



**Georgian Young Lawyers' Association**

# **Transparency and Accessibility to Public Information in Georgia**

*Monitoring Results*

Tbilisi, 2010

**TRANSPARANCY AND ACCESSIBILITY  
TO PUBLIC INFORMATION  
IN GEORGIA**

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**Tbilisi  
2010**

THE MONITORING IS CONDUCTED BY THE GEORGIAN YOUNG LAWYERS' ASSOCIATION WITHIN THE PROJECT FINANCIAL TRANSPARENCY AND ANTI-CORRUPTION MONITORING OF THE PUBLIC FUNDS. FUNDED BY THE OPEN SOCIETY INSTITUTE (OSI).



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## I. INTRODUCTION

The research has been implemented in frames of the regional project “Monitoring of Transparency and Accessibility to Public Information”. Objective of the research was to study the practice of freedom of information by administrative agencies, to identify existing trends and problems or barriers that applicants were facing in the process of inquiring public information from administrative agencies.

Georgian legislation guarantees all rights to access of information. The Constitution of Georgia sets high standard for freedom of information.

Article 24 of the Constitution:

***“Everyone has the right to freely receive and impart information, to express and impart his/her opinion orally, in writing or by in any other means”.***

Article 41

***Every citizen of Georgia shall have the right to become acquainted, in accordance with a procedure prescribed by law, with the information about him/her stored in state institutions as well as official documents existing there unless they contain state, professional or commercial secret.***

Georgian legislation establishes standards for open public agencies and classifies all information public, if it “is not deemed to be state, commercial or personal secret by applicable legislation”. FOI Chapter of the General Administrative Code of Georgia establishes detailed provisions and creates guarantees for transparency and accountability of administrative agencies.

Although, the practice is frequently equivocal; particularly regarding issues which are not explicitly regulated by law. For example, the law regulating protection of personal data is not explicit; hence, access to such information is inconsistent. Georgian legislation does not establish obligation of publishing information proactively or define types of information that are subject to openness under the initiative of administrative agency.

Having considered freedom of information guarantees established by Georgian law, certain vague entries and urgency of the issue, the researched covered all matters of our interest.

As a result, in addition to practice of freedom of information procedures by public agencies, the monitoring also identified different approaches of administrative agencies regarding accessibility to information of different type and content.

## II. MONITORING METHODOLOGY

The monitoring was implemented in a certain reporting period – August 2009 – February 2010. Correspondingly, materials utilized in research are of that period and the research findings reflect recent trends of freedom of information practice in Georgia.

The project was implemented according to the criteria established by the regional project and encompassed all pre-envisioned stages. The Georgian legislation recognizes only written form of information claim; correspondingly, all applications submitted to corresponding agencies were filed according to the applicable legal standards.

Total of 150 information claims were submitted in the form of written applications in frames of the project. The number of questions raised by applicants in applications was 328. In certain cases it was necessary to send additional elaborative applications, which did not serve the purposes of the research and are not reflected in statistical data.

### 1. Applicants

Article 37 of the General Administrative Code of Georgia stipulates:

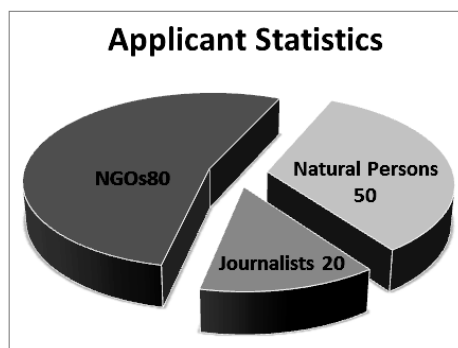
***“Everyone may claim public information irrespective of its physical form or the condition of storage. Everyone may choose the form of receipt of public information...”***

Under the Georgian legislation, **everyone** has the right to apply to a public agency with a claim of public information, which creates the

obligation of administrative agencies to equally review and satisfy **all** applications. Although in practice, approach of public agencies varies according to applicants – whether the information is claimed by a non-governmental organization, a citizen or a journalist – instead of content of information.

Correspondingly, study of noted practice of administrative agencies was important for purposes of the research. To this end, natural persons and journalists along with non-governmental organizations were involved in the research.

Out of 150 applications addressed to public agencies, 80 were sent by non-governmental organizations, 50 by natural persons and 20 by journalists during the reporting period.



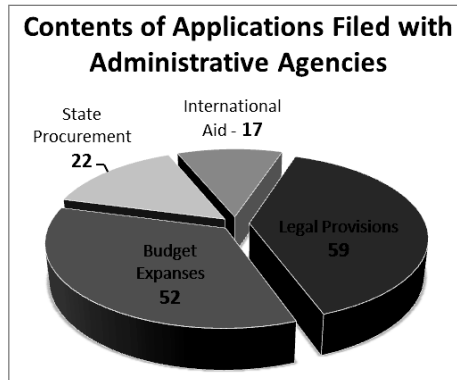
## ***2. Content of Claimed Information***

Applications filed with administrative agencies claimed different types of information. Their contents were defined according to indicators established by the regional project. Following content-based directions were identified:

- Information on budget expanses;
- Grants received through international aid;
- State procurement;
- Information on legal provisions.



Accordingly, out of the applications submitted to administrative agencies 52 claimed information on budget spending, 22 applications claimed information on state procurement, 17 claimed information on international aid, and 59 claimed information on different types of legal provisions.



Four main content-based directions were identified for research, although each was narrowed down to focus on specific issues.

### ***2.1. Budget Expenses***

Annual State Budget is rather volumnuous document and due to scale of the research it was impossible to focus on each specific issue. Based on urgency of the issue, a specific sphere was selected – transparency of adinistrative expenses of public agencies. Approach of public agencies and their practice of principles of openness regarding accessibility of informatin on their administrative expenses, salaries and bonuses of public servants was of a particular interet to us.

Correspondingly, all applications regarding access to budget expenses was structured with identical questions and claimed following information:

- List of employees and the amount spent on salaries, bonuses and rewards of each employee in 2008 (individually);

- 
- Business trip expenses of each employee in 2008 (individually);
  - Amount of budget funds spent to pay the phone bills (including cell-phone) of employees in 2008;
  - Amount of budget funds spent on company vehicle(s) in 2008;
  - Amount of funds spent on fuel procurement by employees in 2008;
  - Amount of budget funds spent on cell-phone and vehicle procurement in 2008 (individually).

Abovementioned questioned were sent to following administrative agencies: ministries, subagency institutions, legal entities of public law, local self-governances and other independent agencies established by the Constitution.

## ***2.2. International Aid and State Procurement***

Georgian government's control of spending of funds received through international aid, as well as lawfulness of state procurements is one of the matters of public interest.

Correspondingly, lawfulness of spending of funds received through international aid was selected for purposes of the research; a specific sphere was identified – provision of housing conditions for IDPs.

Information on state procurement, more specifically documents that certified spending of funds apportioned for IDPs of the August 8, 2008 war were claimed. Claimed information on state procurement was divided into two types: procurement of services through tenders and through single person negotiations.

While inquiring information on tenders, the focus of our interest was copies of all tender documents, as well as copies of amendments to agreements signed with winners of tender, etc.

Regarding procurements through single person negotiation and agreements signed by municipalities and the Municipal Development Fund, following information was requested:

- copies of agreements signed between the procurer and service provider;

- copies of amendments to noted agreements;
- copies of documents concerning damages to buildings and budget estimates;
- copies of documents certifying monetary transfers;
- copies of documents certifying hand-over;
- Other state procurement documents.

The Municipal Development Fund of Georgia, which is responsible for spending funds, was the focus of information inquiry. It shall be noted that the Fund is legal entity of public law, although agreements signed with donors foresaw retroactive funding of implemented measures; correspondingly, we also focused on spending of State Budget funds apportioned to provide housing conditions for IDPs.

In order to claim public information regarding the noted issue, applications were submitted to all the agencies responsible for spending the funds. We particularly focused on municipalities that directly performed spending of funds for the noted purposes. The strategy enabled us to study lawfulness of grant funds that were allocated for IDPs and also to examine the noted issue with regards to local self-governments to identify transparency of certain administrative agencies.

### ***2.3. Legal Provisions***

Accessibility to legal provisions is one of the priorities, particularly in the context of legal authorities. When we speak about accessibility to documents maintained in courts, we shall differentiate statuses of ordinary persons, parties to a dispute (plaintiff, defendant, third party with an independent claim, and third party without an independent claim) and their representatives. Other participants of the process – witnesses, experts, specialists and interpreters – do not bear any particular status for the purposes of information accessibility.

Parties to a dispute have full access to case materials, including personal data, while outside parties do not have access to personal

data. On basis of their application, parties to a dispute will be transmitted copies of court decision in no less than three days after the application has been filed, while the term for other parties is no less than ten days.

Paragraph of Article 42 of the General Administrative Code emphasizes that everyone has the right to access “court materials on the cases where public agency acted as a litigant”.

In cases described below, Georgian Young Lawyers Association did not apply to court as a party to a dispute, but as a third party exercising its right to freedom of information.

During the research, court decisions were focused in two specific directions:

- Applications in the name of GYLA were sent to 14 courts; public information concerning cases reviewed by courts under the Law of Georgia on State Procurement was claimed.

Namely:

1 - The number of such disputes reviewed by courts during the period from April 20, 2005 (when the applicable law of Georgia on State Procurement was adopted) to present.

2 – Copies of court judgements.

Paragraph 1 of the application claimed statistical data, while paragraph 2 claimed documents.

- GYLA applied with public information claim to 16 courts operating on the territory of Georgia. Number of court judgements on FOI cases (Chapter III of the General Administrative Court) from 2008 to present, as well as copies of the judgements was claimed.

Paragraph 1 of the application claimed statistical data, while paragraph 2 claimed documents.

Regarding realization of freedom of information right, court practice is noteworthy. Courts review FOI disputes, make authoritative and binding decisions; hence, it is interesting to examine to what extent courts themselves follow legal stipulations. Noted approach gave us an opportunity to study several issues:

- how courts, as administrative agencies work to process and release information;
- frequency of freedom of information claims filed in courts and analysis of current situation;
- statistical indicator of lawsuits filed by private companies challenging lawfulness of procurement under the Law on State Procurement and analysis of current situation;

### ***3. Administrative agencies addressed by applications***

In specific cases certain types of administrative agencies were selected for purposes of the research. Local self-governments were one of the target groups. Correspondingly, applications were sent to all municipalities that procured services to provide housing conditions for IDPs.

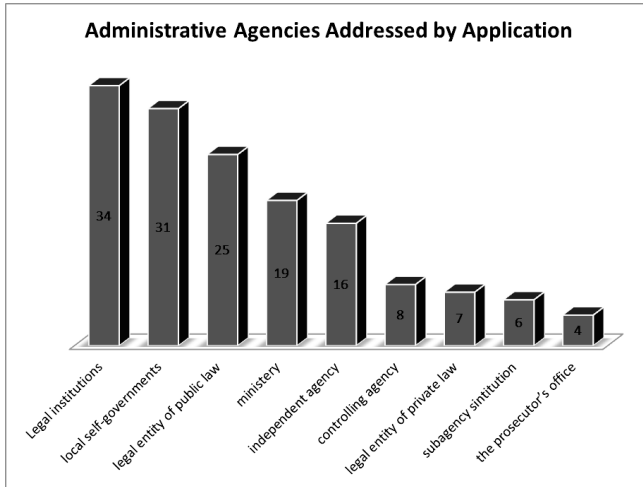
Legal agencies also represented one of the target groups. In the process of selection of legal agencies, aspect of regions was taken into consideration and as a result, applications were filed with courts in almost all regions of Georgia.

In other cases the research didn't target any specific group. Necessity of involvement of all types of public agencies, due to differences in their institutional and functional features, was taken into consideration when choosing addressees of applications.

According to the General Administrative Code of Georgia (Article 27a, Article 2), following public agencies are subject to obligations of accessibility of public information:

- State agency
- Local self-governance agency
- Legal entity of public law
- Any other individual that exercises public legal authority on legal basis
- Legal entity of private law funded from the state or local budget in frames of such funding.

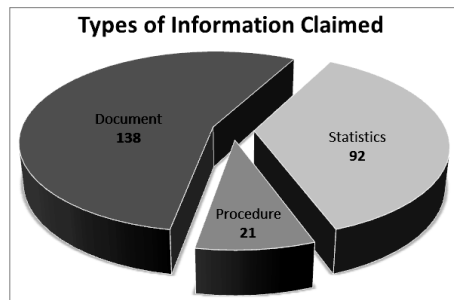
Correspondingly, monitoring covered different number of all types of public agencies operating in Georgia.



#### ***4. Types of Information Claimed***

150 applications that were filed in frames of the research claimed different types of information. More specifically, applicants claimed access to documents, statistical data or periodic information. In most cases, single application claimed access to two types of information.

138 out of 150 applications filed claimed release of a document from administrative body, 92 applications inquired statistical data and 21 applications inquired information about procedure.

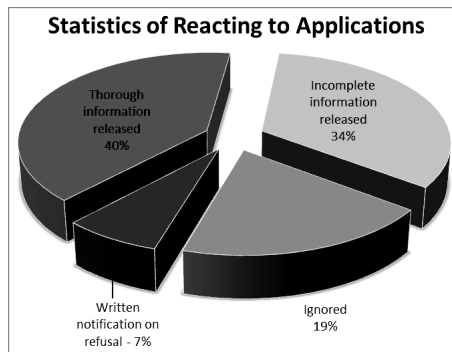


### III. RESEARCH FINDINGS

The monitoring demonstrated that applications were fully satisfied by providing thorough information in 60 cases; administrative agencies issued incomplete information in 50 cases, 29 applications were ignored and 11 applicants were notified in written that their claim had been rejected.

Definition “thorough information released” refers to the cases, where administrative agencies fully satisfy every point of applications and issue complete information. “Incomplete information” refers to the cases, where administrative body issues information about some or single point of application.

Last two cases (ignored applications and rejected applications) are identical result-wise, as access to information was refused; although they differ in terms of the way administrative agencies handled applications; hence, both cases were reflected individually in research findings.



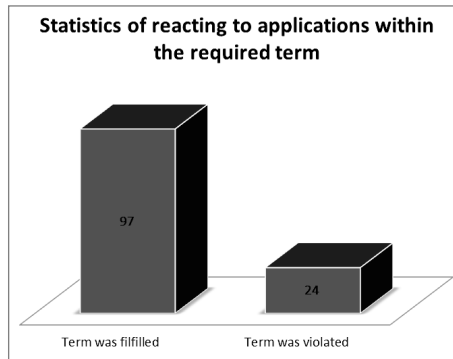
The chart demonstrates that 40% of applications were satisfied by releasing full information, in 34% of cases incomplete information was released and the remaining 26% was rejected.

In addition to thorough and quality information, timely accession is of a particular importance to an interested party.

In this case Georgian legislation creates rather high standard. Namely, the law obligates public agency to ensure immediate provision of information. At the same time it also provides maximum term of 10 days for cases of exception. These cases of exception are explicitly defined by law. Regrettably, release of public information by public agencies rarely meets the criteria of urgency.

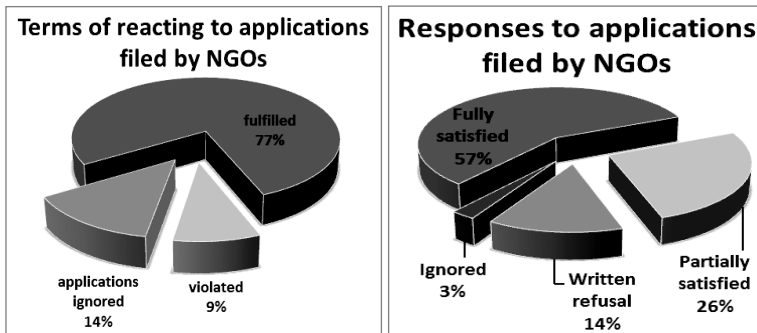
Correspondingly, “term fulfillment” in the chart below refers to those cases where provision of information occurred within the required ten-day term. The rest of the cases, where provision of information occurred after the ten-day period are considered as violation of the term.

In 97 cases public agencies fulfilled the ten day term requirement for release of public information. In 24 cases the requirement was violated. The data does not include 29 applications that were ignored by public agencies.

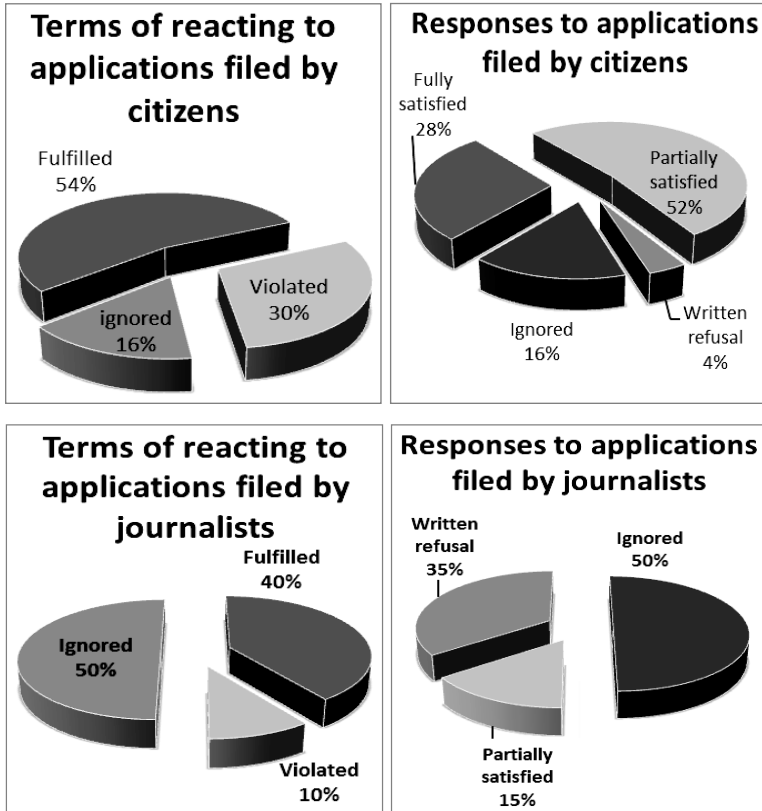


### ***1. Statistics of Findings According to Applicants***

It is interesting to observe patterns of release of information in cases of non-governmental organizations, citizens and journalists. These patterns were studied for each subject. Below is statistical data for each group of applicants.







### 1.1. Term fulfillment

As the charts demonstrate, administrative agencies fulfill the ten-day term requirement in cases when applications are filed by NGOs. The same index decreases from 77% to 54% in cases when applications were filed by citizens. The required period for release of information was observed only in 40% of cases when applications were filed by journalists.

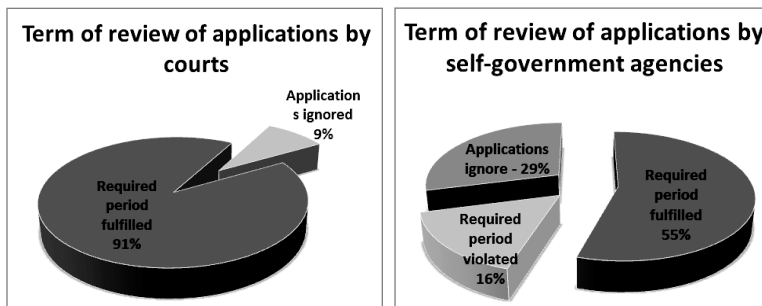
Percentage of cases when applications were ignored by administrative agencies is similar (14%-16%) when applications were filed by NGOs and citizens, while half of applications submitted by journalists were ignored.

### 1.2. Thoroughness of information released

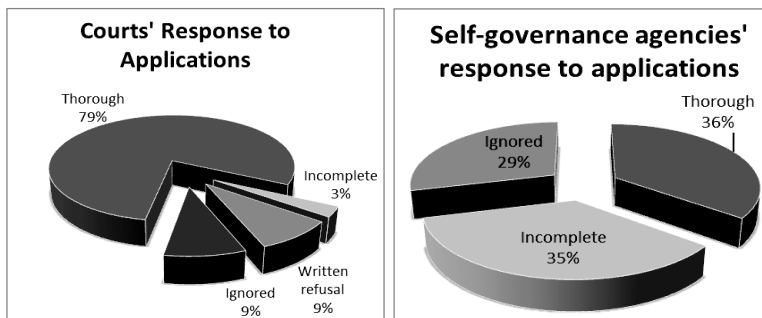
Same proves to be true regarding thoroughness of information released by public agencies. The percentage rate is high in cases when applications were filed by NGOs (57%); the rate is considerably decreased in cases when applications were filed by natural persons (28%); thorough information was not released in any of the cases when applications were filed by journalists.

### 2. Statistics of Findings according to Application Addressees

Below is analysis of certain indicators for specific types of public agencies. Work of two types of target groups was studied in frames of the monitoring. These target groups are: legal and local self-governance agencies. Results demonstrate that legal agencies fulfill period requirement for release of information established by law, while local self-governance bodies mostly fail to fulfill the requirement.

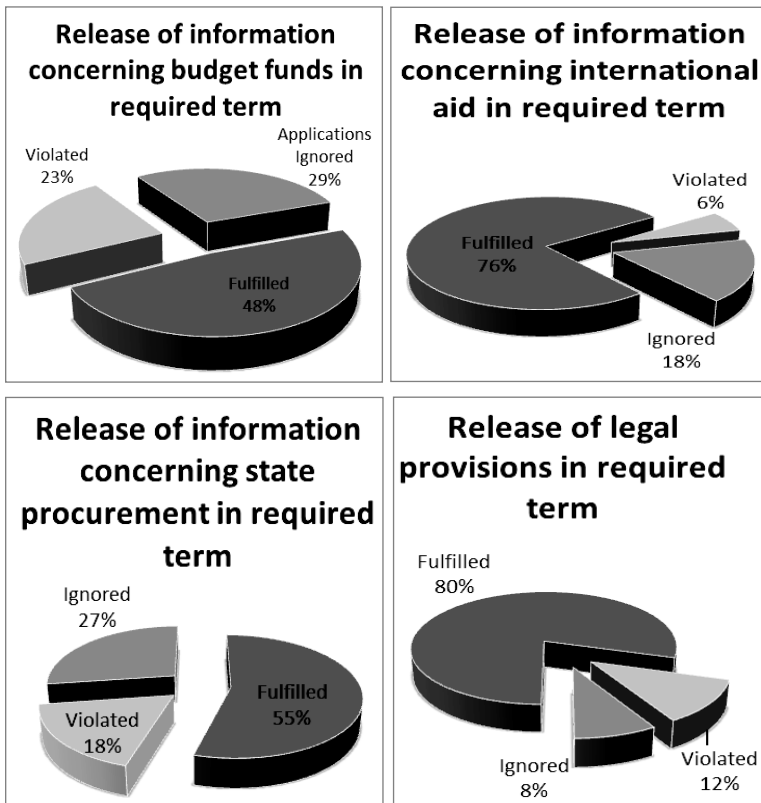


Same conclusion can be made for the noted agencies, when reviewing thoroughness of information released by them.



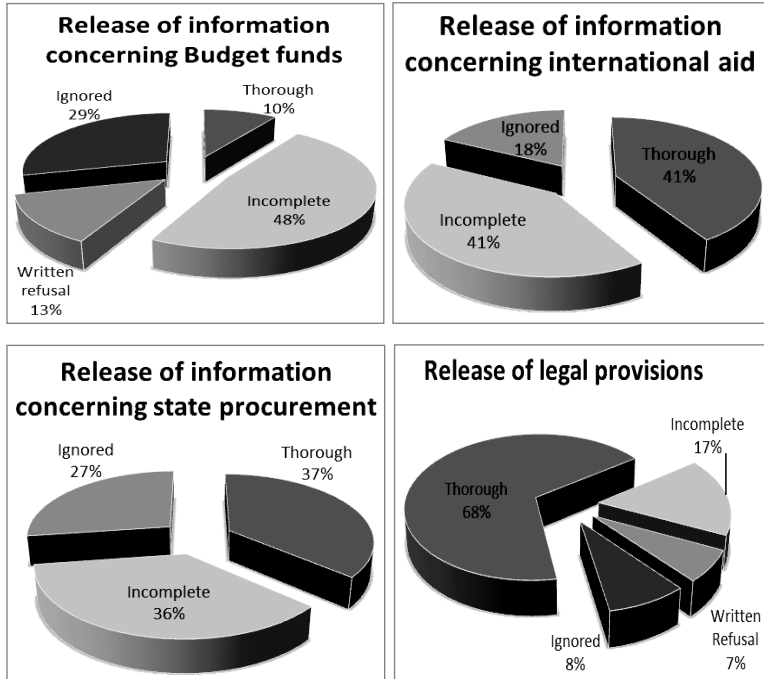
### 3. Statistics of results according to contents of information

Research demonstrated that the rate of releasing information within required period is high in cases when information concerning legal provision and international aid is claimed. In cases when information concerning spending of funds (Budget spending and state procurement) is claimed, the rate is lower. Proportionally, the cases of applications ignored is also high when financial information is claimed; such claim constitutes one third of total number of applications filed.



Indicators are analogous in terms of thoroughness of information released. Only 10% of applications that claimed information concerning budget spending were fully satisfied. Noted rate is increased up to 37% in cases when information regarding state procurement

was claimed. As for the cases when information concerning international aid was claimed, the indicator increases with several percentage points only – up to 41%. The highest indicator was registered in cases involving access to legal provisions. The highest rate of declined applications (42%) was registered in cases involving access to information on spending of Budget funds.



### ***3.1. Accessibility to information concerning salaries, bonuses of public servants and other administrative spendings***

Information concerning public agency spending to pay phone bills of employees and to fund service of company vehicle(s), to procure fuel, cell-phones and vehicles were deemed as public information by most of the public agencies and provided to us. Noted information is statistical data reflecting the amount of funds spent on a specific service or expenses for employees.

Regrettably, not all of the agencies deemed noted information public. For example, Special Service for the Protection of the State declared that under the Law of Georgia on State Secrets, the claimed information constituted state secret; hence, our claim was declined.

We consider that information claimed in our application falls under the information on spending funds by public agencies. Correspondingly, it shall not be classified as information in spheres of defence, economy, foreign relations, intelligence service, state security and law and order. It shall be noted that under the Law of Georgia on State Secrets, for information to be deemed as state secret, it shall include data containing state secret and procedures for classifying the information as state secret shall be complied with. The Law of Georgia on State Secrets defines state secret as kind of information “that includes data containing a state secret in the areas of defense, economy, external relations, intelligence service, state security and protection of law and order”. Article 7 of the Law lists types of information that can be deemed as state secret. It shall be noted that *only* the types of information listed in the Article can be deemed as state secret, not any other type of information.

We consider that content of the information claimed does not include data containing a state secret. Moreover, public may be interested to have access to noted information, as it involves spending of the State property by administrative agencies and falls under the category of information concerning administrative agency, which shall not be classified as a state secret.

Additionally, positions and salaries of the Special State Protection Service are defined by normative act of the President of Georgia and the presidential decree may not be classified as a state secret. Noted fact reaffirms our judgement that claimed information does not contain state secret. The judgement is further corroborated by Article 8 of the Law of Georgia on State Secrets, which stipulates that normative acts (including normative act of the President of Georgia) may not be classified as state secret. Written refusal of administrative agencies demonstrates that formal requirements foreseen by the Law of Georgia on State Secrets are not fulfilled. Under the Law (Article 4.2.d), the President of Georgia shall approve the list of officials

who are authorized to define specific information as a state secret. It shall be noted that written refusal of the Special State Protection Service did not indicate whether required information is deemed as state secret by authorized official, or who defined the information as state secret. Correspondingly, requisites of applicable normative act classifying the information as state secret remain unknown.

Hence we consider, that the act of Special State Protection Service is unfounded, so is refusal of the agency to release the information.

The ministry of interior affairs of Georgia cited different substantiation for refusal to release information that was claimed. The agency clarified that although the claimed information is not classified as state secret under the Law on State Secrets, it is inexpedient to publicize it. Hereby we would like clarify once more that public agency is obligated to perform only the actions that are foreseen by law. The Constitution of Georgia and Chapter 3 of the General Administrative Code (FOI Chapter) does not include provisions concerning restriction of freedom of information by the ministry of interior affairs of Georgia. Freedom of information is restricted only in cases provided by law, such as information containing state, commercial or professional secret. Correspondingly, substantiation provided by the ministry of interior affairs for freedom of information restriction violates the law and restricts freedom of information without any legal reasoning. Another example of an unfounded action is refusal to provide public information claimed from the Georgian National Energy and Water Regulatory Commission. The application was rejected without any legal reasoning.

Information claimed by applications can be divided into two parts: information concerning expenses of public agencies and personal information of employees of public agencies – salaries, bonuses and business trip expenses.

The research demonstrated that public agencies practice different approaches regarding accessibility to public information: one public agency may refuse the release of information that was deemed as public by another agency. Such approach was exposed with respect to salaries, bonuses and business trip expenses.

### ***3.1.1. Salaries and bonuses as public information***

Chapter III of the General Administrative Code of Georgia deals with freedom of information, laying out significant FOI principles; however the list of types of information that shall be accessible to public is not exhaustive.

It shall be noted that certain public agencies deemed information concerning salaries, bonuses and business trip expenses as public and released the information. These public agencies are: City Hall of Kutaisi, Telavi Municipality, Rustavi City Hall, and Office of State Representative to Kakheti Region.

### ***3.1.2. Salaries, bonuses and business trip expenses as personal information***

Public agencies recognize the right to freedom of information and access of official documents maintained by public agencies; however, information concerning salaries, bonuses and business trip expenses of employees was deemed as personal information. As public agencies claim, pursuant to the Article 41 of the Constitution of Georgia such information constitutes personal data of public servants entered in official records, namely information concerning finances that may not be released by administrative agency without consent of the individual.

Additionally, according to Article 37 of the General Administrative Code of Georgia, in order to obtain personal information, a person shall submit a written request, as well as written consent of the information subject, certified by a notary or an administrative agency except for the events prescribed by the law. Otherwise, public agency may not release noted information.

As a result, certain public agencies, under Paragraph of Article 27 of the General Administrative Code of Georgia, classified salaries, bonuses and business trip expenses of each employee as personal information. Correspondingly, the general prosecutor's office of Georgia, Central Election Commission, legal entity of public law Security Police Department, the ministry of finance, the State Chancellery, the National Bank, the Revenue Service and the Office of the National

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Security Council of Georgia, the Municipal Development Fund of Georgia, National Agency of Public Register, legal entity of public law I. Chavchavadze State University, the office of the Parliament of Georgia, the City Council of Tbilisi, legal entity of public law Tbilisi Ivane Javakishvili State University did not provide us amount of salaries, bonuses and business trip expenses for each individual employees.

We consider that information concerning salaries, bonuses and business trip expenses of each employee does not fall under the protected category of personal data, but under the legitimate spending of State funds. Additionally, data concerning salaries, bonuses and business trip expenses is the information of high public interest. It concerns spending of State budget funds, which were apportioned to public servants performing public authority. Correspondingly, citizens have full legitimate right to access information concerning salaries, bonuses and business trip expenses of public servants, which are of high public interest and therefore may not be classified as personal data.

We consider that Para 2 of Article 41 of Georgian Constitution does not apply equally to cases of public and private entities. It is important to differentiate protected sphere of public servants' personal data and protected sphere of citizens' personal data. Data deemed as personal information in the second case, may not fall under the protected category of personal data in the first case. Our argument is further solidified by the Law of Georgia on Freedom of Speech and Expression. Para i of Article 1 of the Law defines public figure as person attracting public attention in relation to certain issues due to his specific actions. Employees of public agencies receive salaries, bonuses and business trip expenses in frames of public authority they perform. Correspondingly public interest in accessibility to information concerning the amount of remuneration that employees of public agencies receive for performing public service is high; hence, information concerning salaries, bonuses and business trip expenses of employees of legal entities of public law constitutes public information and does not fall under the protected category of public servants' personal data.



### ***3.1.3. Salaries, bonuses and business trip expenses, as state secret***

The ministry of defence employed different approach and substantiation regarding release of information on salaries, bonuses and business trip expenses of public servants. As the ministry clarified, considering the volume of claimed information, staff changes, rotations and laws regulating secrecy of information, it is impossible to provide claimed data. The ministry also cited Chapter II of Decree of President of Georgia No. 42 of January 21, 1997.

The noted decree of president was adopted in connection to the enforcement of the Law on State Secrets of Georgia. Chapter II lists types of information classified as state secret. According to the same chapter salaries, bonuses and business trip expenses are not deemed as information containing state secret in the sphere of defence. Moreover, Article 7 of the Law on State Secrets imperatively defines types of information that may be classified as state secret. Information claimed by us does not fall under the category. Hence, under the Law of Georgia on State Secrets, information concerning salaries, bonuses and business trip expenses of employees does not constitute state secret. Therefore, substantiation of the ministry of defence regarding the claimed information, followed by unfounded restriction of freedom of information is remains vague for us.

### ***3.1.4. Bonuses as personal information***

The ministry of justices of Georgia provided us with the list of employees and their salaries, not including the amount of bonuses for each employee. The ministry of foreign affairs deemed information concerning salaries and business trip expenses of each employee as public information, while information concernin bonuses was deemed as personal information.

The ministries cite Para 2 of Article 41 of the Constitution of Georgia as basis for refusal to release noted information. According to the Article, information existing on official papers pertaining to individuals' health, his/her finances or other private matters shall not be accessible to anyone without the consent of the individual in question. Additionally, public agencies refer to Article 27 of the General

Administrative Code of Georgia, which stipulates that information concerning bonuses constitutes a personal secret, as it allows identification of the person. It is forbidden to release the information without consent of the individual in question.

As the ministry of foreign affairs clarifies, Para 2 of Article 37 of the Administrative Code of Georgia regulates procedures for claim and receipt of public information. Namely, while filing a claim for personal information, an applicant shall present consent of the individual in question certified by notary or an administrative agency, except for cases prescribed by the law. The ministry considered that volume of information claimed exceeded volume of information accessible freely or without any conditions. The public agencies clarified that amounts of salaries and business trips expenses for each employee constitute public information and amount of bonuses constitutes private information, which lacks any legal reasoning.

According to judgement of public agencies, information on bonuses constitutes information about finances of a given public servant, which allows identification of the individual. If we follow this line of thinking, information concerning salaries and business trip expenses of employees shall be deemed as personal information; hence, public agencies should not have released them. Such approach demonstrates that public agencies refuse to release information on bonuses of employees without any legal reasoning. Moreover, the law of Georgia on Civil Service (Article 37) clarifies that salary of public servant includes wage, bonus and additional pay pursuant to the law. Correspondingly, under the Law of Georgia on Civil Service both bonus and wage are salary components; hence, pursuant to the Georgian law, they are not subject to different legal regime. Therefore, public agencies should have released amount of bonuses without a holdup, particularly since they had already published information on salaries.

### ***3.1.5. Business trip expenses as public information***

Legal entity of public law Public Broadcaster, legal entity of public law Civil Registry Agency and Administration of Batumi City Hall released business trip expenses for each employee, while they refused

to release information concerning salaries and bonuses for each employee. Regrettably, acts of all of the noted public agencies lacked legal reasoning. Such approach of public agencies is rather dubious, as they release information on business trips of their employees, while refusing to release information on bonuses and wages, citing the obligation to protect personal information.

We consider that under the Georgian legislation same standards apply to salaries, bonuses and business trip expenses of employees of public agencies. When making a decision on whether to designate information concerning salaries and bonuses as public information, public agencies note that under the General Administrative Code of Georgia the data constitutes personal information. In that line of thinking, information concerning business trip salaries shall also be deemed as personal information; hence, public agencies should not have released it.

#### ***4. Accessibility to public information from local self-governances***

In compliance with the General Administrative Code of Georgia, public information shall be issued within maximum of 10 days. Nevertheless, certain municipalities either did not provide legal documents of procurement at all, or failed to fully provide them.

The Municipal Development Fund failed to provide information in due time, mostly because of the volume of information to be provided. Parties negotiated over the issue.

In the process of release of information by local self-governances, municipalities frequently failed to provide full information or to release it in due time.

Local self-governances systematically failed to provide full information, which may have been caused by several reasons: a) shallow attitude towards requirements of freedom of information; b) faulty maintenance of documents, i.e. certain procurement documents had not been filed at all; c) materials were fully seized by the prosecutor's office for purposes of criminal investigation;

In frequent cases it was necessary to file additional elaborating applications for obtaining claimed information.

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All of the above-mentioned demonstrates that public agencies, municipalities in this case, fail to comply with legal procedures and terms in the process of releasing procurement documents.

### **5. Accessibility to public information from legal agencies**

Georgian courts practice different approach to accessibility to public information.

This is how courts provided accessibility to court decisions on cases involving state procurement:

12 courts out of fourteen provided full information within the period required by law. All of the courts notified us that during the period cited in the application (from April 20, 2005, when the applicable law of Georgia on State Procurement was adopted - to present) cases have not been filed under the Law of Georgia on State Procurement and correspondingly, such cases have not been reviewed. One of the courts disregarded the application filed by GYLA, one of the courts failed to provide full information.

Response of the Samtredia Regional Court is dated December 14, 2009. The letter informed us that the agency had not reviewed state procurement disputes from 2006 to present. As for the 2005 data, "archive of the Samtredia Regional Court, including the year of 2005 has been sent to the archival department of common courts of Georgia. Article 80 of the General Administrative Code of Georgia applies to such cases, when claimed information is not available at the given agency. The provision regulates referring of an application to an authorized administrative body. Under Paragraphs 1 and 3 of Article 80:

1. *If solution of the matter set forth in the application falls within the jurisdiction of another administrative agency, an administrative agency shall refer the application and all attached documents to the applicable administrative agency within five days.*
2. *The applicant shall be informed in writing about the reference of the application and attached documents to the applicable administrative agency with an appropriate justification within two days.*

As the 2005 archive of the Samtredia Regional Court was transmitted to the archive department of common courts, application of GYLA should have been referred to noted agency within five days. The decision about reference of the application should have been informed to the applicant in two days. Nevertheless, the Samtredia Regional Court violated the legal procedure and directly responded to the applicant, mentioning other administrative body in the letter.

The Marneuli Regional Court disregarded application filed by GYLA.

Under Article 40 of the General Administrative Code of Georgia, administrative agency shall release public information immediately, or not later than ten days in exceptional conditions listed in the article. If release of public information requires the period of 10 days, the public agency shall immediately inform the applicant thereof upon his request. The public information officer did not react immediately to the application filed by GYLA. Additionally, claimed information was not provided within maximum period of time established by law. Hence, requirement of Article 40, which obligate administrative agency to release public information in due term was rudely violated. According to Article 41 of the General Administrative Code of Georgia, the applicant shall be immediately informed of the denial of a public agency to release public information. The agency shall also provide an applicant with information concerning his rights and procedures for filing a complaint within three days after the decision is rendered. The public information officer of the Marneuli Regional Court failed to release information in due time, he also failed to comply with the legal requirement on the rule of denial of access to public information. According to Para 3 of Article 177 of the General Administrative Code of Georgia, violation of legal term for performing an action is considered as refusal to perform the action.

As for accessibility to court judgements regarding freedom of information claims from 2008 to present, 13 courts fully provided claimed information and in due time. For example. The Constitutional Court of Georgia, Poti City Court, Abasha Regional Court, etc. Provision of information also entails the responce that freedom of information disputes have not been reviewed and such judgements

have not been made. Two of the courts – Kutaisi City Court and Lentekhi Regional Court - disregarded our applications and correspondingly, did not provide claimed information.

The case of Georgian Supreme Court is worth mentioning. The Supreme Court of Georgia refused to release public information, citing necessity of systematization of claimed schemes, which required considerable period of time and the court deemed mobilization of court staff for the systematization inexpedient.

We consider that the response of the Supreme Court of Georgia lacks legal reasoning, as Chapter 3 of the General Administrative Code of Georgia imposes responsibility to ensure release of public information on legal agencies. The reason cited by the Supreme Court of Georgia may not serve as the basis to refuse release of information. If claimed information requires finding and processing of certain documents of a significant volume, the public agency may release information within term of ten days (Article 40 of the General Administrative Code of Georgia). Noted condition was wrongfully used by the Supreme Court to justify its refusal.

Hence, approach of courts to accessibility of public information varies and some courts fail to provide claimed public information within due period of time.

### ***5.1. Information Provided by Courts***

Courts provided information in two forms: they either provided number of court judgements and copies of the judgements, or we were notified that such disputes had not been reviewed.

26 out of 30 courts notified us that they had not delivered a judgement for state procurement or freedom of information disputes during the given period of time.

It shall be noted that from April 20, 2005 to present courts have not reviewed even a single state procurement dispute; hence, there are no corresponding judgements.

As for FOI judgements, courts provided information as follows:

1. City Court of Georgia – 19 judgements;

2. Constitutional Court of Georgia – 1 judgement;
3. Gurjaani Regional Court – 1 judgement;
4. Batumi City Court – 3 judgements;
5. Tbilisi Appellate Court – 26 judgements;
6. Tbilisi City Court – 16 judgements.

Small number of court judgements demonstrates that citizens do not apply to courts actively to protect their rights, which may be caused by their distrust in court system, or court fees. The issue particularly persists in the regions, which is reflected on the number of court judgements.

We consider that court fee poses significant obstructions to freedom of information practice. The fee amounts to 100 GEL for freedom of information disputes. We consider that court fee shall not be defined by a fixed amount for all cases; instead, it should be set according to cost of information in question. In certain freedom of information disputes, plaintiff should be exempt from State excise-duty, particularly when information in question is prohibited to be classified as secret under Article 42 of the General Administrative Court of Georgia; for example, disputes involving personal information, information concerning environment, etc. Noted changes will promote protection of rights of citizens by means of court.

### ***5.2. Protection of personal data in information provided by courts***

Article 41, Para 2 of the Constitution of Georgia and Articles 43-45 of the General Administrative Code of Georgia guarantee protection of personal information.

According to Article 44 of the General Administrative Code of Georgia, No public agency shall disclose information constituting personal secret, except for personal data of officials, without the consent of the information subject, or a founded decision that was rendered by court pursuant to the law.

Information in court judgements, such as identity of parties to the dispute, information containing their identification constitutes personal data of an individual and courts are obligated to secure pro-

tection of the information. Correspondingly, judgements released by courts shall not reveal identities of individuals.

Different courts have varying approach to the issue. Judgements released by some of the courts - Tbilisi Appellate Court, Tbilisi City Court, Batumi City Court and Gori Regional Court – did not reveal personal data.

Some courts did not ensure protection of personal data in released documents – Gurjaani District Court, Sighnaghi District Court, Rustavi District Court.

Hence, certain courts fail to ensure protection of personal data when releasing public information.

#### **IV. PROACTIVE PUBLICATION OF PUBLIC INFORMATION**

Study of the work of administrative agencies with regard to proactive publication of information is one of directions of the regional project. Georgian legislation does not impose such obligation on administrative agencies; although, in 2009 Georgia signed the Council of Europe Convention on Access to Official Documents and committed itself to the obligation of making documents public at the initiative of public authorities.

##### **Article 10 of the Convention**

“At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest”

Proactive publication of information by administrative authorities is extremely significant for its result and effect. It promotes society’s awareness and involvement in decision-making process and it also decreases public authorities’ administrative expenses associated with claim of public information by interested party.

Press service of a public agency and its web-portal play significant role in making documents public; nevertheless, only existence of



press service and web-portal may not serve as main indicators for evaluating transparency of the agency, as transparency is a complex notion.

It is important that press-service, web site and other means for promulgating documents create an effective mechanism for transparency.

As these matters are not regulated by law, proactive promulgation of information is a matter of will of the agency. Correspondingly, work of press-service, posting information on websites, thoroughness of the information, its availability and urgency proportionally equals to the will of agency to be open and as much accessible to public as possible.

### **1. Role and function of press-service**

Press service plays significant role in ensuring transparency of public agency, its accountability, as well as effective system of communication in the agency. National legislation neither establishes common standard nor defines general rules of operation for such structural entities.

Study of applicable legal base at public agencies and structural entities responsible for accessibility of public information demonstrated once more absence of common regulations and standards.

Agencies established to ensure accountability and transparency of public authorities have different names. Differences persist in forms, structures and functions of such agencies.

Press services are established on basis of regulations of certain agencies. The regulations define their place in structure of the agency and scope of their authority. In certain cases, regulations of a public agency makes a mention of a press service, as one of the structural entities, while scope of its functions and authority is laid out in detail in regulations of the press service itself.

Study of press service regulations demonstrated that press services of different agencies have different functions and obligations. In some cases they perform a number of functions, while in other

cases their authority is very limited in scope. It is difficult to define common functions of all press services; although, below are general functions performed by press services in Georgia:

- Inform media about events organized by the agency, its decisions and its activities in general.
- Communicate with media through press-conferences, briefings, official notifications, statements, information materials and other means of communication.
- Ensure and support communication of the agency and its management with media (in certain cases coordination of communication with governmental and non governmental organizations and agencies);
- Plan, organize and implement presentations and public events at the agency
- Provide informational and technical support of the agency's website; create and develop e-mail;
- Release public information
- Daily monitor leading media outlets of the world (including Georgian media outlets) and prepare special informative-analytical materials based on information published by media;

In addition to these common functions, in certain cases press services perform other functions that are specific to each of them; for example:

- Register hot-line phone calls at the ministry and provide relevant consultation; provide corresponding information to structural sub-agencies for them to react to incoming messages;
- Ensure exchange of information with diplomatic corps of Georgia abroad;
- Study public opinion;
- Certify apostilles in frame of their legal competence;
- Promote public education and awareness regarding environment protection;
- Organize discussion clubs for problematic issues; set up the ministry's library.

Evidentially, functions and obligations of press service are autonomously defined in each case, which creates certain image of the agency's transparency and corroborates or refutes strive of the agency to be as accessible for public as possible.

## **2. Web-portal of a public agency**

Operation of web-portal plays significant role in publicizing information proactively. Structural entity responsible for its informational support varies according to public agencies. In certain agencies special department is set up to ensure electronic processing of information, creation of database and posting public information on the website. These functions generally entail creation of the website, its maintenance, processing and regular updating. Maintenance of the computer network of the agency and its development, posting certain legal statutes in the agency's computer network, management of information resources, administration of database, analysis of IT issues, developing standards for information system, etc.

In certain agencies these functions are not defined at all, which demonstrates absence of common standards for electronic communications.

It is rather significant that thorough, quality and accessible information is posted on the websites. These are the necessary criteria that websites shall meet; although, this is not always the case.

Article 42 of the General Administrative Code of Georgia creates general entry, which stipulates that "any other information that is not considered state, commercial, or personal secret pursuant to the law or applicable procedures" shall be open. Same Article additionally creates the list of such types of information. In our opinion, this is the least of information which public agency websites shall contain.

Out of the information posted on the website, accessibility to data concerning public servants is important. Such information shall be thorough and shall provide an opportunity for effective communication for citizens. Recently such information was posted on some websites only; in frequent cases the data is incomplete, or serves

formal purpose. It is particularly true regarding phone numbers of public servants posted on the website. The data provided should create an effective mechanism for transparency and proper communication. For example, phone numbers posted on the website of president's administration fail to provide effective communication and serve formal purpose only.

Content information of PIOs, as well as regulations for paying fees for duplicating public information copies shall be accessible on the website. The latter is of crucial importance as the Georgian Law on Fees for Duplicating Public Information Copies stipulates that each agency defines rules for paying the fee on its own. Applicable regulation shall be adopted and be accessible for any interested party.

Public agencies that release certificates for authenticity of data, have in recent years fully incorporated electronic technologies. For example, a person can obtain information and receive official certificate on websites of civil and industrial registries electronically. It significantly simplified use of information by citizens.

Over the recent months there has been major changes in the way the Georgian Chamber of Control operates. The agency is available online and in almost every social network.

All of the above-listed changes are positive and play significant role in promoting transparency of public authorities, but of significant importance remains content of information accessible to public through electronic technologies.

## **V. CONCLUSION**

The research revealed main trends of practice of freedom of information and applicable legal guarantees. Research findings demonstrate that violations and barriers to freedom of information vary. In certain cases freedom of information practice is hindered by vague legal norms, or absence of legal norms. In some cases barriers are posed by illegal actions of administrative agencies and their unlawful practice.

Findings demonstrate that in most cases information released was thorough, the ten day term for release of information was fulfilled;

although the indicators are much higher when freedom of information is fully practiced. Moreover, in all cases information claimed was public.

Disregard of applications by public agencies is unlawful. 29 out of 150 applications were ignored. The trend of disregarded applications is similar to that of written refusals. Although applicable law directly requires substantiation of refusal, response of administrative agencies failed to comply with the standard.

Provision of incomplete information, violation of due time for release of information, unfounded refusals, disregarded applications, unlawful and unfounded classification of public information as secret, wrongful practice and contradicting positions – these are the main issues revealed by the research.

Research findings demonstrate that regardless of its content, accessibility to information depends on the will of public agencies to classify the information as public or to designate it as secret. Public agencies have adopted varying approach to designating information concerning administrative expenses as public; moreover, they cite different legal reasoning for refusing to deem information as open. In certain cases an administrative agency adopted contradicting position, as it cited inconsistent arguments.

Problems persist in Georgian legislation and practice as well, which decreases transparency of administrative agencies and unlawfully restricts right of interested individuals to receive information. Noted problems and barriers need to be identified and worked on. We consider that the research will support introduction and strengthening of freedom of information standards and guarantees.