret, in the cases stipulated by the law by the court decision to the party concerned with the purpose of familiarization shall be submitted the case materials containing personal data, state or commercial secret. In other cases, availability of such documentation of similar character (materials of administrative proceedings) shall be restricted by the legislation of Georgia.

2.2 Erroneous Interpretation of Public Information

In the process of requesting the public information within the framework of the project, the Institute had to deal with a number of erroneous interpretations of public information terms by public institutions.

According to the subparagraph “1” of the first part of Article 2 of GACG, the public information is an official document (including a drawing, model, plan, scheme, photography, electronic information, video and audio records), i.e. kept by the public institution, as well as information received, processed, created or sent by the public institution or an employee in connection with the duties, as well as information published proactively by the public institution; (25.05.2012. N6327 shall enter into force from September 1, 2013).



Official Document

- Any information (including information depicted on paper)
- Drawing
- Model
- Plan
- Scheme
- Photograph
- Electronic information
- Video record
- Audio record

1) Stored at the public institution

2) Received, processed, created or sent by the public institution or an employee in the course of his/her duty of service

Information Published Proactively

Information published by the
Public Agency on an electronic
resource (web-site)

From September 1, 2013

public information in Public Registry. It should also be noted that within the framework of the project implemented in the previous years the Institute has addressed public institutions with request of copies of Public Registries. As we learn from analysis of the received replies, there is a general trend that the public institutions do not keep public registers at all, which can be connected with a practical problem – the public registry should be combine references to all public information requiring a large resource due to the multitude and frequency of receiving, creation, Processing or issuance of information.

If a public institution refuses to release public information claiming that it was not registered in the Public Registry, it may be simply stating that it has not recorded the information, and not the fact that information is not kept therein. Unfortunately, the current legislation does not provide for the effective control for establishing the fact of existence/non-existence of the information at the public institution, which makes the information recording mechanism in the Public Registry necessary, yet formal.

Availability of information in public institutions may be related to the notion of public database provided for by subparagraph “g” of Article 27 of GACG representing data collected, processed and stored by a public institution or its public servant on a systematic basis. It is remarkable that under Article 42 of GACG the name and place of the database in disposal of a public institution, as well as identity of a responsible person and business address shall not be classified as secret. In any case, content, sources of data stored in the database, category of persons which the processed information is being collected and kept, are open.³⁸ One part from the Report on Release of Public Information, the so-called “10 December Report,” represents information on such bases.³⁹ In the opinion of the Institute, relation of the public registry to the public database is very significant when the registry may be perceived as a catalogue for recording information stored in the database. Nevertheless, it should be mentioned that in relation with the issue of availability/absence of public information, we face a problem when an agency neither creates the database, nor recognizes the data as entered and/or keeps the public registry in a proper manner.

The first part of Article 37 of GACG stipulates that any person shall have the right to request public information despite its physical form and condition of storage. An audio record may exist on a magnetic tape, as well as in the form of an electronic file. When the agency has one and the same record in both forms, the interested person shall enjoy the right to choose the form of its acquisition.⁴⁰ This has a practical significance for an applicant, if he/she makes a copy of the information on his/her audiocassette, he/she shall pay a certain fee to the budget as a due for public information copy, and if he/she receives the information by e-mail, he/she will be released of paying

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³⁸ Subparagraph “l” of Article 42 GACG.

³⁹ Subparagrapg “c” of Article 49 GACG.

⁴⁰ Part one of Article 37 GACG.

the fee.⁴¹ The Institute considers violation of the right in this context, when the public institution redirects an applicant to see the information on a web-site and neglects his/her will to receive the available information in another form (e.g. copy, electronic file, etc.).⁴²

One type of this information – electronic information, should also be singled out. In 2012 Article 35¹ was added to the GACG, according to which the administrative authorities were entitled to receive and release any information and/or document by integrated automatic means of workflow management, where the party concerned has not selected any other form of information receipt. An administrative authority has acquired a possibility to store and release any document in the form of an electronic copy created and kept therewith. The electronic copy of a document and its printout were granted the same legal force as an original of the document. Part 3 of Article 37 of GACG is closely connected with the above Article,⁴³ which shall enter into force September 1, 2013. Under this amendment, public information may be requested in electronic form, by electronic facilities of the public institution.

During implementation of the Project, the Institute came across an interesting tendency in related with electronic public information. It should be noted that public institutions frequently use e-mail for supplying requested information in the form of an electronic copy. As to claiming the electronic information by means of electronic capabilities of public institutions, in spite of the fact that the obligation to ensure the applicant with the said capability shall accrue from September 2013, a number of agencies are already using such capabilities within the scope of powers referred to in Article 35¹ of GACG. For example, the legal entity governed by the public law – **Revenue Service**, has means of requesting public information by its official web-site and the relevant form uploading application,⁴⁴ except, the contents of requesting the public information is limited to one field: the gambling industry. About a year ago, **the Supreme Council of Justice of Georgia**, with the purpose of claiming public information from the courts of Georgia, created an accessible Internet program for interested parties,⁴⁵ for which it is possible to request from the Council, courts of appeal, regional/city public information on court practice and statistics in the form of a scanned electronic application. In the framework of this program, the Institute applied to **city courts of Tbilisi, Kutaisi and Batumi** claiming specific public information. Unfortunately, only the Batumi city court has responded. Inaction of the remaining two courts could be explained not by failure of the program, but by neglecting to respond to the request on their part. While requesting information by electronic facilities, the Institute has encountered a very interesting precedent; during the process of claiming information on specific auction from the **LEPL “Property Management Agency” of the Tbilisi City Hall** – the public institution rejected to accept the written application and requested its electronic

⁴¹ Law of Georgia “On Fees for Taking Copies of Public Information”, Article. 6, subparagraph „f“ and Article 7, subparagraph „b“.

⁴² See page 9 of the same report.

⁴³ The Institute took active part in the process of development of all the amendments to GACG relating to the transparency of administrative authorities web-sites and which will be enacted from September 1, 2013.

⁴⁴ Available: http://rs.ge/Default.aspx?sec_id=4507&lang=1&appmaincatid=9&appcatid=51

⁴⁵ Available: <http://service.court.ge/public/>

form, thus actually neglecting the form of application submission prescribed by the GACG.⁴⁶ At the same time, after the Institute sent an application in electronic form, it received a refusal in the same electronic form. **We may ascertain, we have faced an illegal restriction by the Property Management Agency to the process of claiming-releasing information by own electronic resource,⁴⁷ violating the right to select the form of request of public information as well.**

The erroneous interpretation of the public information concept is frequently connected with the norm referred to in Article 40 of GACG, under which the public institution shall be obliged to impart public information no later than 10 days, where the response to the request of public information requires obtaining and processing separate, unconnected documents of significant volume. The need for a 10 day period by the public institution should be immediately informed to the person requesting public information. The following issues may be important and interesting for the applicant; what does the processing of documents mean in general and what does processing mean for the obligation of a public institution to create public information? The approach is equivocal – according to the suggestion of public institutions and judges, collection of certain documents should be conducted by their mechanical gathering (collecting together, classification, systematization, filing) and not by logical synthesis of data (creation of a new document).⁴⁸ In addition, there exists an opinion supported by Article 10 of the Law of Georgia “On Unified Public Registry of Information” under which the object of Registry shall be entitled to their own database, registry, information system and in the process of rendering services, collect (process) only those data that are necessary for performing the functions provided by the corresponding normative act, or, only when processing of such data is directly stipulated by normative act.⁴⁹ It is remarkable that subparagraph “c” Article 2 of the same law interprets the term “data Processing” as “collecting, recording, organization, changing, **searching, removing, using, transferring, combining**, closing, deleting or destructing of data, or **any totality of these actions**, despite carrying out of action and means of usage”. According to Article 10, the authors of this consideration neglect the existence of two important possibilities: 1) Processing of data in the database may mean their release in the form of public information; 2) there is no public institution, and the functions of which do not comprise the imparting of public information, acquisition, and processing of data by public institutions directly stipulated by part one of Article 40 of GACG. If we limit the action of Article 10 only to collection of data, then the logic of erroneous consideration shall be devoid of sense, as we have to deal not with the consideration that certain data was absent originally, but the data should not have been processed where such data is not directly included in the functions of the agency specified in details.

In the opinion of the Institute, processing of document means processing data represented therein. Otherwise, the obligation of public institutions will suffice only with mechanical copying. Let us discuss a hypothetical example of this approach – there are minutes of all the government sessions

⁴⁶ Article 37, part 2 of GACG.

⁴⁷ <http://auction.tbilisi.gov.ge/>

⁴⁸ *Jorbenadze S.*, Freedom of Information - Guide, Tbilisi, Institute for Development of Freedom of Information, first edition, 2012, pages 48-49. Available: <http://www.opendata.ge/userfiles/files/FoI%20guidebook%20IDFI.pdf>

⁴⁹ see. <http://www.opendata.ge/userfiles/files/ganchinebaaaa.pdf>

held during X period stored in the public institution. An applicant addresses the public institution with the request of information on how many sessions the Minister of Finances was absent during X period. The public institution refuses to release the information, as though there is a possibility to process such data, but this means creating a new document that in its opinion is out of its competence. Besides, it does not even supply copies of mentioned minutes so that the applicant is unable to extract interesting information for him/her. This very approach comes in conflict with transparency and accountability, and with the principle of ensuring public availability of information.

It is apparent that taking an additional 10 days for supplying public information referred to in Article 40 of GACG is conditioned by two stages: acquiring and processing of information. **The Institute does not agree with the consideration that processing information is the same as creating a new document.** The concept of creating a new document is in fact equal to creating non-existing public information, for example – requesting translation of a document from a public institution, making performance of research on the basis of existing data, requesting to interview an official, etc. In this case, the stage of seeking the information shall be absent and, at the same time, one may have to deal with the intellectual-creative activity. On the contrary to the mentioned, extraction, separation, or summation in the original form of data/records from a document obtainable at a public institution does not mean creating new public information, and requires a reasonable term - 10 days (not including Saturdays-Sundays and holidays⁵⁰). This logic is confirmed with 13 different information requested by the Institute within the framework of the project from 175 public institutions about gender of employees, most of which were replied by the authorities. The practice of releasing public information on the 10th and 11th requests should be noted – *average age of employees according to gender and quantity of employees that are parents of 3 and more children, according to gender (quantity of men and women)*. It is less probable that this information was readily available in the public institutions' database; thus, the concrete information was obtained and further processed for the purposes of responding.

In the above mentioned view, it is interesting to consider the reply from the Batumi city court to the Institute requesting the rendering of information on concealed eavesdropping of telephone conversations and facts of recognizing lawful/unlawful records, as well as quantity of permits issued for such operative-investigation arrangements. The court declared that it does not have the requested information, by reason that in order to obtain the requested information, systematization and archival processing of cases was necessary, which required a lot of time. At the same time, processing of case files of the requested type and mobilization of administrative resources was not the barest necessity for activities of the court, as the court was busy with enforcing the powers granted under the legislation. **With this response, the court not only rejected the possibility of processing the information, but even excluded the probability of obtaining the requested information preceding**

⁵⁰ Article 15 of GACG:

At calculating the terms referred to in the Code the holidays and days off stipulated in labor legislation of Georgia shall not be taken into account.

the stage of information processing, which cannot be considered as reasonable – it is less probable that legal acts on the quantity of which the information was claimed were not kept at the court and/or entered in the register, besides, the obligation to release public information may not be perceived beyond the functions of the court.⁵¹

The Kutaisi city court has left similar requests unanswered, as a result of which, the Institute brought an action at the same court. The appeal was not upheld.⁵² In the opinion of the court, only the information shall be regarded as public information subject to release, which is obligatorily entered in the Public Register of public information according to the Article 35 of GACG, and release of information shall be reasonable. The quantity of requested information shall be in proportion with the human resources of an administrative authority. The court considered the appeal of the Institute as unreasonable, satisfying the claim that searching, processing, accounting, systemizing, as well as listing the cases available in the court archive would be necessary. Therein discussed was the impossibility of carrying out the volume work and necessity of establishing a working group impeding the court functionality and causing violation of legal rights of citizen applying to the court system. In the opinion of the Institute, exactly such consideration is an erroneous interpretation of the notion of public information.

⁵¹ **Law of Georgia „On Integrated Public Register of Information.“ Article 2, subparagraph „c“.**

Processing of data – collection, recording, organization, storage, seeing, extraction, usage, transfer, combination, closure, deletion or destruction of data or any combination of these actions, despite of carrying out the action or used means.

⁵²see Decision 287 of March 13, 2013 by the following link [http://www.opendata.ge/userfiles/files/gadawvyvetileba\(1\).pdf](http://www.opendata.ge/userfiles/files/gadawvyvetileba(1).pdf)

Resulting from the range of problems related to the notion of public information, the Institute considers that:

- ✓ Any public information available in the public agencies must be released, if requested, where it does not contain the restricted information;
- ✓ Non-existence of the public database or unaccounted information in the Public Registry must not prevent the process of releasing such information, if any;
- ✓ The opportunity to process public information is provided by the Law and it may be understood as not only collecting documents, but extraction, separation and/or summing up of the data/records from documents;
- ✓ Even where the public agency assumes that processing of the claimed information is not its obligation, it should find all the documents, that may refer to the request and supply its copies to an applicant, together with the reasoned refusal on processing;
- ✓ It would be desirable to make the interpretation of public information more concrete in the GACG - “An official document” (including part of the document, drawing, model, plan, scheme, photo, electronic information, video- and audio records);
- ✓ The Public Registry must record a reference to the public information within 2 days from its processing (extracting, separation, summing up), with the indication of the public information processing data, as well as the natural person or legal entity to which the information is being sent;
- ✓ Failure of a person responsible for release of public information to perform the large volume of works, proportion of the claimed information with human resources of the administrative authority and/or reasonability of imparting the information shall not constitute the legal grounds for refusal to issue the public information. Indeed, the mentioned shall grant under the administrative law the relevant functions, and not the functions of copying machine operator, to the public official responsible for ensuring the availability of public information.

2.3 Questions Sent to the Public Institutions

Within the scope of the project, the Institute addressed public institutions with standard requests (requests for public information). At the same time, a number of public institutions were sent requests concerning specific issues. For more clarity see the sent questions.

Standard Requests

1. Current **manning table** indicating the **official salary for each position**;
2. **Information on bonuses (gross) granted to the officials (separately) and employees** of public institution by months;
3. **Information on the amount of premiums accrued to the salaries of employees** (by indication of name and surname separately);
4. **Report on Budget Execution** (Balance);
5. **Cost estimation of the amounts allocated from the state budget “Other expenses”**;
6. **Cost estimation of the amounts allocated from the Reserve Fund**;
7. **Report on Public Information** submitted to the President and Parliament of Georgia by the public institutions under Article 49 of the General Administrative Code of Georgia (**the so called “10 December Report”**);
8. **List of vehicles purchased** by the public institution, with indication of brand, purchase price and year of issue of the car;
9. **Actual expenses on fuel** incurred by the public institution;
10. **Information on the quantity of employees dismissed from the public institution system on the basis of applications in person**;
11. **Information on the quantity of employees dismissed by the management from the public institution system**;
12. **Information on subsistence money** incurred during the official and working visits in the country and abroad (separately) **of the public institution manager**;
13. **Copies of legal acts (orders) issued by manager of public institutions**;
14. List and cost estimate of **social and cultural events** carried out by the public institution;
15. **List of the positions** available in the public institutions **for which vacancies were announced**;

16. **List of the positions** available in the public institutions **on which the persons were appointed without announcing the vacancies;**
17. **List of the positions** available in the public institutions **on which acting persons were appointed on temporal basis;**
18. Biographic data (CV) of the official appointed in the administration of public institution (minister, first and other deputy ministers, heads and deputy heads of departments);
19. Internal Audit Report;
20. **Exhaustive list of state purchases** (announced tenders, competitions, etc.) and amount of money spent for each.

In the Project framework, the Institute also applied to 175 public institutions with the request to supply information in section of gender of employed staff. The application contained the following questions:

Questions, Related to the Gender Balance

1. **Number of employees in the context of gender** (number of men and women);
2. **Number of employed in leading positions** (head of department and above) **in the context of gender** (number of men and women);
3. **Number of employees dismissed by the management in the context of gender** (number of men and women);
4. **Number of employees dismissed by the management from the leading positions** (head of department and above) **in the context of gender** (number of men and women);
5. **Number of employees dismissed based on own application in the context of gender** (number of men and women);
6. **Number of employees dismissed from leading positions** (head of department and above) **in the context of gender based on their own application** (number of men and women);
7. **How many employees used unpaid vacation in the context of gender** (number of men and women);
8. **How many employees used paid maternity leave in the context of gender** (number of men and women);
9. **How many employees used unpaid maternity leave in the context of gender** (number of men and women);

10. **Average age of employees in the context of gender;**
11. **Number of parents with 3 or more children among employees in the context of gender** (number of men and women);
12. **Number of administrative complaints submitted by the discharged / dismissed employees in 2008-2013** (with indication of number of men and women);
13. **Number of decisions in their favor on the administrative complaints submitted by the discharged / dismissed employees (2008-2013)** (with indication of number of men and women)

During the Project implementation period, taking into account high public interest, various public institutions were also sent additional requests on the specific issues that were directly connected with their field of activity. For example, here are some of them:

Different questions

- Copy of the approved project of reconstruction of Bagrati Cathedral;
- Information about the number of persons detained by the Office of the Main Prosecutor of Georgia on charges of bribing voters;
- Information on the total amount of fines imposed by the Patrol Department for administrative misdemeanors (GEL);
- Information about the funds provided by the state budget allocated for the 2012 Summer Olympics in London for the gold, silver and bronze medal winner athletes, members of the Olympic team of Georgia;
- Copy of the construction plan or the city of Lazika or the project strategic development document;
- Information about the total amount of funds allocated for the construction of the Parliament of Georgia in Kutaisi and copies of relevant legal acts;
- Copies of all agreements concluded between Tbilisi City Hall and the CT Park Company.
- Information about the amount of money transferred to the account of the Tbilservice Group LLC cleaning fee, copies of agreements concluded between Tbilisi City Hall and Tbilservice Group LLC, Tbilservice Group LLC statute and copies of the Tbilservice Group LLC reports on the services provided to Tbilisi City Hall (reports);
- Information on the number of prisoners from January 1, 2008 until today who were transferred from Gldani #8 Facility to the Medical Facility #18 for convicted and accused and number of prisoners dead at the Medical Facility #18 for convicted and accused;

- Full quarterly reports (with the relevant documentation attached) on the activities of the third channel (the First Caucasus Channel) submitted by the Key 1 LLC and TV Company PIC to the Public Broadcaster for the third channel (Caucasus) related to their activities on the spending of the money, the purchases etc.);
- Number of the Georgian military servicemen wounded during participation in the peacekeeping mission in Afghanistan;
- Comprehensive list of the state property disposed on the decision of the President of Georgia on the basis of direct purchase, for 1 (one) GEL, and relevant legal acts (indicating the persons, who purchased agricultural lands for 1 (one) GEL);
- Information about number of motions to the City Courts on the “secret listening and recording of the telephone conversations”, number of such motions satisfied by Courts and number of recognized types of these operational-investigative measures performed without sanction of a judge as legal or illegal;
- Cost estimates for the implementation of the project “Tunes of Vere district” “Georgia without occupants” and the concert of Charles Aznavour in Akhaltsikhe;
- Information about money transferred to the state budget as a result of plea agreements and on what amounts have plea agreements concluded;
- Information on the number of persons whose property was confiscated and transferred to the state and the total cost of this property by years;
- Copies of agreements on transfer into the ownership of the Ministry of Economy and Sustainable Development of the shares of legal entities of public law free of charge (gift);
- Statistics for crimes registered in Georgia (according to months and articles).

Within the Project, the Institute asked the population to share their opinions on the topics and issues that would be interesting to additionally obtain from public institutions. Below, are questions received via the section “Request for public information” of analytical blog “Opendata Blog” created as a part of the Project and through the Institute e-mail (info@idfi.ge) and Facebook page:⁵³

Public information requested by the general public through the IDFI

- Copy of agreement on the 49 years management concluded between Tbilisi City Hall and Geogolds Company, as well as cost estimate of works in Mushtaidi Park;

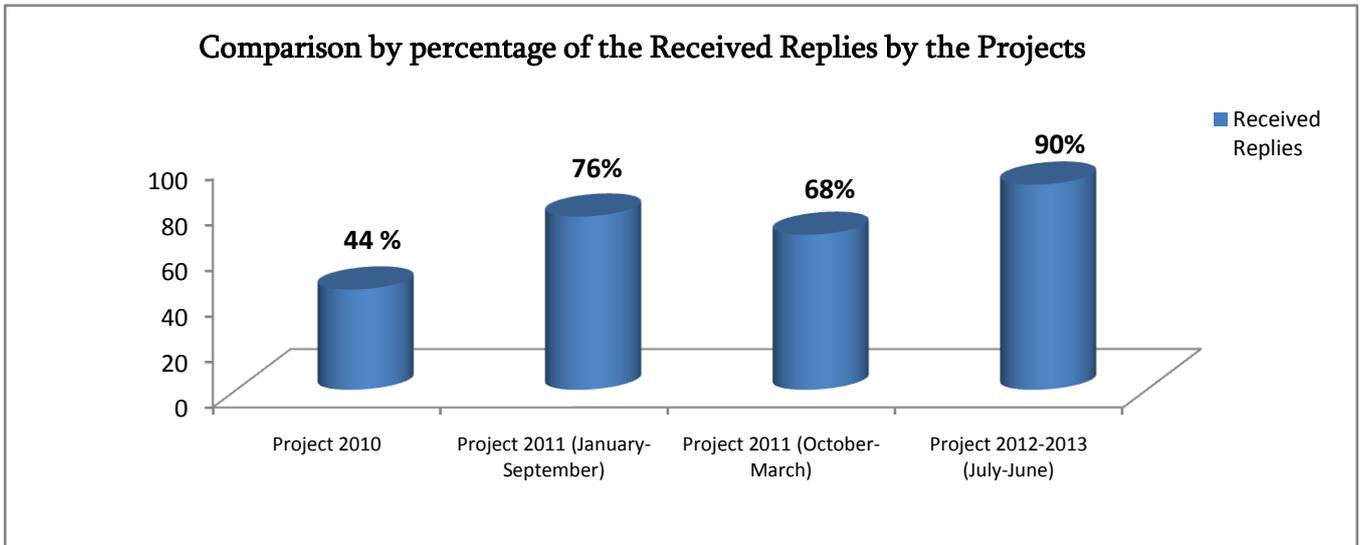
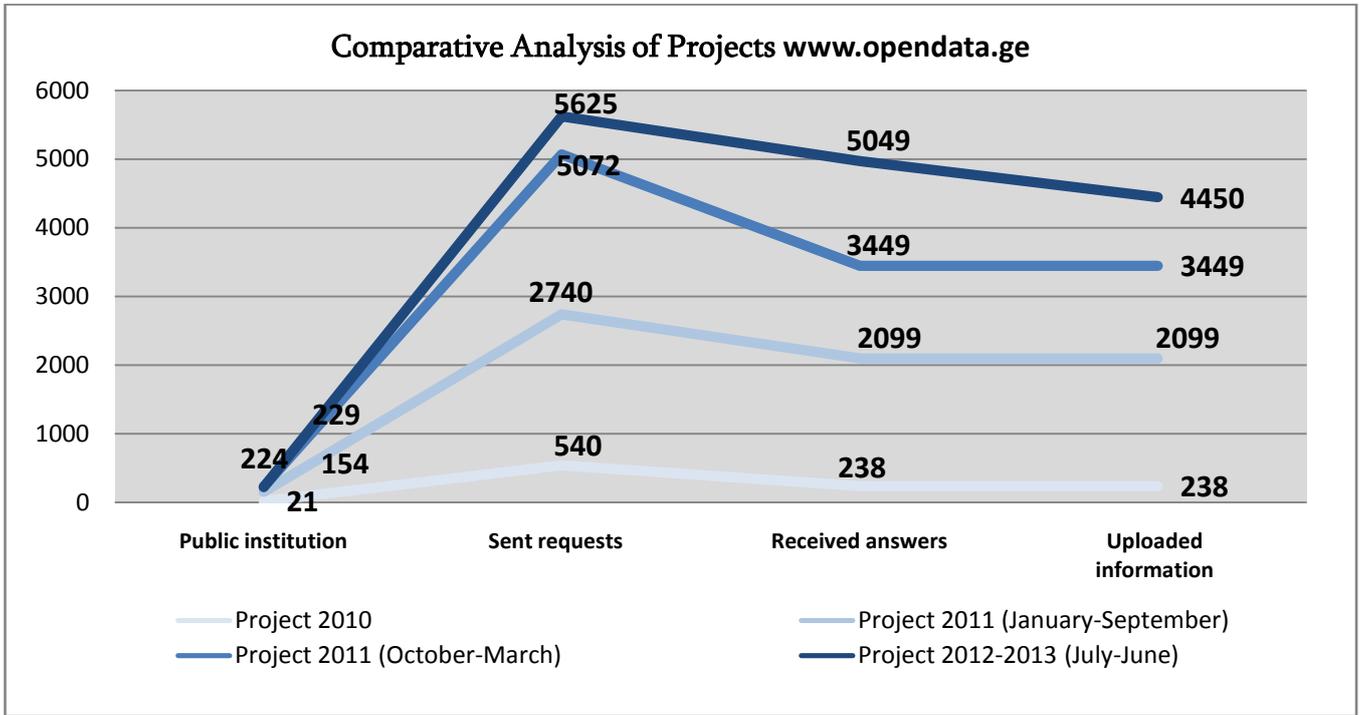
⁵³ see the following link for additional information <https://opendatablog.wordpress.com/2013/04/11/idfi-exmareba-moqalaebs-informaciis-migebashi/>

- Complete financial reports, balance sheet and profit – loss statements of the State Lottery Company LLC and Georgian Post LLC;
- Bank guarantee presented by MEDICOM LLC in order to take part in the auction N160 of the Property Management Agency of Tbilisi City Hall with the purpose to purchase the property under the lot N16;
- Amount of cost of the lot paid up to date by MEDICOM LLC, the winner for the auction N160 of the Property Management Agency of Tbilisi City Hall in purchasing the property under the lot N16;
- The unified registry of the victims, the victims' list, who received different types of compensations from the State in the early years;
- New members of the local councils, which are the bodies considering issues related to the parole release and change of the remained part of the sentence with a lighter punishment, created at the Ministry of Corrections and Legal Assistance together with the enactment of the new Code of Prisoners.

3. Statistics of the Received Public Information

During the Project (over one year) IDFI has applied to 224 public institutions with 5625 requests for public information, out of which 5049 requests have been replied to.

In 2010, since the first pilot project started, the dynamics of public information issuance according to the projects of relevant series demonstrates that there is a growing trend of received replies. In addition, the practice of placing obtained public information on the project website, as well as allowing the user to get more information, is the object of interest. It should be noted that in comparison with previous projects, this year the level of interest for the uploaded information increased.



In this chapter, the practice of releasing public information will be discussed within the context of statistics, according to the following aspects:

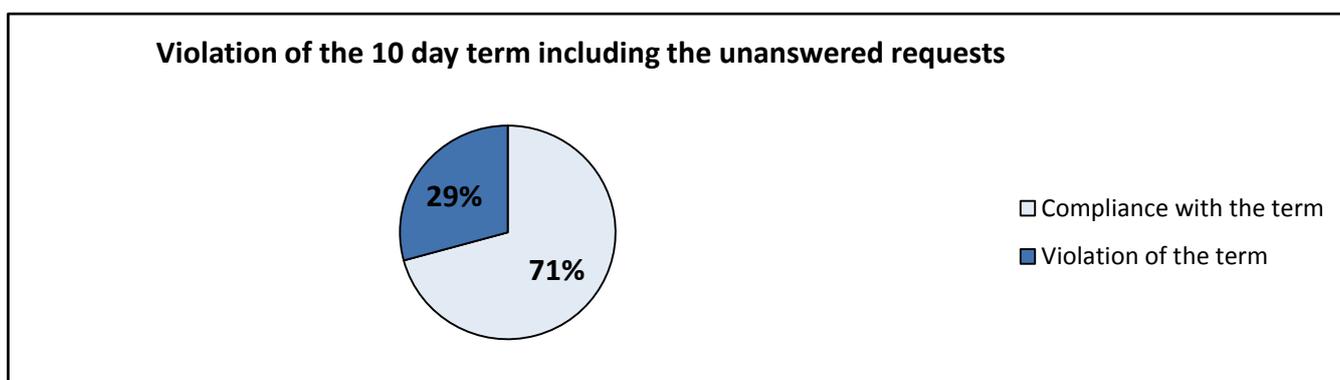
- Terms of public information release;
- Form public information release;
- Practice of public information release;
- Practice of public information release before and after elections.

Rating of the most open and closed public institutions revealed as a result of the implemented project also will be provided here.

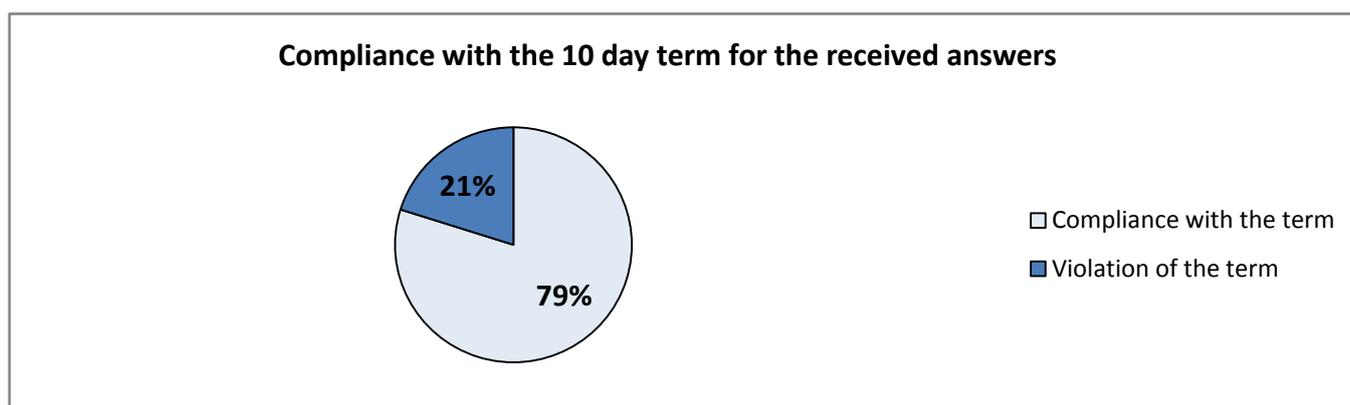
3.1 Terms of Public Information Release

Under GACG, public institution shall immediately issue public information. At the same time, if the information requires processing, 10 day term can be provided for the release of public information. The first part of the Article 40 of GACG obliges public institutions to issue public information immediately.⁵⁴ Immediately, in turn, means an indefinite date and in this case the specific terms shall be set with consideration of reasonable factors. In particular, the information will be deemed as immediately issued, if for example, the requester is provided within 3 (three) days. The Article 40 of GACG makes reservation and determines cases where a public institution may request 10 days for release of public information instead of immediate response.⁵⁵ For the purposes of maintenance of statistics, ten working days shall be deemed as compliance with the term. Most public institutions provided the Institute with the information under the above criteria.

Within the scope of the project, the 10 day term established by the legislation was violated in 1632 cases, including unanswered requests.



Additionally, the majority (3993 answers) out of 5 049 answers received by the Institute were received in compliance with the 10 day term.



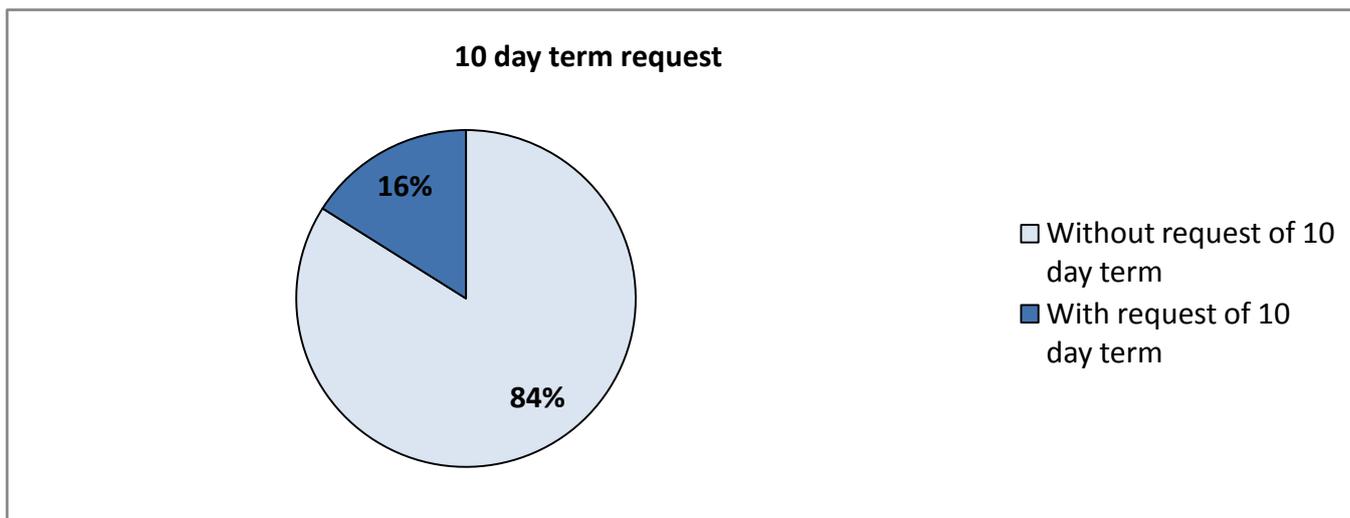
⁵⁴ Article 40 of GACG.

1. A public institution shall provide public information immediately or not later than 10 days if the answer to the request for public information requires:

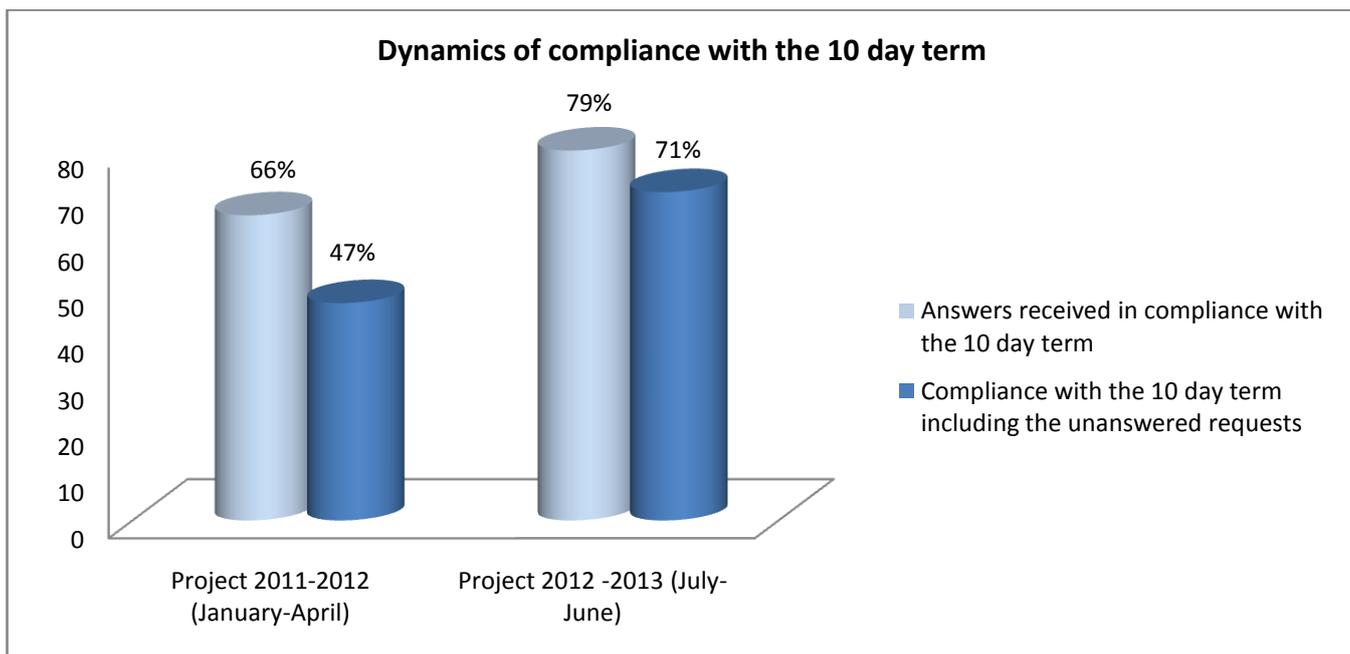
- a) obtain and process the information from its structural unit located at other settlement or other public institution;
- b) obtain and process a significant amount of separate documents that are not connected with each other;
- c) consultation with its structural unit located at other settlement or other public institution.

⁵⁵ See footnote №54.

There were only 797 cases when the Institute was notified that the public institution needed 10 day term to provide information.



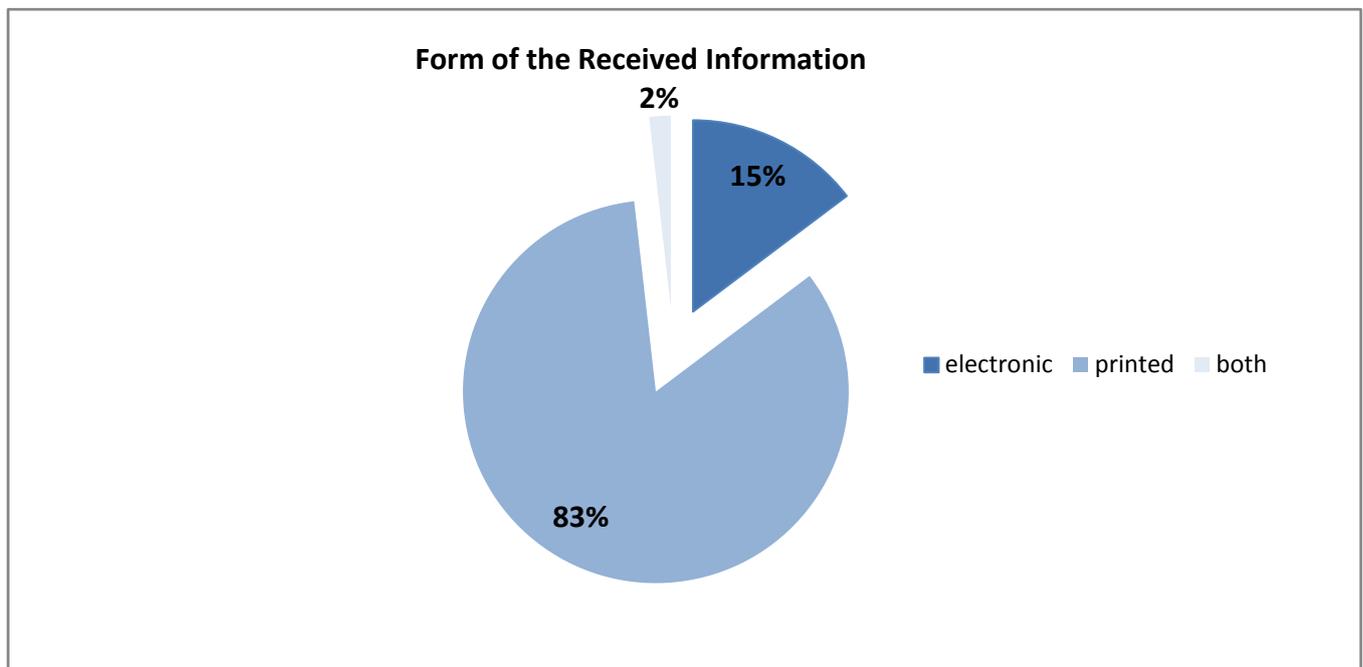
It should be noted that in comparison with the similar projects of previous years, the cases of violation of 10 day term have decreased. This can be attributed by the decrease of unanswered requests and an increase of public institution responsibility in regards to the release of information.



3.2 Form of Public Information Release

Article 37 of the GACG establishes the right to choose the form of release of public information. The institute used the mentioned right and asked public institutions to provide information in a hard copy or electronic form. Considering these alternatives, public institutions mainly provided information in printed form, which requires more administrative costs in comparison with provision of information in electronic format. The Institute also encountered cases where the specific requested information has been provided in both printed and electronic forms.

Out of 5 049 answers received by the Institute, the majority (4 204 answers) were received in the printed form, 730 answers in the electronic form, and in 115 cases, the same information was provided in printed and electronic form.



In case the institution's requested public information is stored in electronic form, and there is the alternative proposed by the applicant – to receive the information in electronic or printed form, it is advisable for public institutions to choose the more efficient form of information delivery – electronically. On the one hand, the electronic form will save the institution administrative resource efforts, on the other hand, this will release the applicant from the payment of fees for copies of public information, which will ultimately speed up and simplify the process of releasing public information.

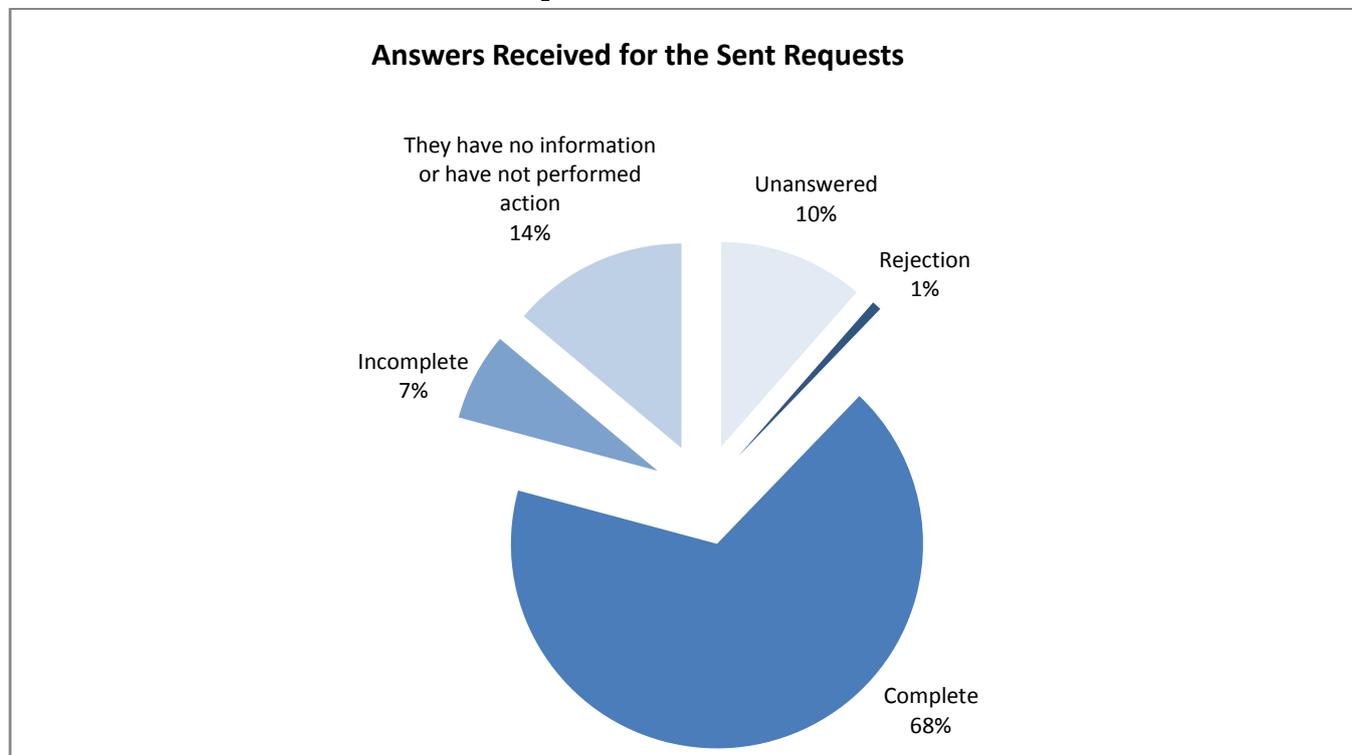
3.3 Practice of Public Information Request

Answers received by the Institute during the implementation of the Project can be divided into several categories:

- **Complete answer** – information received from a public institution in response to the request that represents a comprehensive answer to the question posed, including fully given documents;

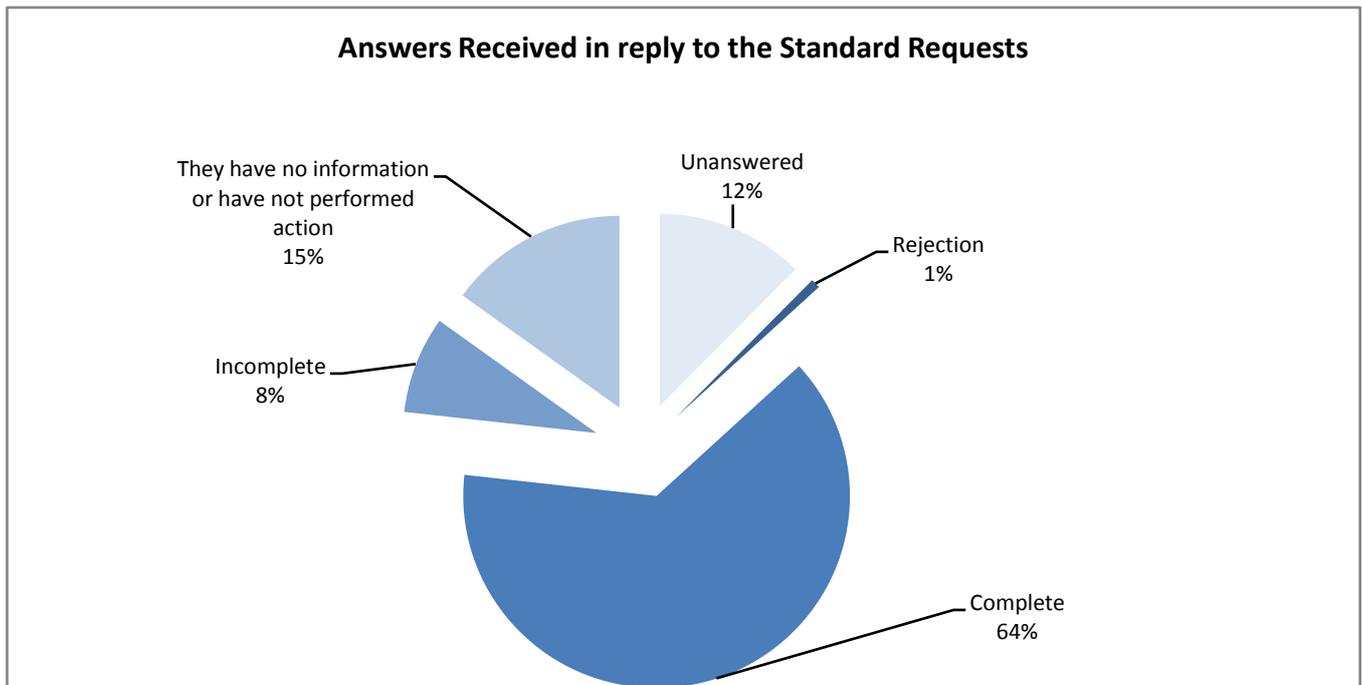
- **Incomplete answer** – certain information received from a public institution in response to the request that does not represent a comprehensive answer to the question posed as well as the answer given disregarding the form of release of public information pre-selected by the applicant (including redirection to the website for the information);
- **Rejection to issue public information** – rejection received from a public institution in response to a request, despite the fact whether it had the basics (e.g. restricted information) or not (e.g., not recognizing the obligation to process, administrative, proportionality of amount of information to the human resources of administrative body. etc.);
- **Unanswered** – an omission by a public institution reflected avoidance of issuance of information. This is legally equal to rejection, but IDFI maintains separate statistics of similar cases;
- **Institution does not have information / has not carried out a specific action** – explanation is given by a public institution that the requested document is not stored there or it has not carried out the action about which the information is requested.

Within a year during the project, the Institute applied to 224 public institutions with 5625 requests for public information, which the Institute received complete answers to 3 830 applications, incomplete answers have been given to 389 requests, rejection occurred in 42 cases, 576 requests were left unanswered and in 788 cases institutions reported that they did not have the requested information or had not carried out the specific action.



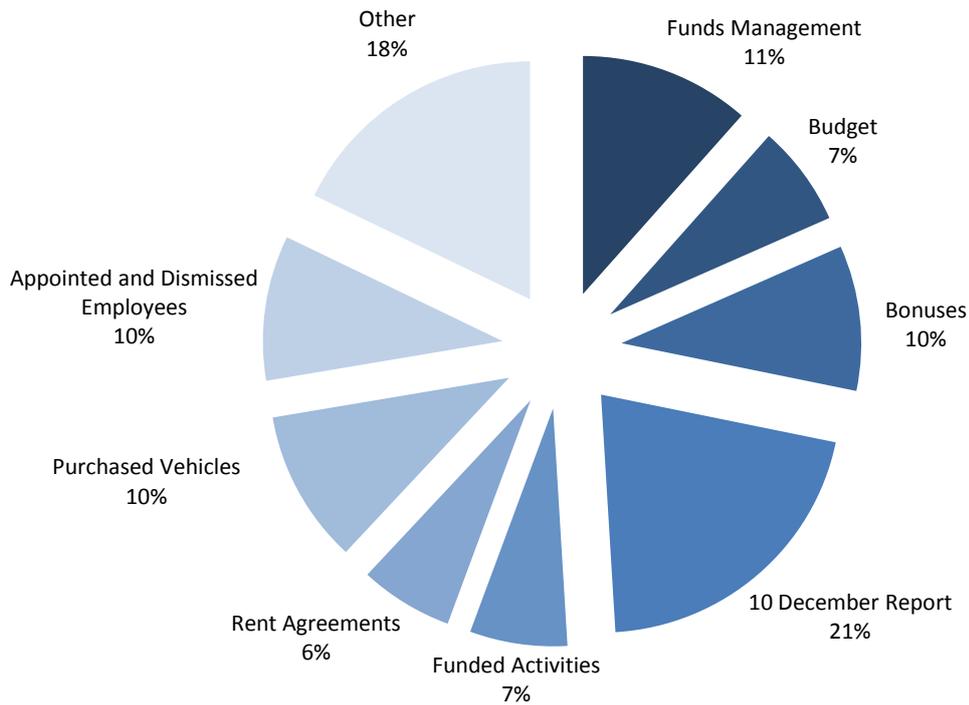
As mentioned above, public institutions were sent various requests, including standard requests, information on gender-related issues, and various questions (including questions asked by the population).

During the Project, public institutions were sent 2762 standard content requests, out of which we received complete answers to 1764 requests, incomplete answers to 226 requests, rejection in 22 cases, 334 unanswered requests, and in 416 cases, institutions reported that they did not have the requested information or had not carried out the specific action.



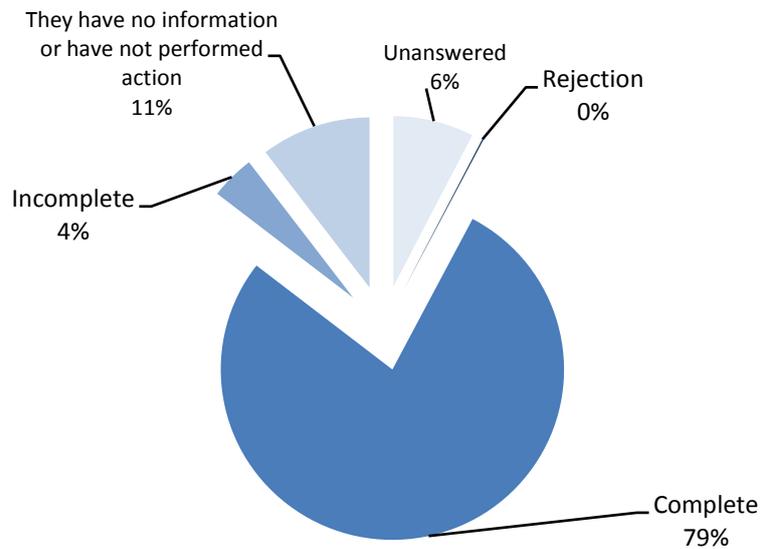
The carried out study revealed interesting data in reference to those standard questions which were left unanswered by the public institutions (unanswered or refusal). The largest share of unanswered responses to standard questions makes the information requested about December 10 reports - 21%, and the second most restricted information is detailed cost estimate of money received from funds under the state budget - 11%.

Standard Unanswered Requests by Content



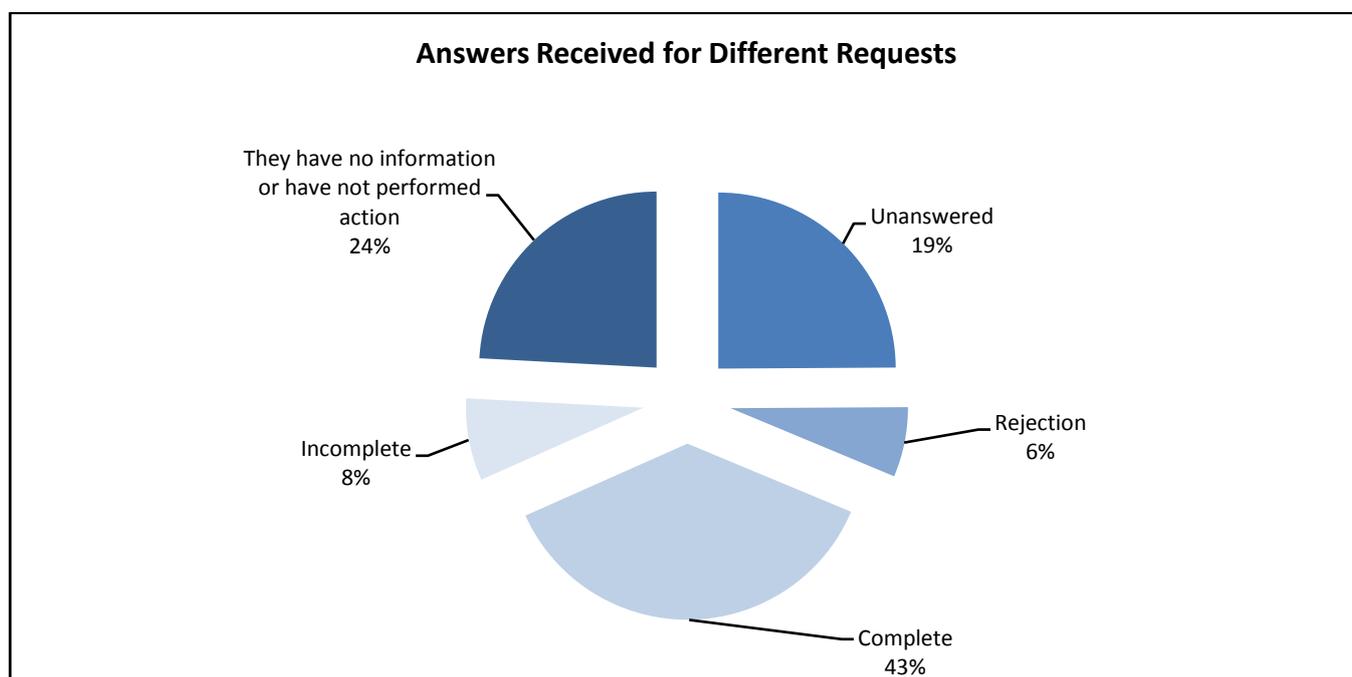
During the project, public institutions were sent 2275 requests related to the gender balance, out of which we received complete answers on 1798 requests, incomplete answers to 96 requests, rejection occurred in 3 cases, and 134 requests were left unanswered, and in 244 cases, institutions reported that they did not have the information requested or the specific action was not carried out.

Answers Received for the Gender-related Requests



Out of 13 requests related to gender balance, the most challenging for public institutions was the question about the average age of employees in terms of gender, in which cases public institutions often provided incorrectly calculated data.

During the project, public institutions were also sent various questions. The mentioned questions contained requests on different issues taking into consideration high public interest, as well as questions on behalf of the population. Within the scope of the project, public institutions were sent 265 different questions, out of which we received complete answers on 115 requests. Incomplete answers were issued for 20 requests, rejection occurred in 17 cases, 49 requests were left unanswered, and in 64 cases, institutions reported they did not have the information requested or the specific action was not carried out.

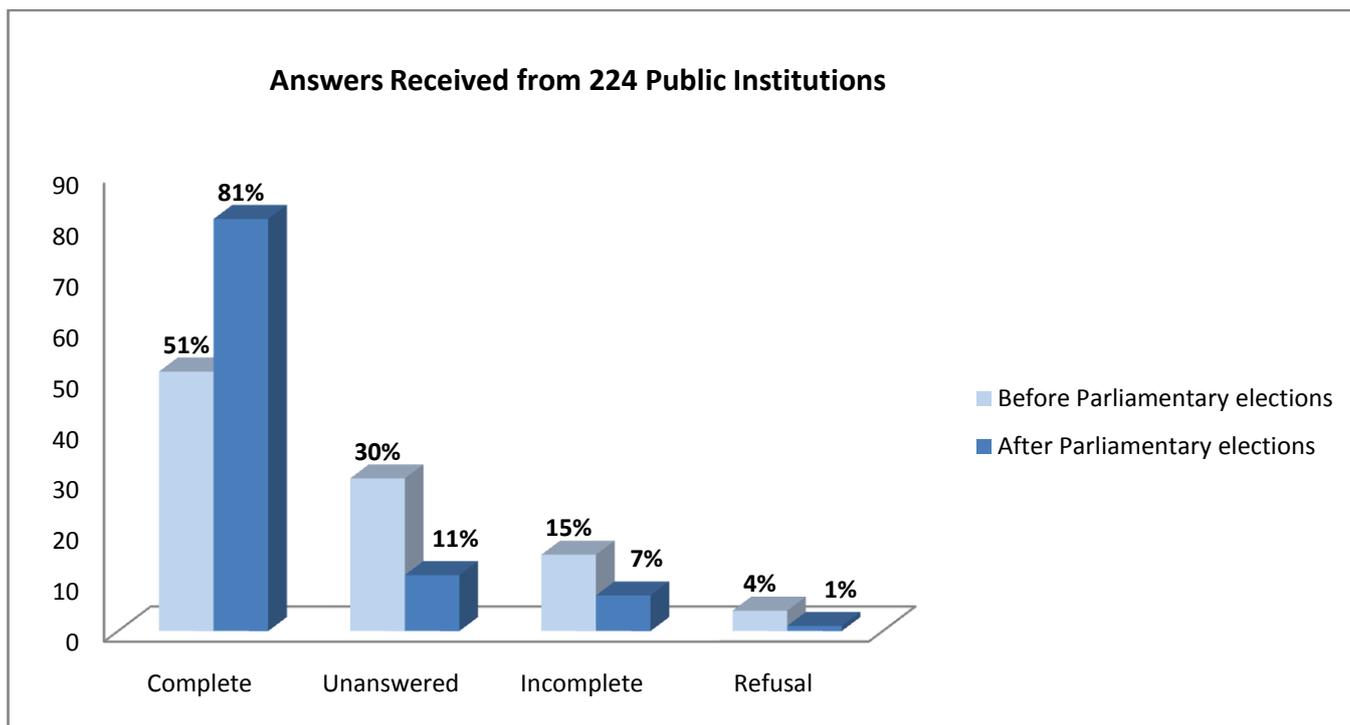


Based on the responses received to different questions, analytical information and articles were regularly published by the Institute on the special blog: <https://opendatablog.wordpress.com/>

3.4 Practice of Public Information Release Before and After Elections

It should be noted that the initial period of the project coincided with the democratic change of government in Georgia through the parliamentary elections of October 1, 2012; this event fell in the scope of interest of the Institute in terms of openness of public information. Accordingly, it is possible to present data on how the political changes performed in the country affected the practice of issuance of public information. **According to our data, since the Parliamentary Elections on October 1, 2012, positive trends are observed in terms of release of public information. The 51% share of complete answers that existed before the elections has increased to 81% and the unanswered requests reduced from 30% to 11%. Significant progress has been made as well in terms of the 10 day term**

compliance. The 10 day term was violated in 54% of cases of requests sent before the parliamentary elections and only in 27% of cases during the post election period.

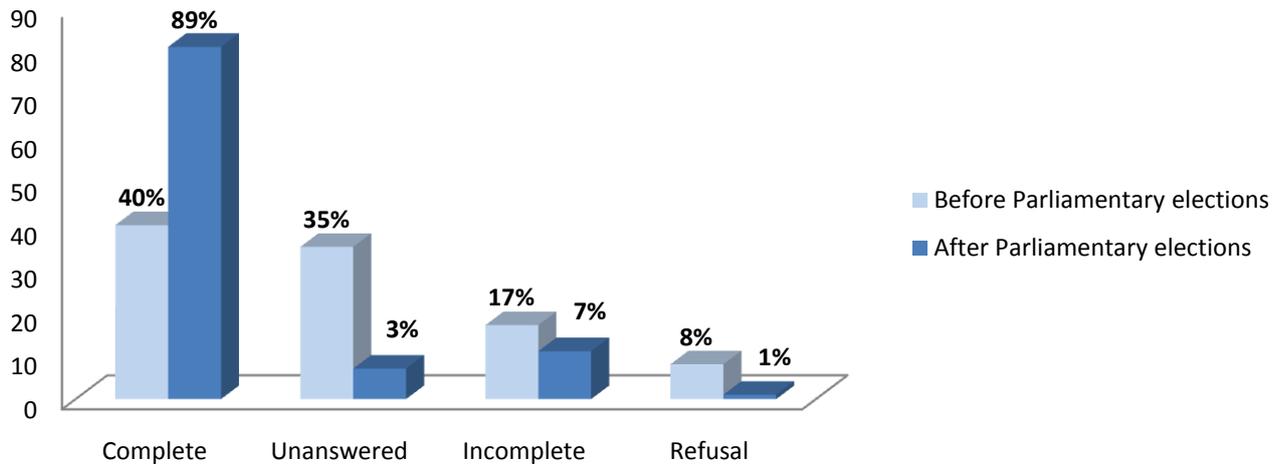


Note: the percentage given on the diagram above does not reflect the responses obtained from public institutions which reported they had no information or had not performed the specific action.

The intensity of progress in terms of information issuance in a variety of public institutions is interesting to observe. After the parliamentary elections most of requests for public information were sent by the Institute to: Ministries, Legal Entities of Public Law and Sub-Agencies, State Ministers' Offices, Local Self-Governing Units and Administrations of the State Representatives-Governors. The available data allows us to see the real picture of the impact of political changes in public institutions according to the above-mentioned groups.

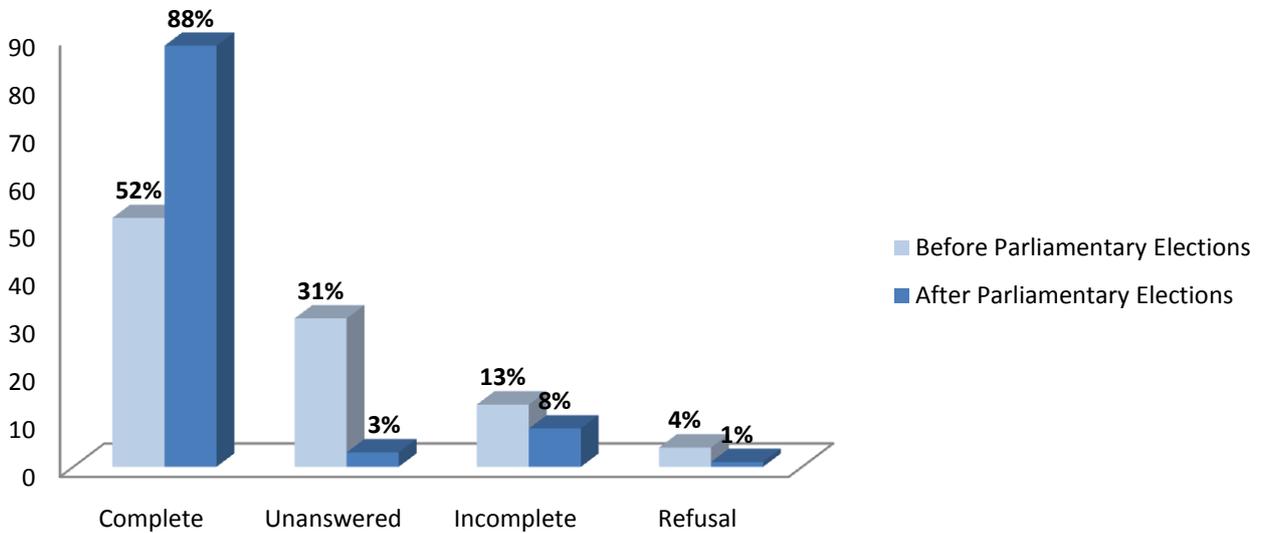
In the case of Ministries, the practice of unanswered questions reduced by 32% and the number of complete answers increased by 49% in the period after the 2012 parliamentary elections.

Answers received from 24 Ministries (including Offices of the State Ministers and Ministries of Autonomous Republic of Adjara)

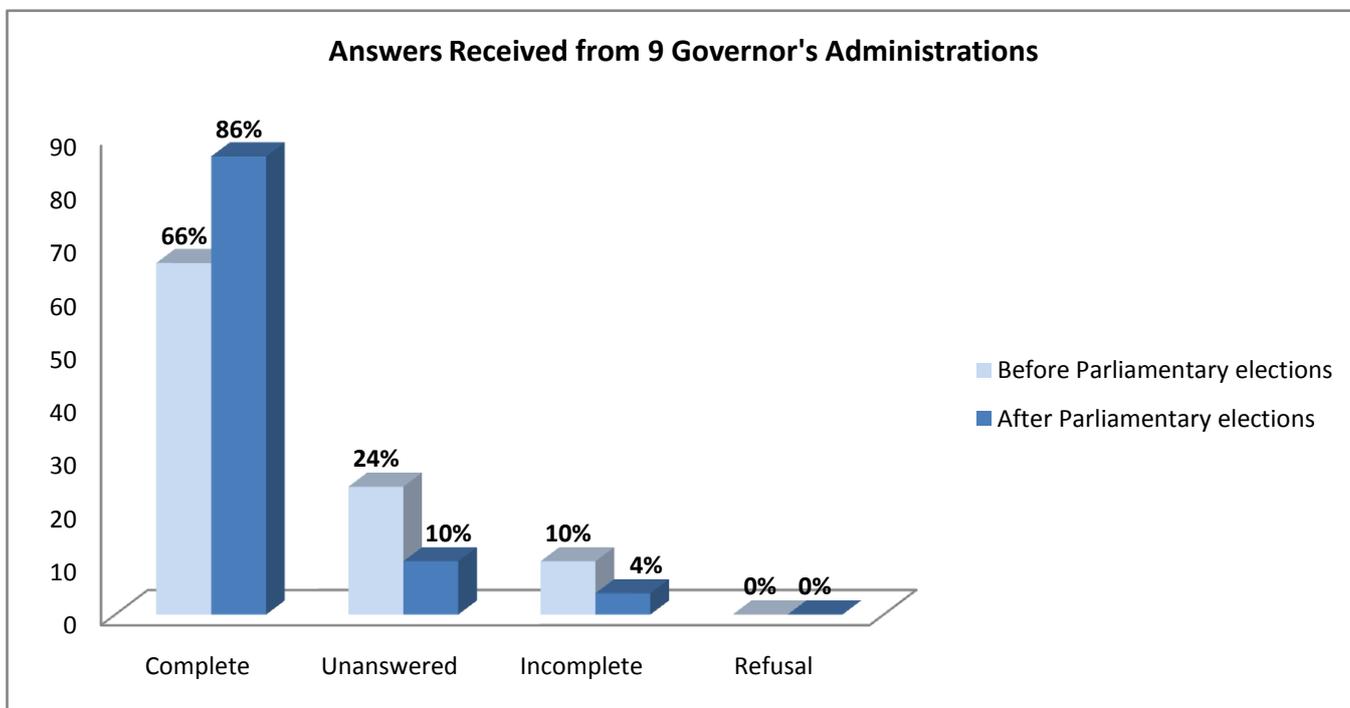
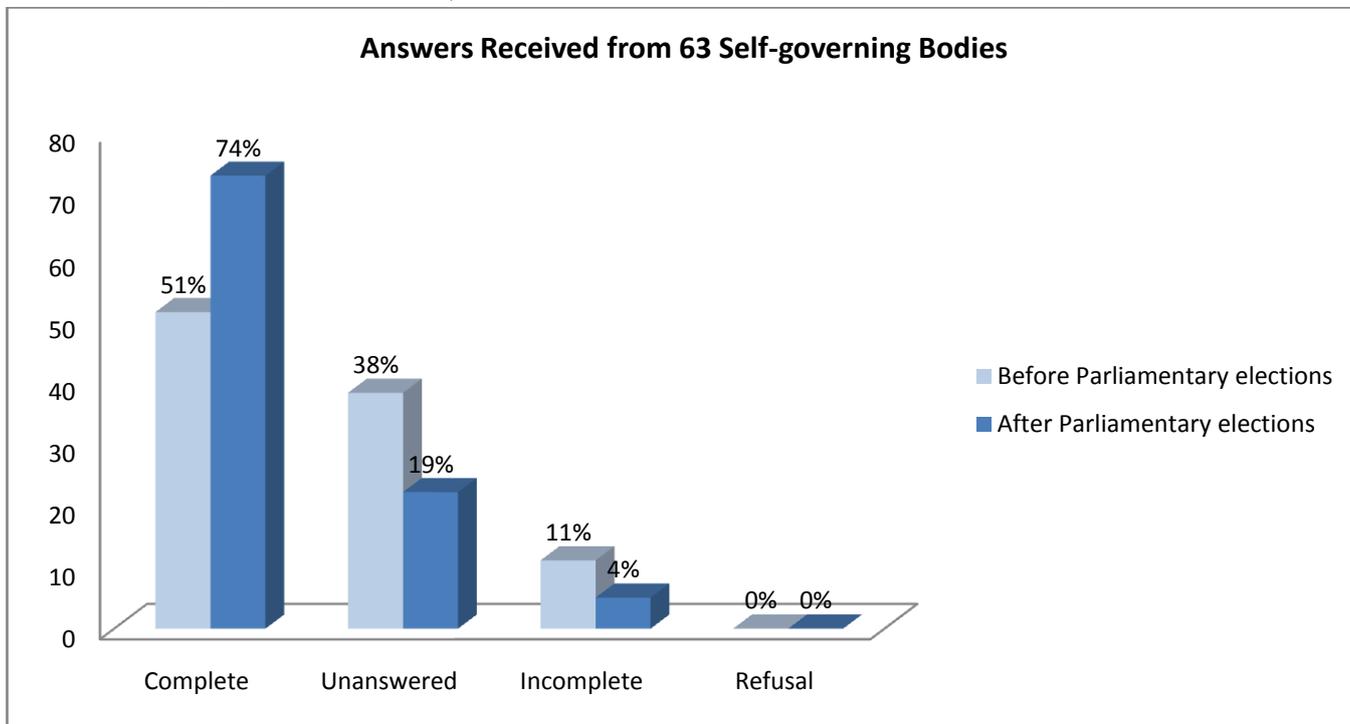


In case of Legal Entities of Public Law and Sub-Agencies, the 52% share of complete answers increased to 88% and the 31% practice of unanswered questions reduced to 3%.

Answers received from LEPLs and Sub-Agencies (107 public institutions)



Since the political changes, regional self-governing units, as well as state attorneys – governors’ administrations, have also demonstrated more responsibility in terms of releasing public information. In case of self-governing units, complete answers compared to the pre-election period increased by 23%, while unanswered requests decreased by 19%. When it comes to state representatives – governors’ administrations, complete answers provided by them progressed by 20% and the unanswered requests decreased by 14%.



As demonstrated by the diagrams given above, political changes reflected a positive impact on the release of public information by public institutions. Release of complete answers issuance as well as compliance with the 10 days term practices are improved.

3.5 Ratings of Openness of Information of Public Institutions

Based on the data revealed within the Project we can demonstrate the ratings of public institutions according to the following parameters:

- The most transparent and non-transparent public institutions;
- The most transparent and non-transparent public institutions by groups;
- Public institutions that improved provision of availability of information the most;
- Public institutions which immediately issue public information.

According to the mentioned ratings, the Institute traditionally awards public institutions with the relevant letters of commendation.

➤ The Most Transparent and Non-Transparent Public Institutions In General

The most transparent - All public institutions that showed the highest percentage of complete responses to the requests were evaluated under these parameters. In addition, under equal conditions, preference is given to public institutions which gave a complete response to the request within the shortest time;

The most non-transparent – All public institutions that left the highest percentage of the Institute’s requests unanswered were evaluated under these parameters. In addition, the hierarchy of evaluation has the following sequence - an institution did not respond to requests, an institution unsubstantially rejected to satisfy request and an institution provided incomplete answer.

While preparing the ratings of public institutions, transparency percentage values were used that are obtained by coefficients given below:

Evaluation Coefficients For The Information Obtained	
Information provided completely in accordance with the 10-day term	1
Information provided completely in violation of the 10-day term	0,99
Information provided incompletely in accordance with the 10-day term	0,5
Information provided incompletely in violation of the 10-day term	0,49
Information provided completely after administrative complaint	0,6
Information provided incompletely after administrative complaint	0,3
Requests left unanswered	0
Unsubstantiated rejection to provide information	0

The implemented study demonstrated that most often of all public information is issued completely by the following public institutions:

Twenty of the most transparent public institutions

N	Public institution	Number of requests	Complete	10 days term compliance	Transparency %
1	Office of the Public Defender of Georgia	32	32	32	100%
2	Kvareli Municipality Gamgeoba	29	29	29	100%
3	Dmanisi Municipality Gamgeoba	29	29	29	100%
4	Tkhibuli Municipality Gamgeoba	27	27	27	100%
5	Ministry of Environment	23	23	23	100%
6	Ministry of Infrastructure and Regional Development	22	22	22	100%
7	Office of the State Minister for Reintegration	21	21	21	100%
8	Ministry of Labor, Health and Social Affairs of the Autonomous Republic of Adjara	19	19	19	100%
9	Ministry of Education, Culture and Sport of the Autonomous Republic of Adjara	19	19	19	100%
10	Academy of the Ministry of Internal Affairs	19	19	19	100%
11	Service Agency of the Ministry of Finance	18	18	18	100%
12	National Agency of Standards, Technical Regulations and Metrology	18	18	18	100%
13	National Accreditation Authority – Accreditation Centre	18	18	18	100%
14	National Center for Educational Quality Development	18	18	18	100%
15	The Civil Service Bureau	18	18	18	100%
16	Penitentiary and Probation Training Centre	17	17	17	100%
17	Civil Aviation Agency	17	17	17	100%
18	State Regulation Agency for Medical Activities	17	17	17	100%
19	Office of the State Minister for European and Euro-Atlantic Integration of Georgia	17	17	17	100%
20	State Hydrographic Service of Georgia	16	16	16	100%

The most closed of the public institutions

Energy and Water Supply Regulatory
Commission of Georgia

Within the implemented research the Institute has revealed the most closed public institution: the **Georgian National Energy and Water Supply Regulatory Commission**. The mentioned public institution unreasonably rejected 5 requests for information sent by the Institute. In particular, on March 26, 2013 the Institute requested information on 12 points from the Regulatory Commission. The Commission rejected the request in the letter of April 5, 2013; the reason for rejection was confidentiality. On April 18, 2013, the Institute appealed to the Kutaisi City Court in court, because it deemed the Commission's rejection unlawful. It should be noted that this is not the first time the National Energy and Water Supply Regulatory Commission refuses to issue public information to IDFI. A similar incident took place in 2011. Despite the fact that the Institute has submitted a petition to the Public Defender of Georgia, the Commission did not take into account the Ombudsman's recommendations, which was reflected in the Public Defender's 2011 report: "The Public Defender of Georgia, under the powers conferred, directed recommendation to the National Energy and Water Supply Regulatory Commission to issue to the NNLE Institute for Development of Freedom of Information the following requested information: a list of personnel of the National Energy and Water Supply Regulatory Commission, actual expenses of the staff employed in this agency on fuel consumption and a monthly limit, as well as telecommunications costs for telephone conversations (without indication of particular identities)." ⁵⁶

The sad fact is that the Georgian National Energy and Water Supply Regulatory Commission continues its activities non-transparently and an unaccountable fashion. The commission does not perform its duties under the legislation of Georgia to ensure the availability of public information.

The study also made clear that the provision of public information in Georgia is most often avoided by the following public institutions:

⁵⁶ On the state of protection of human rights and freedoms in Georgia", Annual Report of the Public Defender of Georgia – p.99

Ten of the least transparent public institutions

N	Public institution	Number of requests	Unanswered	Rejection	Complete	Incomplete	10 days term compliance	Transparency %
1	Municipal Board of Bolnisi	21	21	0	0	0	0	0%
2	Municipal Board of Gardabani	32	30	0	2	0	1	6,2%
3	Municipal Board of Signagi	31	22	0	9	0	9	29%
4	Tbilisi City Court	6	4	0	2	0	2	33,3%
5	Kutaisi City Court	6	4	0	2	0	2	33,3%
6	Batumi City Court	6	0	4	2	0	6	33,3%
7	Municipal Board of Tsalka	31	20	0	11	0	11	35,5%
8	Municipal Board of Borjomi	32	17	0	15	0	0	46,4%
9	Municipal Board of Mestia	31	14	0	15	2	17	51,6%
10	Municipal Board of Khashuri	34	14	0	16	1	17	53,1%

The most transparent and non-transparent public institutions by groups

The following groups of public institutions were evaluated in the framework of the research under parameters of informational transparency and non-transparency:

I. Central Public Institutions

According to the results of the implemented project, the largest number of complete answers to requests was provided by the Ministry of Environment, while the Administration of the President of Georgia turned out to be the least transparent.

Rating of transparency of the central public institutions

	Public institution	Number of requests	Unanswered	Rejection	Complete	Incomplete	term compliance	Transparency %
1	Ministry of Environment	23	0	0	23	0	23	100%
2	Ministry of Infrastructure and Regional Development	22	0	0	22	0	22	100%
3	Office of the State Minister for Reintegration	21	0	0	21	0	21	100%
4	Ministry of Labor, Health and Social Affairs of the Autonomous Republic of Adjara	19	0	0	19	0	19	100%
5	Ministry of Education, Culture and Sport of the Autonomous Republic of Adjara	19	0	0	19	0	19	100%
6	Office of the State Minister for European and Euro-Atlantic Integration of Georgia	17	0	0	17	0	17	100%
7	Office of the State Minister for Diaspora Issues	21	0	0	20	1	21	97,6%
8	Office of the Government of the Autonomous Republic of Abkhazia	21	0	0	20	1	10	97,5%
9	Ministry of Agriculture of the Autonomous Republic of Adjara	19	0	0	18	1	19	97,4%
10	Ministry of Justice	23	0	0	22	1	13	97,4%
11	Ministry of Economy and Sustainable Development	33	0	0	31	2	33	97%
12	Ministry of Foreign Affairs	22	0	0	20	2	1	94,5%
13	Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia	24	0	0	21	3	24	93,8%
14	Ministry of Agriculture	22	0	0	19	3	22	93,2%
15	Ministry of Energy and Natural Resources	21	1	0	19	1	20	92,9%
16	Ministry of Sports and Youth Affairs	24	0	1	21	2	24	91,7%
17	Ministry of Culture and Monuments Protection	29	1	0	25	3	17	91 %
18	Ministry of Labor, Health and Social Affairs	22	2	0	20	0	18	90,8%
19	Ministry of Defense	30	2	1	26	1	6	87,7%
20	Ministry of Penitentiary, Probations and Legal Assistance Issues of Georgia	20	2	0	15	3	10	82,6%
21	Ministry of Finance and Economy of the Autonomous Republic of Adjara	19	3	0	15	1	6	81,1%
22	Office of the Government of the	20	3	1	16	0	17	80%

	Autonomous Republic of Adjara							
23	Ministry of Education and Science	27	6	1	20	0	0	73,3%
24	Parliament of Georgia	34	8	0	23	3	10	71,6%
25	Ministry of Finance	30	7	0	19	4	23	70%
26	State Chancellery of Georgia	37	13	0	24	0	24	64,9%
27	Ministry of the Internal Affairs	31	8	0	17	6	3	63,9%
28	Administration of the President of Georgia	29	4	0	24	1	0	49,7%

II. Legal entities of public law, sub-agencies and other public institutions

According to the results of the implemented project, the most of complete answers for requests were provided by the Office of the Public Defender of Georgia and the Chamber of Commerce and Industry of Georgia turned out to be the least transparent.

Ten of the most transparent LELPs, sub-agencies and other public institutions								
N	Public institution	Number of requests	Unanswered	Rejection	Complete	Incomplete	10 days term compliance	Transparency %
1	Office of the Public Defender of Georgia	32	0	0	32	0	32	100%
2	Academy of the Ministry of Internal Affairs	19	0	0	19	0	19	100%
3	Service Agency of the Ministry of Finance	18	0	0	18	0	18	100%
4	National Agency of Standards, Technical Regulations and Metrology	18	0	0	18	0	18	100%
5	Unified National Accreditation Authority – Accreditation Centre	18	0	0	18	0	18	100%
6	National Center for Educational Quality Development	18	0	0	18	0	18	100%
7	The Civil Service Bureau	18	0	0	18	0	18	100%
8	Penitentiary and Probation Training Centre	17	0	0	17	0	17	100%
9	Civil Aviation Agency	17	0	0	17	0	17	100%
10	State Regulation Agency for Medical Activities	17	0	0	17	0	17	100%
Five of the least transparent LELPs, sub-agencies and other public institutions								
N	Public institution	Number of requests	Unanswered	Rejection	Complete	Incomplete	10 days term compliance	Transparency %

1	Energy and Water Supply Regulatory Commission	22	1	5	13	3	21	65,9%
2	State Security Special Service of Georgia	20	4	0	11	5	10	67,2%
3	SAKPATENTI	24	4	0	14	6	20	70,8%
4	Office of Tax Ombudsman of Georgia	21	5	0	15	1	26	73,8%
5	Georgian National Investment Agency	18	2	0	11	5	18	75%

III. Regional authorities - the Mayors' offices, Municipal Boards and Governors' administrations

According to the results of the implemented project, the largest number of complete answers for requests was provided by Kvareli and Dmanisi Municipal Boards, while the Bolnisi Municipal Board turned out to be the least transparent.

Five of the most open regional bodies								
N	Public institution	Number of requests	Unanswered	Rejection	Complete	Incomplete	10 days term compliance	Transparency %
1	Municipal Board of Kvareli	29	0	0	29	0	29	100%
2	Municipal Board of Dmanisi	29	0	0	29	0	29	100%
3	Municipal Board of Tkibuli	27	0	0	27	0	27	100%
4	Administration of the State Representative - Governor in the Imereti Region	6	0	0	6	0	6	100%
5	Administration of the State Representative - Governor in the Samegrelo – Zemo Svaneti Region	6	0	0	6	0	6	100%
Five of the most closed regional bodies								
N	Public institution	Number of requests	Unanswered	Rejection	Complete	Incomplete	10 days term compliance	Transparency %
1	Municipal Board of Bolnisi	21	21	0	0	0	0	0%
2	Municipal Board of Gardabani	32	30	0	2	0	1	6,2%

3	Municipal Board of Signagi	31	22	0	9	0	9	29%
4	Municipal Board of Tsalka	31	20	0	11	0	11	35,5%
5	Municipal Board of Borjomi	32	17	0	15	0	0	46,4%

IV. State Universities

According to the results of the implemented project, the most complete answers for requests were provided by the Sukhumi State University and Tbilisi State Medical University, and Ivane Javakhishvili State University turned out to be the least transparent.

Rating of transparency of the State universities								
N	Public institution	Number of requests	Unanswered	Rejection	Complete	Incomplete	10 days term compliance	Transparency %
1	Sukhumi University	8	0	0	8	0	8	100%
2	Medical University	8	0	0	8	0	8	100%
3	Gori University	8	0	0	7	1	8	93,8%
4	Zugdidi University	8	0	0	7	1	8	93,8%
5	Ilia State University	8	0	0	7	1	8	93,8%
6	Technical University	8	1	0	7	0	7	87,5%
7	Telavi University	8	1	0	6	1	7	81,3%
8	Batumi University	8	1	0	6	1	7	81,3%
9	Kutaisi University	8	2	0	6	0	6	75 %
10	Tbilisi State University	8	0	2	4	2	6	62,5%

➤ Public institutions that improved provision of availability of information

Even during the implementation period of the previous project “Public Information Database” the Institute presented the ratings of public institutions. The data revealed as a result of the current project enabled us to present the list of public institutions that show the highest percentage of

improvement in provision of availability of public information. The progress, with high probability, occurred due to the political changes as a result of the October 1, 2012 parliamentary elections. Among the 5 of the most progressive public institutions in terms of transparency, the first place was held by the National Agency of Non-Custodial Sentences and Probation. It should be noted that none of the requests from the Institute were satisfied by these institutions during the previous project, while within the current project complete answers provided by these institutions made 94.1%.

Public institutions which have enhanced provision of availability of information to the most				
	Public institution	Complete answers issued within the 2011-2012 Project	Complete answers issued within the 2012-2013 Project	Progress
1	National Agency of Non-Custodial Sentences and Probation	0 %	94,1%	94,1%
2	Ministry of Defense	0%	86,6%	86,6%
3	Municipal Board of Tetrtskaro	0%	86,2%	86,2%
4	Municipal Board of Tsageri	0%	84,4%	84,4%
5	Municipal Board of Samtredia	0%	80%	80%
	Municipal Board of Tianeti	0 %	94,1%	78,5%
	Municipal Board of Khoni	0%	75,6%	75,6%
	Municipal Board of Kaspi	0%	72,7%	72,7%
	Municipal Board of Kareli	0 %	71,4%	71,4%
	Municipal Board of Aspindza	0%	65,6%	65,6%
	Service Agency of the Ministry of Internal Affairs	0 %	61,9%	61,9%
	Municipal Board of Chkhorotsku	0%	55,2%	55,2%
	Municipal Board of Vani	0 %	53,3%	53,3%
	Municipal Board of Borjomi	0%	46,9%	46,9%

➤ **Public institutions that issue public information immediately**

Estimation of the parameter of immediate issuance of information was carried out by the speed of response by a public institution to the requests of the same volume and contents. It should be noted that compliance with the terms of issuance of information by public institutions still remains a major problem with regard to freedom of information in Georgia.

Immediately issued public information				
	Public institution	Number of requests	3 days term compliance	Average number of days
1	Health Insurance Mediation Service	21	21	2
2	National Agency of Standards, Technical Regulations and Metrology	21	21	2,4
3	National Agency of Tourism of Georgia	21	21	3
4	Ministry of Education, Culture and Sport of the Autonomous Republic of Adjara	21	21	3

4. Challenged Decisions of Administrative Bodies

In the frameworks of the project, the Institute challenged several cases of a request left unanswered or refusal to issue public information by public institutions. A total of 8 administrative complaints to the administrative authorities and 4 administrative claims to the courts of the first instance were filed by the Institute. It should be noted that by following these measures, public information was ultimately completely issued in 7 cases, and in 1 case information was provided in an incomplete form. In addition, the Institute is awaiting trial process for two cases:

Ministry of Education of Georgia

Administrative complaint was filed on September 3, 2012. The Ministry left unanswered the request for a detailed estimate of expenditure of 1 000 000 (one million) GEL allocated from the state budget under “Other costs” for development of the State policy in the field of education and science in the first quarter of 2012. The information has been provided following the administrative complaint, by which the Institute was informed that the requested information was not kept at the Ministry.

State Chancellery of Georgia

Administrative complaint was filed on September 3, 2012. State Chancellery left unanswered the request for provision of copies of the number of Decrees of the Government of Georgia and Orders of the Prime-Minister. The information has been provided during the administrative grievance process, on October 18, the Institute was provided with the requested copies of the Governmental Decrees.

Administration of the President of Georgia

Administrative complaint was filed on September 5, 2012. The Administration of the President left unanswered the request for provision of public information based on two applications of the Institute – 1) amount of salary and the approval act of the salary of the Chief of the Administration of the President, Deputy Chief, Adviser to the President, Heads of the President’s Press-Service and the Public Relations Service of the Administration of the President, 2) Decrees about the amounts allocated from the Reserve Presidential Fund in 2012; list of the presidential programs, their duration and the amounts provided for the programs (2011-2012). The administrative complaint was left without response by the Administration of the President, for which the Institute on October 12, 2012, appealed to the Tbilisi City Court with an administrative complaint. On December 6, 2012, 20 minutes prior to the start of the Court session, the Administration of the President provided the Institute with the answer – the suit was withdrawn.

Kharagauli Municipal Board

Administrative complaint was filed on September 5, 2012. The Municipal Board left unanswered the request for provision of the rent agreements concluded with the parties, based on which the parties hold municipal areas. The requested information was provided following the administrative complaint on November 7, 2012.

Ministry of Corrections and Legal Assistance

Administrative complaint was filed on October 12, 2012. Corrections Department left unanswered the request for the following information: 1) the number of prisoners who were taken to the N18 Medical Facility from the Gldani N8 Facility; 2) the number of prisoners who were taken from the N8 Facility and died at the N18 Facility. Relevant information has been provided following the administrative complaint.

Ministry of Defense of Georgia

An administrative complaint was filed on December 11, 2012. The Ministry left unanswered the request for the following information: 1) the amount of bonuses (each staff unit individually) from October 01, 2012, until the time of application receipt and copies of relevant legal acts; 2) the number of military personnel wounded during participation in the peacekeeping operations in Afghanistan. The information has been provided following the administrative complaint.

Administration of the President of Georgia

An administrative complaint was filed on March 10, 2013. The President's Administration left unanswered the request for issuance of the following information:

1. The total number of staff members and freelancers at the Administration of the President as at the date of the letter delivery, individually;
2. Information on how many employees were dismissed from their positions at the Administration of the President based on their own application;
3. Information on how many employees were dismissed from their positions at the Administration of the President based on the decision of the Administration;
4. Information on how many people were employed at the Administration of the President as staff and non-staff workers from October 21, 2012, until January 31, 2013, individually, with indication of their positions and names;
5. Information about bonuses for the Administration officials from January 1, 2012 to January 31, 2013 (individually per each of official, by months);
6. Information about the travel expenses incurred for the inside and outside of the country (separately). Official visits and working meetings of the President from January 1, 2012 to January 31, 2013;
7. List of vehicles on the balance of the Administration (with the reference to the vehicle model);
8. Comprehensive list of the state procurement activities (announced tenders, contests, and other types of purchases) of the Administration of the President and amount spent on each of these from January 1, 2012 to January 31, 2013;
9. The actual expenses incurred by the Administration of the President on the fuel consumption starting from January 1, 2012 until January 31, 2013.

Comprehensive information has been provided following the administrative complaint, on March 13, 2013.

Public Broadcaster

An administrative complaint was filed on April 10, 2013. The recognition of the act of the person responsible for the release of public information null and void and obligation to release the requested information to the Institute was requested. GPB rejected to give the information about the amount of the remuneration (salary) of the Public Broadcaster Director General and a copy of the relevant legal

act of the determination of the salary (approval). The reason given was that the information “will become” public after the official’s property declaration is presented to the Civil Service Bureau. Information has been provided only after the satisfaction of the administrative complaint.

Kutaisi City Court

On December 20, 2012 by means of the Supreme Council of Justice of Georgia software service.court.ge/public/ the Institute requested the following public information from the Kutaisi City Court: 1) From October 21, 2012 until December 2012, the number of motions on the operational-investigational measures “secret listening and recording of telephone conversations” that were considered by the Kutaisi City Court; b) From October 21, 2012 until December 2012 the number of motions on the operational-investigational measures “secret listening and recording of telephone conversations” that were satisfied by the Kutaisi City Court; c) From October 21, 2012 until December 2012 the number of motions on the operational-investigational measures “secret listening and recording of telephone conversations” performed without sanctioning by judge that were recognized as legal by the Kutaisi City Court; d) From October 21, 2012 until December 2012 the number of motions on the operational-investigational measures “secret listening and recording of telephone conversations” performed without sanctioning by judge that were recognized as illegal by the Kutaisi City Court. No answer was received from the Court. On January 22, 2013 the Institute appealed to the Kutaisi City Court with the request to issue public information.

On March 13, 2013, by the Court decision (3/24.2287), the claim of the Institute was not been satisfied. The main reason indicated was that information issuance must be relevant to the reasonableness and the amount of the requested unprocessed information should be proportional to the human resources of the administrative body.

Tbilisi City Court

On December 20, 2012 by means of the Supreme Council of Justice of Georgia software service.court.ge/public/ the Institute requested public information similar to the data requested from the Kutaisi City Court from the Tbilisi City Court as well. On January 22, 2013, the Institute appealed to the Tbilisi City Court demanding the release of public information.

On January 28, 2013, the Court by the decision (Case # 3/189-13) declared the claim admissible, and on March 18, 2013 the defendant’s counter-claim was presented where the reason for non issuance was the fact that the requested information relates to the state secrets. The Institute is still waiting for a preparatory meeting appointment.

National Energy and Water Supply Regulatory Commission

On March 26, 2013, the Institute requested public information on 12 points from the Regulatory Commission. On April 05, 2013 the Commission replies to the Institute with the letter № 6/06-18/58-

770, in which it refused to issue the information requested on the following points: 1 – information on the amount of bonuses of the Head of the Commission and deputies (separately); 2 – Information on the amount of bonuses for employees (total amount); 3 –list of staff with the salary for each position thereof; 10 – information on the travel expenses for official and working visits abroad of the Head of the Commission. Confidentiality was indicated as a reason for refusal. On April 18, 2013, the Institute appealed to the Kutaisi City Court with the request to declare the act of rejection void and to task the Commission with issuing the Institute the requested public information. The Institute believes that the rejection by the Commission is unlawful, because the personal data of public officials is open under the law, while in other cases, the requested information does not enable one to identify any specific individuals.

VI Conclusion

As in previous years, the Project “Public Information Database – www.opendata.ge”, implemented by the Institute in 2012-2013 in Georgia on a national scale, again highlighted the main challenges related to availability of public information and freedom of information issues.

In the legal context the problem is reflected in the two directions:

- Incorrect interpretation of the legal norms regulating the freedom of information by public institutions;
- Ignorance of the legal norms regulating the freedom of information by public institutions.

Public institutions often try to support the practices against the openness of information by reinforcing the interpretation of relevant legal norms that groundlessly put the requester of public information in a losing position. In some cases, the same can be said for the court practice.

Broad field for the above is given by the legal aspects of restricted public information, the most evident example of which is the problem that became traditional – attempts of concealment of bonuses and salary supplements of officials by public institutions. Although Article 44 of GACG directly establishes the mode of availability of personal data of officials and candidates as public information, public institutions with various kinds of legal explanations still try to avoid issuance of such information. The mentioned is most frequently performed based on the motive of the lack of consent from the particular official to issue the information. Article 41, paragraph 2 of the Constitution of Georgia is referenced and the Constitutional record “In relation with private matters” is distributed in relation to the bonuses and salary supplements of public officials. In other cases public institutions created a totally unreasonable interpretation of the relatively new law on the personal data protection as if the consent of a person for the issuance of personal data is the only possible method for a public institution, but the new law recognizes the consent only as one of the bases and also cites the second grounds for issuance of public information – issuance of public information under the law, which does not require a person’s consent. There is also the trend of

establishing a completely unfounded and vicious practice of interpreting the Law of Georgia “On the Personal Data Protection” in a different way when the number of public institutions reject to disclose information on the total amount of summarized premiums on the grounds that this figure may help in the identification of that particular person.

Wrong interpretation of the notion of public information by institutions remains one of the most problematic issues of public information coverage in Georgia, which is supported by the current judicial practice. For example, public institutions often refuse to disclose information which may be a result of data retrieval, summation or separation of data from different documents (e.g., the total amount of premiums received by an official during the year). According to the approach of administrative bodies, obligation of processing the information under the law is recognized; however, it covers only the mechanical mustering and not the so-called “logical synthesis”. In addition, public institutions do not allow applicants to familiarize themselves with basic documentation, the possibility of processing of which is rejected. According to this wrong approach, retrieval or summation of data means the creation of a new document, and the document shall be issued only in the case if it was filed in the Public Registry at the time of submission of the application. In addition, there is a complete disregard for the norms of GACG which look at the Public Registry as a method of recording information and not the indicator of existence of this information at an institution. With regard to this problem, the reference to the reservation in the Law “On the Unified State Register of Information” that the data should not be processed if such processing was not directly included in the functions of an institution or data processing was not directly provided under the act is quite common. Unfortunately, the public institutions and the judges in their judgment do not allow the smallest probability that there is no public institution the functions of which established under the legislation do not include issuance of public information (kind of processing), and the data processed is directly provided under the Article 40 of GCAG.

If the above-described cases deal with the examples of incorrect interpretation of the existing norms, in some cases the reluctance of public institutions that their obligation for searching and processing documents under the law be cited at all is so high that they substantiate their refusal to issue information undesirable to them on the bases that are unknown to the law, such as, for example, impossibility of performance of large amount of work by the person responsible for providing availability to public information, proportionality of the requested information with the human resources of administrative body, or reasonableness of issuance of information.

A widely established norm record may also provide space to interpretation of legal norms by public institutions in opposition to the applicant. This is especially important in regards with the scope of GACG, which does not apply to the activities of the executive power related to the criminal prosecution of a person committing the crime and criminal proceedings, as well as operational-searching activities. While neglecting to understand the goal of the mentioned norm (to avoid creation of threat or hindrance for relevant activities and functions), operational - investigative bodies and courts are given the opportunity to formally reject any superior public interest

requirement, which can be in theoretical semantic connection with the mentioned activities (e.g. general statistics for crimes in the country).

Legislative Recommendations

With the participation of society, the executive and legislative authorities of Georgia need to respond to faced challenges by discussing the possibility of relevant legislative action, including the following issues:

- To start working on “Law of Georgia on Freedom of Information”;
- Introduction of a special supervisory organ – Commissioner of Public Information, or assignment of Inspector of Personal Data Protection of Georgia with the functions of this organ considered in the long term;
- Test of Public Interest to be introduced in case there is release of secret information.
- To work out a mechanism of independency for the person in charge of releasing public information in the administrative organ;
- Single form of so called “10 December Report” to be approved;
- Make more precise the criteria of data selection, consolidation, separation, and other criteria under the obligation of public institutions processing documents, as well as the range of reasonableness of such processing;
- The fee for copying of public information shall not be payable if the amount of the requested public information does not exceed 20 pages or the requested information refers to environmental protection and public health issues;
- Insolvent persons, journalists and non-governmental human rights organizations should be exempt from paying the public information copying fee;
- The State fee shall not be payable on administrative claims on issues of freedom of information;
- To establish the most reasonable minimum period in each instance (no more than 20-30 days) for the proceeding on claims regarding issues of freedom of information;
- To determined effective mechanisms for disciplinary proceedings against persons responsible for providing public information available in case of apparent violation of the applicant’s right;
- In case of failing to reply to a public information request, the non-pecuniary damage

compensation should be added to the Code of Administrative Offences.

Practical Recommendations

- ✓ Implement awareness-raising programs about the obligation to release public information and submit the so called “10 December Report” for the persons in charge of public authorities;
- ✓ Develop a more effective mechanism recording public information (public registry), including an updated registry for proactively published public information;
- ✓ The Public Defender of Georgia to make effective monitoring public authorities on the facts of violation of the right to receive public information and choose the form of receipt. It is possible to create a centre at the Office of the Public Defender of Georgia, which will monitor issues of access to information;
- ✓ The Personal Data Protection Inspector to provide mechanisms (creation and dissemination of the guide, informational events, trainings of civil servants, creation of a web-site etc.) which will support awareness-raising of the society and will strictly divide the issues of openness of information and personal data protection.

The problems are reflected in the practice of negligence of legal standards by public institutions, for example, turning in open information in the field of regulation of commercial secret and this way the efforts to conceal it. Public institutions, particularly the bodies of local self governance, often create legal entities of public law that have public authority – LEPLs, LLCs, foundations, etc., with the hope that commercial transactions, contracts executed with participation of these bodies and other relevant information in some cases will fall within the scope of regulation of restricted information. It is directly excluded by GACG, in accordance to which the information about an administrative body cannot be a commercial secret, and the administrative body is any person (including legal persons of private law) that serves as a public legal authority. Nevertheless, there are still precedents of neglecting these norms by a number of public institutions.

The violation of the right of choice of form of receiving information by the applicant established by GACG by public institutions can also be characterized as the bearer of trend signs. Very often this is reflected in redirection of applicant to different websites instead of issuance of information in the form requested.

In the end, most often it can be even said systematically that when refusing the issuance of public information, public institutions do not explain in writing their rights to the interested parties and the

order of appeal against refusal of issuance of public information. However, this obligation is directly imposed on public institutions by the acting legislation of Georgia. In addition, the negative trend can be observed in cases of substantiated refusal to issue restricted information by public institutions, their responses are limited only by the formal rejection – the applicant who has a wish to appeal is not provided with important information and details, such as: the legal norms of reference based on which the rejection was given; the degree of secrecy and classification; indication of the official who assigned the requested information to the state secret; reference to the fact of refusal of the subject of the data, to issue the data; the date of consideration of the information requested as a commercial secret by public institution, etc.

The problems revealed within the Project are significant not only for the members of civil society, but particularly for the government. The Institute believes that the following actions can be implemented at the beginning in order to minimize the problems:

The research conducted within the Project and the corresponding statistical data revealed positive shifts connected with the receiving and issuance of public information in Georgia. The Institute believes that this is mainly due to a significant event in Georgia – the change of the government by parliamentary elections of October 1, 2012. This assumption is supported by the figures revealed by the Project – after the election the willingness of public institutions to release information increased by about 25 percent compared to the period before the election. This figure also demonstrates compliance of public institutions with the 10 days term has increased by about 20 percent, though; public institutions are still to cultivate the following practice – to notify the applicant upon the submission of a request whether the 10 days term is necessary for issuance of public information.

Interesting is the fact that the requests sent by the Institute in the post-election period were satisfied by the public institutions that provided no response in terms of issuance of public information for years. This mainly concerns the following bodies of local self governance – Khoni, Vani, Samtradia, Tianeti, Tsageri, Chkhorotsku, Aspindza, Borjomi, Ninotsminda, Tetrtskaro, Kaspi, Kareli Municipal Boards, although the Ministry of Defense of Georgia should be noted as well as the institution which, during the previous project, was awarded the title of the most restricted agency for the year of 2011.

Despite the fact that not all of the groups of public institutions underwent the personnel changes caused by the government change, it can be said that a growing trend of issuance of public information has spread evenly over all public institutions. The above mentioned also influenced quantitative and qualitative values of public information obtained by the Institute and displayed on the website. During the post-election period, the Institute has requested such public information that in previous years was not subject to publication under the authority of the previous government. Consequently, this fact has led to an increase of the Institute website users well.

Despite the positive trend of public information issuance, there is some inefficiency with regard to the forms of providing of public information by institutions. Often public institutions chose to provide information in printed form, even though the Institute gave them alternative to provide the

same information in electronic format. This can be considered as a negative trend, if we assume that the information is stored in electronic format at the institutions, which is proved by receiving documents printed out from Excel files.

Amidst the growing trend of issuance of public information by public institutions, the Institute experienced a certain difficulty in naming the best public institutions in terms of transparency. The difficulty was due to the fact that most of the public institutions in the post-election period fully complied with the requirements sent by the Institute – thus, the practice in respect of each public institutions of the period prior to the elections had decisive influence on the final ratings. However, as well as in the previous project, Dmanisi Municipal Board took one of the leading places in the rating of the most transparent public institutions that shows the high level of accountability of this institution.

In addition, since after the post-election period the number of public institutions has made remarkable progress in terms of issuance of information, the Institute has additionally introduced a special nomination – public institutions that improved provision of public information availability. In this context, the National Agency of Non-Custodial Sentences and Probation and the Ministry of Defense should be mentioned. These institutions had the biggest progress in terms of public information issuance. The last place, meaning non-transparency of public institutions within the current project, was occupied by Bolnisi Municipal Board, but the Administration of the President of Georgia is to be mentioned as well, which, similar to the implementation period of the previous project, and during the current project, was characterized by the fact that acquiring information from this institution required a lot of effort from the Institute – be it administrative appeals or employment of the right to appeal to the court.

The Institute hopes that the increasing trend of openness of information in public institutions will be preserved in Georgia in the future, with any government, and it will not be related to the initial stages of working of the new government, when public institutions are less willing to conceal any information. In addition, parallel to the mentioned trend, it is desirable to minimize the problems of legal nature described above related to the freedom of information in Georgia, which will enable all interested persons to enjoy the right to public information in Georgia, and assist the government to be more transparent and accountable. The Institute continues to actively work toward this goal and is open to any prospect for cooperation.