

# Final Report Serbia

## Methodology

Within the framework of a regional project “Monitoring the Implementation of the Access to Public Information Acts in Croatia, Bosnia and Herzegovina and Serbia by Public authorities, by Means of Carrying out a Survey and Sending Inquiries for Access to Information”, jointly implemented by the Croatian Helsinki Committee for Human Rights, Access to Information Center Sarajevo, and YUCOM in early May 2005, an analysis of the implementation of respective freedom to public information acts in Serbia, Bosnia and Herzegovina and Croatia was carried out.

During May 2005 the partner organizations adjusted a common monitoring methodology and adapted it to all three countries’ specifics. This methodology was based on the methodology the Open Society Justice Initiative applied in a similar survey carried out 2003 in five countries (Armenia, Bulgaria, Macedonia, Peru and South Africa).

### 1. Public Authorities Subjected to the Survey

In accordance with the common monitoring methodology, it was agreed that 100 inquiries for access to information be sent to public authorities in each of the three countries. These inquiries were to be divided into 5 basic categories and sent to addresses of 20 different public authorities: 1) highest state organs, 2) ministries, administrative authorities within individual ministries and administrative agencies, 3) courts of law, 4) authorities in entities, provinces and local self-government units, depending on each country’s specific setup, 5) organizations entrusted with the performance of public authority and legal entities established or financed wholly or predominantly by a state organ.

Each organization was free to draw up, within above mentioned groups, final lists of authorities their inquiries were to be sent. Within the framework of this survey the following authorities were embraced in Serbia:

1) The Government of the Republic of Serbia, the President of the Republic of Serbia, People’s Assembly of the Republic of Serbia and the Constitutional Court of Serbia were sent a total of 21 inquiries.

2) Ministry of Economy, Ministry of Health, Ministry of Science and Environment, Interior Ministry, Justice Ministry, Ministry of Tourism and Services and the Finance Ministry. The Defense Ministry of the State Union SCG was also included in this group as a separate subcategory, and had been especially called upon by Rodoljub Sabic, Access to Public Information Commissioner, to act in accordance with the Free Access to Information Act. The Defense Ministry has responded to these requests repeatedly. A total of 42 inquiries was sent to this group.

3) The Supreme Court of Serbia and the District Court in Belgrade were sent a total of 10 inquiries.

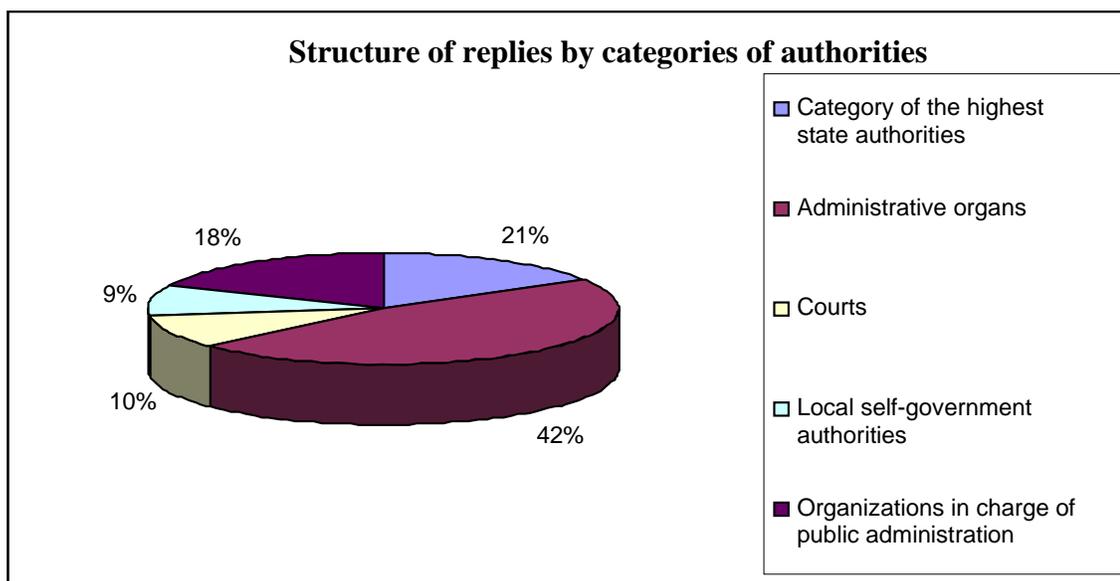
4) Local self-government authorities of the cities of Belgrade and Nis as well as the communes of Zajecar and Pozarevac were sent a total of 9 inquiries.

5) Within this group the Belgrade University Law School, Broadcasting Agency, Privatization Agency and JAT Airways were addressed a total of 18 inquiries.

According to the above mentioned categorization of the public authorities monitored, the following structure has been arrived at:

<b>Total:</b>	<b>100</b>
<b>Category of the highest state authorities</b>	<b>21</b>
<b>Administrative organs</b>	<b>42</b>
<b>Courts</b>	<b>10</b>
<b>Local self-government authorities</b>	<b>9</b>
<b>Organizations in charge of public administration</b>	<b>18</b>

The table depicts a percentage structure of the inquiries by categories of authorities, carried out by an established research methodology. The accent is placed on state administrative organs and the highest state authorities which were addressed the most inquiries.



## **2. Typology of Inquiries Addressed to Public Authorities and the Day of Dispatch**

Depending on the nature of the information that was sought, in Croatia, Bosnia Herzegovina and Serbia, the inquiries were divided into three basic categories: routine, complex and sensitive, with the aim to detect the individual authority's sensibility to different types of inquiries in a relevant way. However, accent was placed on so called routine inquiries, i. e. "inquiry normally accessible in a democracy".

1) In the spirit of the survey, routine inquiries related to usual information from the jurisdiction and work scope of an agency, or information that that agency should be in possession of, or be acquainted of its contents, because the Free Access to Information Act stipulates that it suffices that an information is in the possession of a specific agency irrespective of whether it represents an information pertaining to it direct jurisdiction.

The following information were referred to within the category of routine information: whether an appointed official is authorized to disclose information; different forms of statistical reports that should be in the possession of an authority the inquiry was addressed to; information on draft laws or adopted laws and other legal instruments...

2) In the spirit of this survey, complex inquiries related to applications seeking more different and complex information, which, by our own assessment, could have prolonged the working process of an agency, and further extend the deadline for informing the applicant on the possession of information. According to the art. 16, para. 3 of the Free Access to Information Act, if an authority is not in the position, for justifiable reasons to ... "inform the applicant on the possession of the information and enable the applicant insight into the document containing the sought information, to issue or send a copy of the said document within the specified timeframe, it shall inform the applicant accordingly and set an additional deadline which cannot be longer than 40 days after the receipt of the inquiry. It is within this timeframe that the authority shall inform about the possession of the information, enable insight into the document containing the sought information and issue or send a copy of that document."

A complex inquiry specified in the described manner can, according to art. 13 of the Free Access to Information Act, also represent a reason for the suspension or limitation of the freedom to access public information if an inquiry... "contains requests to access too many information". What "too many information" means, remains a part of "good governments" or free interpretation of the public authority the inquiry was addressed to.

3) Sensitive inquiries related to information that can be sensitive in view of contemporary political climate in Serbia, as well as those that Articles 9 and 14 of the Free Access to Information Act classifies as permissible exceptions after the implementation of the so-called tripartite public interest test.

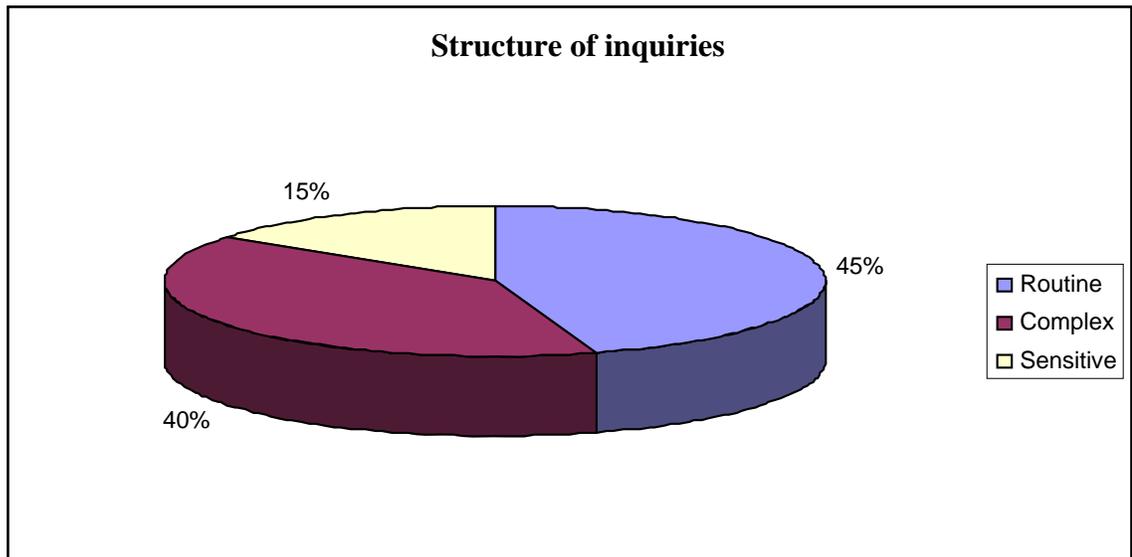
According to art. 9 of the Free Access to Information Act, a public authority should not grant access to information to an applicant if:

According to art. 14 of the Free Access to Information Act, an authority should not grant access to information to an applicant if it would violate the right to privacy, reputation or any other right of the person the sought information relates to, unless:

However, the said reasons per se are not enough to deny free access to information. The public authority the inquiry was addressed to is obliged to conduct a tripartite test which determines:

- 1) that one of the interests contained in the Law is opposed to the interest of the applicant to receive the information;
- 2) whether this interest would be seriously violated by the access to information;
- 3) whether the need to protect the opposite interest prevails over the need of the applicant to access the information, by judging the necessity of denying access to information.
- 4) the structure of addressed inquiries in Serbia. Of a total of 100 inquiries in this survey, 45 were routine, 40 were complex and 15 were of a sensitive nature.

**Total 100**  
**Routine 45**  
**Complex 40**  
**Sensitive 15**



5) Addressing inquiries. All authorities were addressed regular inquiries which sought only information from the public authority, without a direct insight and delivery of documents containing the information.

In accordance with art. 16, para. 1 of the Free Access to Information Act, in this form of legal right to access to information, an authority is obliged to inform the applicant about its possession of the information, i.e. to report it, without delaying, and within the timeframe of 15 days after the inquiry had been addressed. So therefore the fact whether the inquiry was duly replied to is assessed by the date of receipt (by

post, fax or telephone) by every applicant. This means that only a reply that was made before the deadline of 15 days after the inquiry had been addressed is considered to be on time.

## **6) 'D' Day**

According to the established methodology of the Croatian Helsinki Committee and the Access to Information Center Sarajevo, it is determined that June 21st 2005 was the "D" day, when all of the 100 inquiries were to be sent.

Representing its local partners, YUCOM had sent all inquiries, together with a return receipt, as a proof of receipt by the agency the inquiry was addressed to.

All inquiries were received by the authorities between June 22nd and June 24th (as proven by the return receipts), which means that the deadline to process the inquiries and to reply the applicants, depending on the exact date of receipt, was July 8th 2005. However, during the survey we also considered those inquiries which were received 2 or 3 days after July 8th, having in mind postal delay.

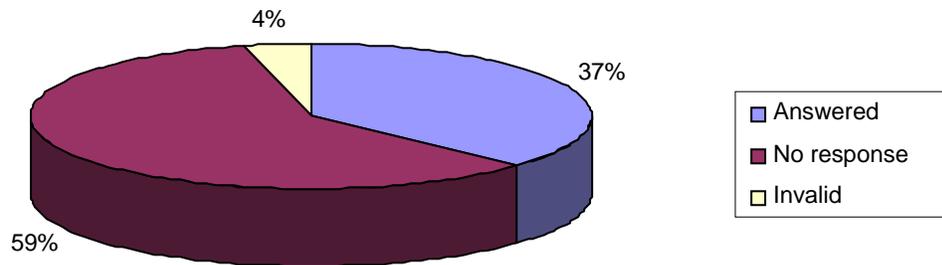
This issue, however, turned out to be crucial during the later evaluation of the received inquiries, because replies sent by some authorities, although dated before the deadline expiry, were received much later than the deadline specified. Because of that fact, those replies weren't considered as valid, according to the interpretation under item 5.

## **4. Replies Received Before the Deadline Expiry**

Before the expiry of the deadline set out in art. 16 of the Free Access to Information Act, July 9th 2004, of one 100 INQUIRIES addressed to relevant authorities, 37 have been answered to, 59 were left without response and 4 could not be considered to be valid.

<b><u>Total</u></b>	<b>100</b>
<b>Answered</b>	<b>37</b>
<b>No response</b>	<b>59</b>
<b>Invalid</b>	<b>4</b>

### Replies received before the deadline expiry



1. Government of Serbia	sent 5	received 0
2. President of Serbia	sent 5	received 4
3. People's Assembly	sent 7	received 1
4. Constitutional Court	sent 4	received 0
5. Ministry of Health	sent 5	received 5
6. Ministry of Science and Environment	sent 5	received 5
7. Ministry of Economy	sent 5	received 0
8. Interior Ministry	sent 5	received 0
9. Justice Ministry	sent 6	received 3
10. Ministry of Trade and Tourism	sent 5	received 4
11. Finance Ministry	sent 6	received 2
12. Defense Ministry of SCG	sent 5	received 0
13. Supreme Court	sent 4	received 0
14. District Court	sent 6	received 0
15. City of Belgrade	sent 5	received 0
16. Local self-government	sent 4	received 1
17. Belgrade University Law School	sent 3	received 3
18. Broadcasting Agency	sent 5	received 5
19. Privatization Agency	sent 5	received 4
20. JAT Airways	sent 5	received 0
<b>TOTAL</b>		<b>37</b>

Evaluation of Received Information

1) Authorities which responded before the deadline expiry. As seen from the previous data, it is obvious which public authorities gave a complete or partial response to the inquiries to free access to information. Those are: Ministry of Health, Ministry of Science and Environment, Republic Broadcasting Agency, Ministry of Trade, Tourism and Services, President of the Republic of Serbia, Law Faculty in Belgrade, Privatization Agency. Those public authorities have an established and adequate service for receiving inquiries, i. e. an authorized employee, a well developed internal organization and coordination which deals with the receipt of inquiries, so therefore a future ignoring of inquiries can only be considered as illegal conduct of the administration, i. e. as illegal “concealing” of information.

2) Authorities which only gave a partial response. Those authorities are the Finance Ministry and the Justice Ministry, whereby the type of inquiry wasn't fully expressed. It remains unclear whether this fact is due to slow procedure, inadequate internal organization and coordination or lack of personnel.

3) Authorities which gave no response or a partial response. Those are: the Government of the Republic of Serbia, The People's Assembly of the Republic of Serbia, Ministry of Economy, Interior Ministry, the District Court, the Supreme Court, the city of Belgrade, local self-government authorities of the cities Nis and Zajecar and JAT Airways.

As an authority of the State Union of SCG, neither the Ministry of Defense of SCG acts according to this Act, despite previous announcements.

Change of result. However, the situation drastically changed after YUCOM announced a presentation of the results in mid July. In the period between July 25th 2005 and August 1st 2005, 20 further replies were received, so the total of responses climbed up to 57, which is considered a good result, at least during this stage of the implementation of the Free Access to Information Act.

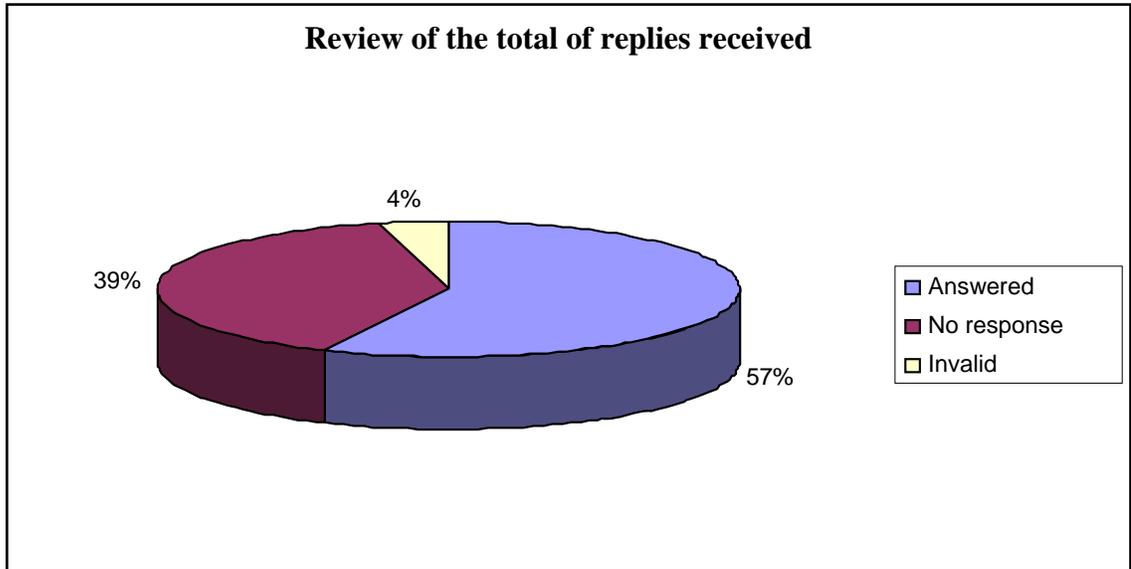
**Conclusion.** This fact shows that certain authorities still don't have a sense of importance of replying to their citizens' inquiries, i. e. it shows the level of their ignorance towards their legal obligations set out by the Free Access to Information Act. A public campaign is still necessary in order to set in motion a more efficient carrying out of the Act, which is most notable in the highest public authorities – The Government of Serbia, People's Assembly of Serbia as well as the Supreme Court and the District Court in Belgrade.

Having this in mind, the survey showed that the role of NGOs in the implementation of this Act is still important and that the Ministry of Culture of the Republic of Serbia, as the ministry in charge of the implementation, is still not doing enough to successfully implement it within the public authorities.

## 5. Replies Received After the Deadline Expiry

After the expiry of the deadline set out in art. 16 of the Free Access to Information Act, August 1st 2005, of 100 inquiries addressed to relevant authorities, 57 have been answered to, 39 were left without response and 4 could not be considered to be valid.

**Total 100**  
**Answered 57**  
**No response 39**  
**Invalid 4**



1. Government of Serbia	sent 5	received 5
2. President of Serbia	sent 5	received 4
3. People's Assembly	sent 7	received 6
4. Constitutional Court	sent 4	received 0
5. Ministry of Health	sent 5	received 5
6. Ministry of Science and Environment	sent 5	received 5
7. Ministry of Economy	sent 5	received 0
8. Interior Ministry	sent 5	received 1
9. Justice Ministry	sent 6	received 3
10. Ministry of Trade and Tourism	sent 5	received 5
11. Finance Ministry	sent 6	received 3
12. Defense Ministry of SCG	sent 5	received 0
13. Supreme Court	sent 4	received 3
14. District Court	sent 6	received 4
15. City of Belgrade	sent 5	received 0
16. Local self-government	sent 4	received 1
17. Belgrade University Law School	sent 3	received 3
18. Broadcasting Agency	sent 5	received 5
19. Privatization Agency	sent 5	received 4
20. JAT Airways	sent 5	received 0
<b>TOTAL</b>		<b>57</b>

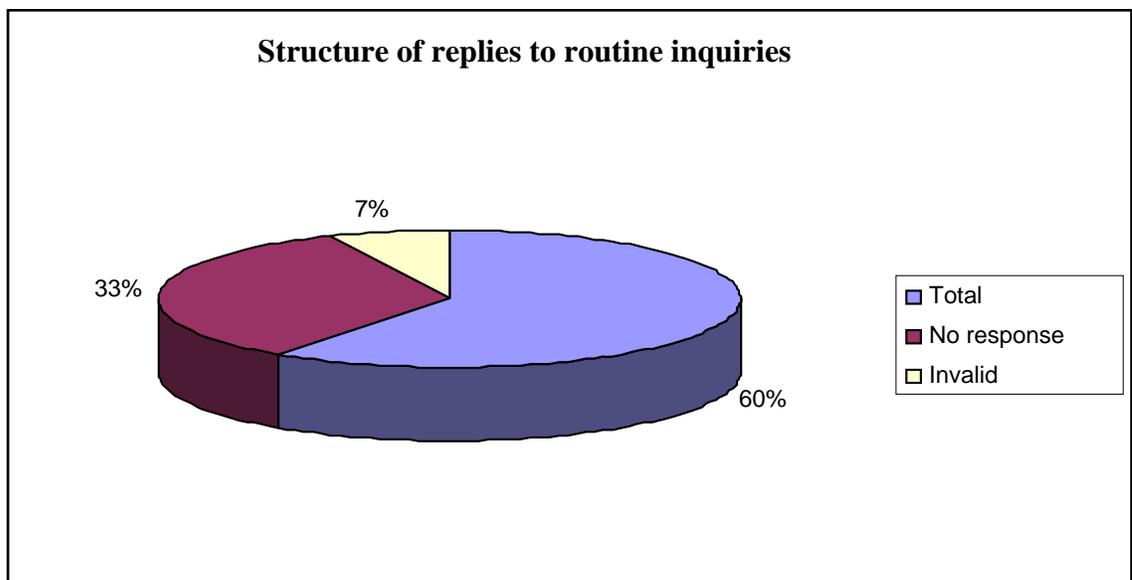
## 6. Review of the Total Number of Replies Received Irrespective of the Deadline, Classified According to Types of Inquiries.

### 1) Replies to routine inquiries.

Forty-five inquiries in the group of routine inquiries, whereby no legal obstacle prevents public authorities to enable access to information, regardless of deadlines, were responded to in 27 cases, i. e. 60% of the total routine inquiries addressed to them. No reply has been obtained in 15 cases (33%), whereas 3 inquiries (7%) within this group were invalid.

#### Replies to routine inquiries:

<b>Total</b>	<b>45</b>
<b>No response</b>	<b>15</b>
<b>Invalid</b>	<b>3</b>

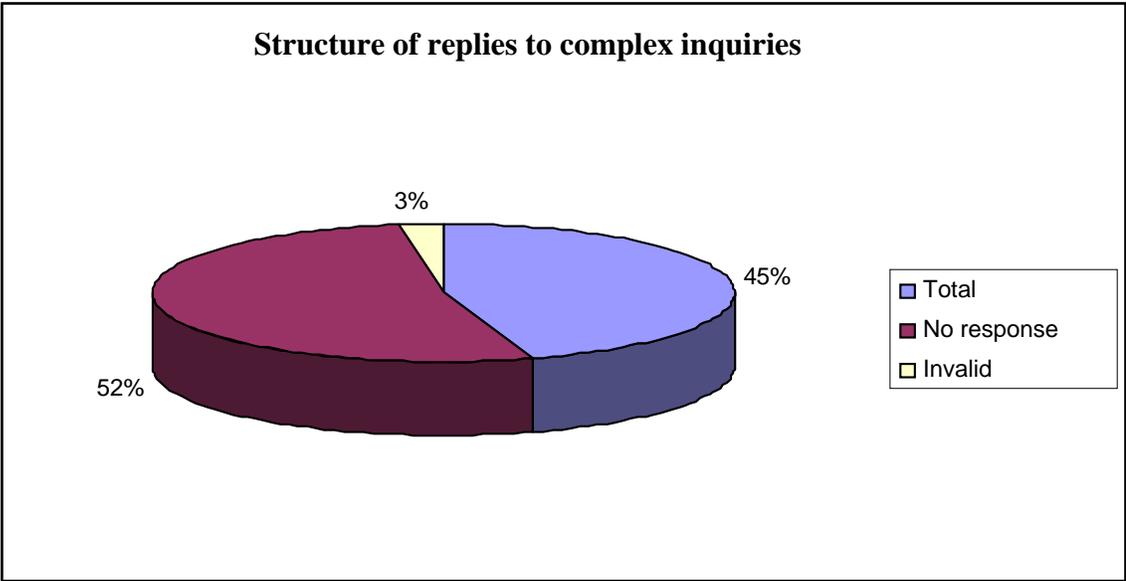


### 2) Replies to complex inquiries.

Forty inquiries in the group of complex inquiries, regardless of deadlines, were responded to in 18 cases, i. e. only 45% of the total complex inquiries addressed to them. No reply has been obtained in 22 cases (52%), whereas 1 inquiry (3%) within this group was invalid.

#### Replies to complex inquiries:

<b>Total</b>	<b>18</b>
<b>No response</b>	<b>21</b>
<b>Invalid</b>	<b>1</b>

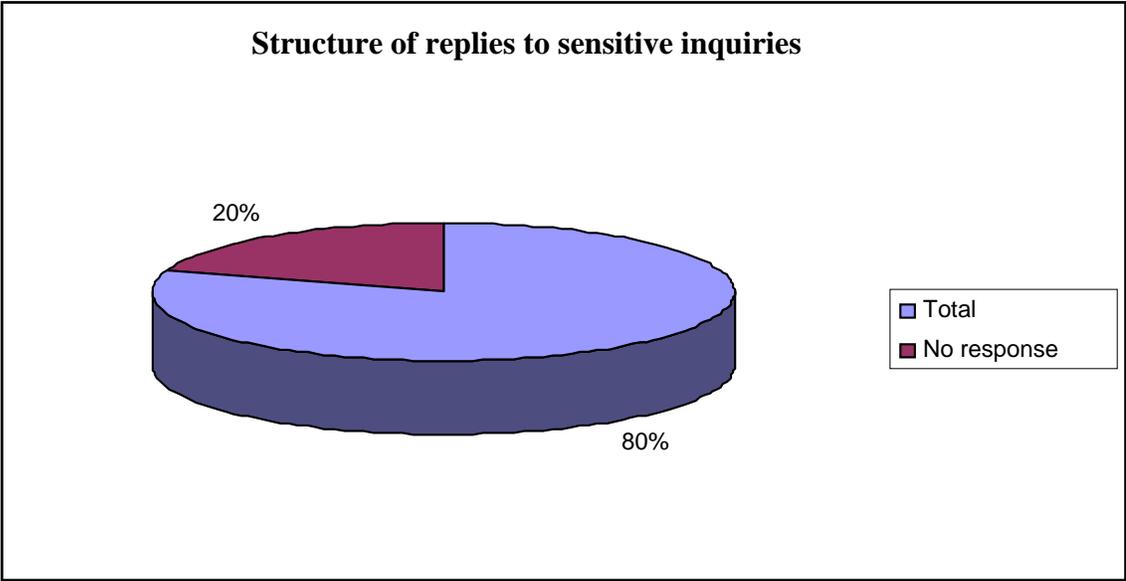


**3) Replies to sensitive inquiries.**

Fifteen inquiries in the group of sensitive information, regardless of deadlines, were responded to in 12 cases, i. e. 80% of the total sensitive inquiries addressed to them. No reply has been obtained in 3 cases (52%).

**Replies to sensitive inquiries:**

<b>Total</b>	<b>12</b>
<b>No response</b>	<b>3</b>

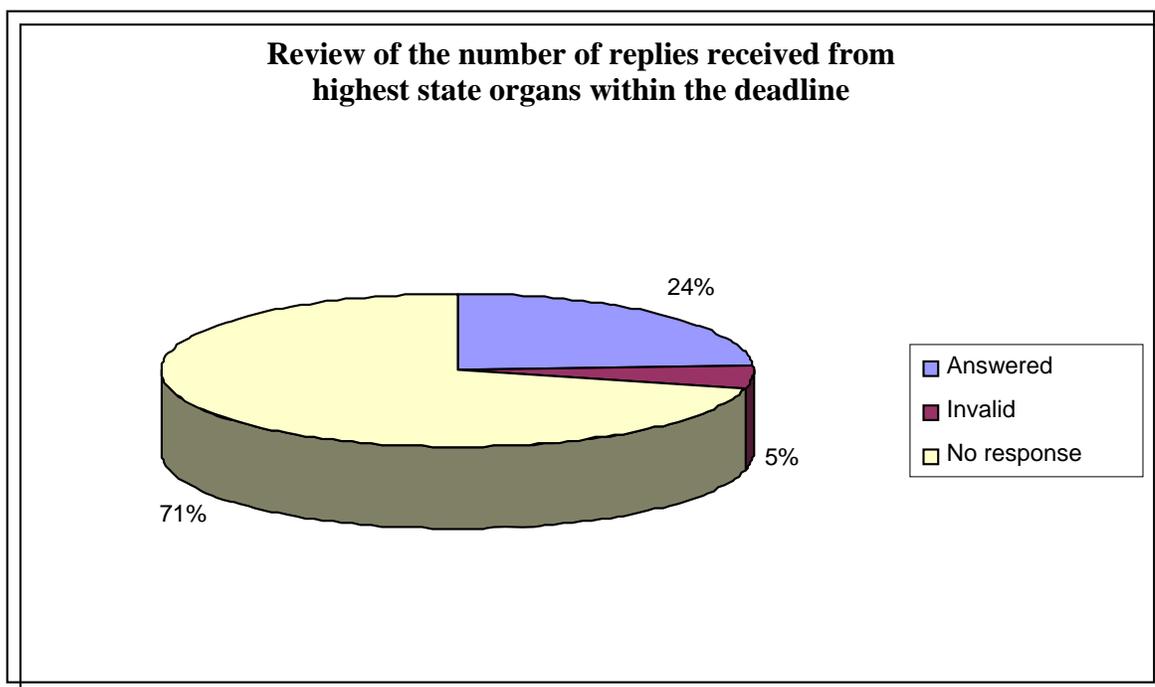


## 7. Analysis of Each Public Authority's Reaction to Inquiries and Action on Them

### A. Highest State Authorities 1

The Government of the Republic of Serbia, President of the Republic of Serbia, People's Assembly, and the Constitutional Court of Serbia belong to the group of highest state authorities. They were addressed a total of 21 inquiries, 5 of which were reacted within the specified time limit, 15 were not responded before the deadline expired and 1 was invalid.

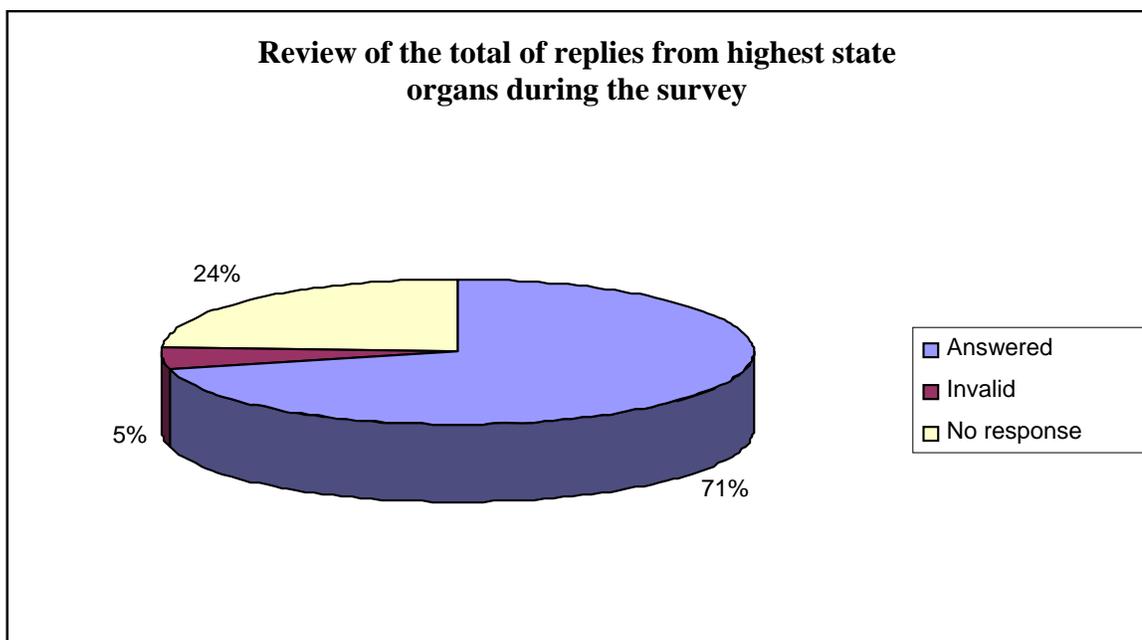
The following table shows the percentage of the responses in view of the deadline set out by the Free Access to Information Act.



After the deadline (July 8th 2005) expired, the structure of the total number of responses received changed considerably by August 1st 2005. Out of a total of 21 inquiries addressed to the highest state authorities, 15 have been reacted to by August 1st 2005, 1 was invalid and 5 were left without a reaction related to the information sought. The following table shows the structure of the total number of responses, including those received after the expiry of the deadline set out in the Free Access to Information Act.

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<sup>1</sup> Although it belongs to the group of highest organs of the State, the Supreme Court is dealt with under C. Courts, point 12 of this chapter



## 1) The Government of the Republic of Serbia

### Information demanded from the Government

The Government of the Republic of Serbia was addressed 5 inquiries, 3 of which belonged to the category of sensitive, 1 to the category of complex and 1 of a routine nature. Responses containing information were complete in 3 cases, 1 was partial and 1 was unsatisfactory.

We would like to point out several most interesting questions contained in the inquiries:

1) Did the Government approve the interior Ministry to purchase equipment without a tender procedure, i. e. contrary to the Public Procurement Act. If yes, on what grounds and when?

The response to this inquiry was only partial because it contained only the legal grounds on which the Government agreed to the Interior Ministry purchasing equipment without a tender, but not whether the Government gave its consent to the purchase itself and when.

2) What is the total amount of costs of escorting indictees before the International War Crimes Tribunal to The Hague during the year 2005?

The response to this inquiry was unsatisfactory. The Government informed that the information related to this matter are classified and that the Rules of Procedure of the Government prevent her from rendering that information accessible. In this particular case, although there is legal obligation to carry out the Public Interest Test, it

has not been done; the Government claims that its Rules of Procedure protect classified files from disclosure, which points out that there are no adequate legal regulations which would regulate the matter of classified information in a uniform way.

3) Data on the structure and distribution of aid for the population of Banat, affected by the flood.

The information was complete and elaborated. The Government stated that 54 million dinars has been mobilized from different sources and allocated for that purpose. The decision on this was prepared by the Natural Calamities Damage Assessment Commission as a permanent auxiliary body of the Government, and approved by the Government. Regarding the amount and structure of assistance allocated by individual Ministries, the Government is in no possession of such information and defers us to specific ministries.

### **Problems related to received information contained in Government's response to inquiries**

The Government responded to all inquiries considerably later than the deadline specified in art. 16, para. 1 of the Act, i. e. only after preliminary results of the survey were communicated in print and the electronic media.

This situation poses the quest related to the deadline as specified by the Act, for, although all information have been duly entered in the records on July 7th, the last day before the expiry of the deadline, it seems impossible that inquiries sent from Belgrade by mail, took more than 15 days to reach the addressees. Such situation has not been encountered in any of the remaining 19 authorities addressed.

The fact that there is a discrepancy between the date the information was drafted and the date it was mailed (July 18th 2005, 11 days after the information was drafted), led us to consider all the above mentioned responses by the Government as responses received after the deadline.

### **Conclusion:**

Discrepancies between dates as described above seem to represent one of the forms of abuse employed in order to prolong the deadline specified by the Free Access to Information Act. This fact can point out at one of the two problems regarding the implementation by the Government of Serbia of the Free Access to Information Act:

1) that already drafted information are being dispatched to applicants with considerable delay, which can indicate insufficient coordination between particular services within the Government. This is intolerable because it is in that way that the citizen who is entitled to free access to information is degraded; or

2) that the date entered on the information to be sent does not correspond with the actual date the information was drafted , consequences of which would unfortunately be much more severe.

On the basis of the survey carried out, one is led to conclude that the Government reacts to citizens' inquiries only after it has been put under the public pressure, rather than in accordance with the principles of legality which obliges it to act in accordance with deadlines specified in the Free Access to Information Act.

## **B. President of the Republic**

### **Information demanded from the President**

President of the Republic of Serbia was addressed 5 inquiries, 4 of which belonged to the category of routine and 1 of a complex nature. Responses containing information were complete in all 4 cases.

Problems related to received information contained in the President's response to inquiries

As far as redirecting of inquiries is concerned, provisions of art. 19 of the Free Access to Information Act that stipulates that ... "when a public authority is not in possession of a document containing the sought information, it shall convey the inquiry to the Commissioner and inform the Commissioner and the applicant about in whose possession the document is according to its knowledge", have been violated. Although this procedure slows down the process of rendering information accessible, it ensures that the applicant remains the "sovereign master" of his/her request, who can also oppose his/her request being redirected to another authority. The "Peoples' Chancery" has sent information related to redirected inquiries on 2 occasions.

#### **Conclusion:**

Generally speaking, the survey has shown that inquiries addressed to the President of the Republic are processed swiftly and efficiently, which testifies to the assessment that the person authorized in accordance with the Free Access to Information Act acts responsibly. It is recommended that the authorized person brings his/her activities in harmony with the provisions of the Act related to redirecting inquiries.

## **B. People's Assembly of the Republic of Serbia**

### **Information demanded from the People's Assembly**

The People's Assembly of the Republic of Serbia was addressed 7 inquiries, and only 1 them was replied to before the deadline set out by the Free Access to Information Act. In 5 cases the respond came long after the deadline and 1 inquiry was invalid. Two of the other 6 inquiries belonged to the category of routine, 2 were complex and 2 were of a sensitive nature.

1) How many secret tunnels and corridors are there in the building of the People's Assembly of the republic of Serbia?

According to the response received, there are no such secret passages. However, it is only recently that the Speaker of Parliament Predrag Markovic showed one of such passages to citizens sightseeing the House of parliament, which renders this response unsatisfactory.

2) How many violations of the Rules of Procedure have been recorded during 2005 and is there a breakdown of such violations according to individual parliamentary parties?

During 2005 a total of 35 MPs' objections related to violations of the Rules of Procedure have been recorded and voted on by the Assembly. The information is considered to be complete.

3) How much does a working day of the Assembly cost?

A working day of the People's Assembly costs a total of 1.500.000. dinars which includes costs of electricity, water, telephone, salaries of both employees and MP's, MP's' per diem, maintenance, stationary, equipment and so on.

This information is complete.

### **Problems related to received information contained in the People's Assembly's response to inquiries**

Only in one case did the People's Assembly respond to the inquiry within the timeframe specified in art. 16 para. 1 of the Free Access to Information Act. The remaining 5 replies arrived with considerable delay and only after preliminary results of the survey were published in the print and electronic media.

The very dates entered in these replies clearly indicate that the replies were written after the deadline specified by the Act (in all 5 cases the replies were dated July 21st and July 22nd 2005).

### **Conclusion:**

The People's Assembly of the Republic of Serbia responds to inquiries only under pressure from the public and not according to the principle of legalism which stipulates that each action of the authorities should be accorded with the law, which includes deadlines obliging the People's Assembly itself as well.

Since the only response given by the People's Assembly on time represented a reply to a journalist's inquiry, the question can be posed: does the People's Assembly consider reacting to inquiries by journalists to be its priority, whereas ordinary citizens, business people and nongovernmental organizations do not fit, which opens the question of discrimination in acting on inquiries.

The question of accuracy of information contained in a reply can be posed in one case, since there is no way to verify the information received from the People's Assembly.

It is not clear how many authorized personnel are in charge of citizens' access to information, since different replies were signed by different persons, such as the Speaker of the People's Assembly, Secretary of the People's Assembly, Chief of Staff of the Speaker of the People's Assembly, all of which can represent the cause of insufficient coordination in acting on inquiries. That can also be considered as a reason for violating the deadline stipulated by the Free Access to Information Act (it is not known who is in charge of replying to specific inquiries)

#### **4) Constitutional Court of the Republic of Serbia**

The Constitutional Court of Serbia does not implement the Free Access to Information Act: it was addressed 4 inquiries (3 of a routine and 1 of a complex nature), none of which was replied.

##### **Problems related to received information contained in the Constitutional Court's response to inquiries**

The Constitutional Court of Serbia does not implement the Free Access to Information Act.

##### **Conclusion:**

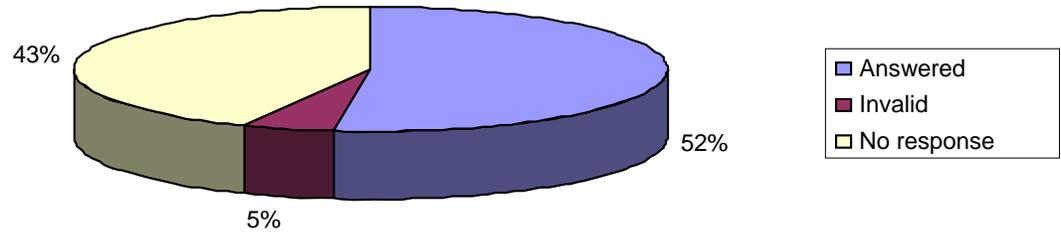
Everyone should be concerned over the fact that the Constitutional Court as one of the highest State authorities ignores the Free Access to Information Act and fails to implement it.

#### **B. State Administration Authorities**

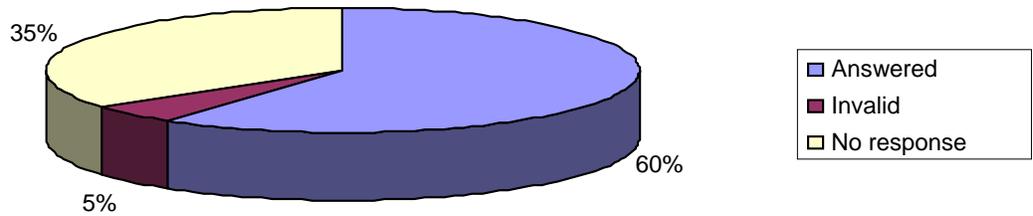
Ministry of Economy, Ministry of Health, Ministry of Science and Environment, Interior Ministry, Justice Ministry, Ministry of Tourism and Services and the Finance Ministry represent the category of administration authorities. The Defense Ministry of the State Union SCG was also included in this group as a separate subcategory, and had been especially called upon by Rodoljub Sabic, Access to Public Information Commissioner, to act in accordance with the Free Access to Information Act. The Defense Ministry has responded to these requests repeatedly. A total of 42 inquiries was sent to this group.

The following tables show the structure of the replies obtained within the framework specified by the law, as well as the total number of replies including those obtained after the deadline specified by the Act expired. The tables depict 37 inquiries; 5 inquiries addressed to the Ministry of Defense were left out. Within the specified deadline, 19 replies arrived, with additional 3 after the expiry of the deadline.

**Review of the replies received from state administration authorities within the deadline**



**Review of the total of replies received from state administration authorities during the survey**



**Report made by YUCOM**