



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media**



Strasbourg, 6 September 2004

ATCM(2004)025 (English only)

**Written analysis of two alternative
Azerbaijani draft laws on
Freedom of information**

by

Jan van Schagen

**Written analysis of two alternative
Azerbaijani draft laws on
Freedom of information**

by

Jan van Schagen*

* Legal adviser at the Ministry of the Interior and Kingdom Relations of the Netherlands

Executive summary

In this review, two Azerbaijani draft laws on freedom of information are analysed as regards their compatibility with the 2002 Council of Europe Recommendation on access to official documents: a draft stemming from the government (hereafter GD) and a draft put together by the Media Law Institute (hereafter ML). It is clear that the drafters of both laws have studied extensively the principles laid down in the Recommendation. The quality of both drafts is high. In both laws, I find the way in which the review procedure is dealt with (GD: commissioner; ML: commission) very good. In the GD, I especially like the fact that public authorities will have to nominate an official person who is responsible for the implementation of the law. In the ML, I evaluate very positively the way in which the obligation for public authorities to make public information at their own initiative is regulated.

The main points of criticism are the following:

- A law on public access to information should limit itself to regulating the public disclosure of information. That is to say, information that is available for everyone that requests it. In both draft laws, these general rules are partly mixed with rules for disclosure of information for specific persons (especially private information only to be disclosed to the person it concerns). These kinds of rules should be in a different law, or at least in a separate chapter of this law (see par. 3.3).
- Rules on classified documents should not be mixed with rules on disclosure of information. Documents are classified to prevent illegal disclosure. A freedom of information law should lay down rules and procedures by which to decide whether information can be made public in a legal way. With regard to legal disclosure, the fact that a document is classified is as such not relevant. Relevant is whether the content of the document is protected by one of the limitations in the law on access (see par. 3.4).

Furthermore, both draft laws have their strong and their weak points. If the strong points are combined a great law will be the result. Therefore, I have no strong preference for the one or the other. In general, I think the wording and the structure of the ML is clearer and better understandable. It may be wise therefore to take this draft as the starting point for further discussion.

1. Introduction

There are various models for legislation on the principle of public access to official information in different countries.

Constitutional provisions or ordinary law relating to a general right of public access to official information exist in several other European countries, such as the Netherlands, Spain, Portugal, Austria, Hungary, Estonia, Belgium, Romania, France, Greece, Italy, Poland, the United Kingdom and Ireland. Work in this field - new legislation or revision of existing rules - is in progress in Germany, but especially in a large number of the new democracies.

Most countries, such as Sweden and Finland, have laws granting individuals a basic right of access to *documents* held by the authorities, with limitations of that right laid down in law in order to protect information of a sensitive nature or documents which are in a preparatory

stage. Some countries, for example the Netherlands, have a slightly different approach in the sense that its system for access deals with informing individuals, independently of whether the information is contained in documents or elsewhere. One could speak about, on the one hand, information- and, on the other, document-based systems for access.

2. The individual right of access to official information in international law

2.1 The European Convention on Human Rights

The fundamental right to freedom of expression under Article 10 of the European Convention for Human Rights includes the right to receive and impart information without interference by public authorities.

The boundaries of the protection afforded by Article 10 as regards the right of access to information have been examined in some cases by the European Court of Human Rights. The Court has distinguished between on the one hand public and media access and on the other hand individual access to information, including the right of access to documents by individuals with a particular interest in obtaining the information.

The Court has stated that it is important that the public be enabled to obtain access to information from the authorities. The protection afforded by Article 10 has not been interpreted as to include a general right of access to information from authorities, but it has indicated that the public has a right to receive information of public interest and significance (e.g. the *Observer and Guardian* judgement, Series A no. 216, paragraph 59) and that media enjoys a privileged form of freedom of expression and information because of its role to inform about matters of public interest and the public's right to receive such information (e.g. the *Sunday Times* judgement, Series A no. 30, paragraph 65).

The European Court of Human Rights has interpreted Article 8 of the Convention - the right to respect for privacy - in some cases regarding individual requests for access to information concerning the applicants (the *Leander* judgement, Series A no. 116, the *Gaskin* judgement, Series A no. 160 and the *Guerra* judgement, Reports 1998-1). The Court has stated that the right according to Article 10 to receive information forbids the State to interfere with an individual's right to receive information, but does not impose on the State a positive obligation to collect, impart or disseminate information to individuals. Article 8 however confers a right for individuals to receive from the authorities essential information concerning or affecting them personally.

To conclude, no general right of access to official information follows from the European Human Rights Convention but the Convention encompasses, through Article 8, a limited right of access to information of personal interest to individuals.

2.2 The UN universal declaration on human rights

Article 19 of the UN universal declaration on human rights could in one respect be said to go a step further compared to the European Convention on Human Rights regarding freedom of information as it is inherent in this right not only the right to disseminate information but also "to seek information".

2.3 European Co-operation

2.3.1 *The European Union*

Within the EU the Treaty revisions in 1997 led to the inclusion of a provision in the EC Treaty (Article 255) that states that the European Parliament and the Council have to adopt rules on access to the documents of the European Parliament, the Council and the Commission, i.e. the three most important EU institutions. This has been done through a legal act adopted by the European Parliament and the Council in May 2001: The Regulation (1049/2001) on public access to European Parliament, Council and Commission documents. The EU regulation includes the following main features.

All documents held by one of the three institutions, including both documents produced by the institutions and documents handed in by third parties, are covered within the scope of the rules. However some documents, *inter alia* documents from a member state that it has requested not to be released without its permission and documents classified for the protection of vital interests such as defence matters, are subject to special treatment. (Articles 3 and 4)

Exceptions to the main rule of access shall be made in order to protect certain interests: public security, defence and military matters, international relations, the financial, monetary or economic policy of the union or one of its member states, physical or legal persons' economic interests, judicial proceedings and legal advice, the purpose of inspections, investigations and audits, privacy and personal integrity and preliminary internal deliberations. All these exceptions are conditioned by a harm-test. Some of them do not apply even if a specific harm can be established as a consequence of the release of the document in question if there is an overriding public interest in disclosure. (Article 4.1-3)

If only part of a document is covered by a secrecy exemption the remaining parts shall be released. (Article 4.6)

Each institution shall set up a public register of its documents. (Article 11)

Documents shall be provided in the form requested by the applicant, either as a copy, including electronic copies if the document exists in such a form, or in the original form at the premises of the institution. (Article 10)

Applications for access to a document must be made in writing and specify to a certain degree what document is requested. The written applications can be made through e-mail or fax. (Article 6)

Final decisions by the institutions refusing access can be appealed to the EC Court. (Article 8)

In the draft Constitution for the European Union, to be signed in Rome under the current Dutch presidency, the right to access to documents is being expanded to all public authorities in the EU.

2.3.2 *The Aarhus Convention*

In 1998 in Aarhus, Denmark, the UN European Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was

adopted. The Aarhus convention is different from the Council of Europe and EU instruments on access to information as the latter deal with access in a general sense but the Aarhus convention is limited to the environmental field. It also deals with several aspects of increasing public debate and participation in environmental matters apart from access to information. The usual essential elements of a regulation in the access to information field are also found in the Aarhus convention. The Convention has been ratified by a number of States in addition to the European Union.

2.3.3 The Council of Europe

The first step taken within the Council of Europe in this field was the adoption in 1981 of Recommendation No. R (81) 19 on the Right of Access to Information held by Public Authorities. In 2002 a new recommendation was adopted by the Committee of Ministers: Recommendation Rec (2002) 2 on access to official documents. In the preamble of this recommendation it is considered that wide access to official documents, on the basis of equality and in accordance with clear rules:

- allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, whilst encouraging informed participation by the public in matters of common interest;
- fosters the efficiency and effectiveness of administrations and helps maintain their integrity by avoiding the risk of corruption;
- contributes to affirming the legitimacy of administrations as public services and to strengthening the public's confidence in public authorities.

Furthermore it is considered that:

- the utmost endeavour should be made by member states to ensure availability to the public of information contained in official documents, subject to the protection of other rights and legitimate interests;
- the principles set out in the Recommendation constitute a minimum standard, and that they should be understood without prejudice to those domestic laws and regulations which already recognise a wider right of access to official documents;
- whereas the Recommendation concentrates on requests by individuals for access to official documents, public authorities should commit themselves to conducting an active communication policy, with the aim of making available to the public any information which is deemed useful in a transparent democratic society.

The principles of this recommendation are hereafter used as the criteria to review the two draft laws on freedom of information.

3. Review of the two draft laws on freedom of information

3.0 Introduction

Recommendation (2002) 2 on access to official documents is the starting point of my analysis of the two Azerbaijani draft laws:

1. 'The Law of the Republic of Azerbaijan on freedom of information' drafted by the Azerbaijani authorities (hereafter: GD).
2. The 'Law on access to public information' drafted by the Media Law Institute (hereafter: ML)

Each paragraph starts with the citation of an article of the Recommendation. Then the relevant articles of the draft laws are listed. They are followed by my comments. In my comments I concentrate on the question whether the draft laws comply with the Recommendation. Sometimes some additional comments on the text of the draft law are added.

3.1 Definitions

Rec. (2002) 2: I. Definitions

For the purposes of this recommendation:

"public authorities" shall mean:

- i. government and administration at national, regional or local level;
- ii. natural or legal persons insofar as they perform public functions or exercise administrative authority and as provided for by national law.

"official documents" shall mean all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation.

Relevant articles

GD: 2.1.1, 2.1.6

ML: 3.1.3, 4

Comments

For my comments on the definitions see the next paragraph under 'scope'.

3.2 Scope

Rec. (2002) 2: II. Scope

1. This recommendation concerns only official documents held by public authorities. However, member states should examine, in the light of their domestic law and practice, to what extent the principles of this recommendation could be applied to information held by legislative bodies and judicial authorities.

2. This recommendation does not affect the right of access or the limitations to access provided for in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Relevant articles

GD: 2.1.1, 2.1.6, 5, 8

ML: 3.1.3, 3.1.4, 4

Comments

The GD has a very broad scope. It is not limited to official documents, nor to public authorities. Art. 2.1.1 defines information in a very broad way. Article 5.1 does the same for the word "document". It is not quite clear to me, though, what the meaning of art. 5.2 is. Whether a public authority possesses a document or not, should not be relevant. All information held (that is: in its premises or in its archive) by an authorized body regardless of form or status should fall under the scope of the law. The definition of public authorities is also very broad. Not only the authorised bodies fall under the scope of the law, but also the so-called dataware subjects (art. 8). The dataware subjects include commercial and non-

governmental organisations such as political parties, religious organisations and trade-unions as well as other legal persons regardless of ownership form. Though at first glance it seems attractive to have a broad scope, it is important to make sure that public authorities themselves can not abuse the law by demanding all kinds of private or confidential information from commercial or non-governmental organizations. As I will explain later a public access law is not meant to form the basis for public authorities to gather information.

It is not clear to me whether the ‘state bodies’ mentioned in article 2.1.6 also include legislative bodies and judicial authorities. If this is so, it would be wise to state this explicitly.

The scope of the ML is also very broad, but differs from the GD. The definition of public information is limited to all information created upon performance of public duties provided by legislation. This seems a sensible definition. And though in the rest of the draft law only the word ‘information’ is used I take it that everywhere this means ‘public information’. Regarding the holders of information the same restriction is used. Holders of information include private legal entities and physical persons carrying out public duties provided by law. Commercial and non-commercial entities are under certain conditions deemed to be equal to holders of information. In the ML definition it is not clear whether legislative bodies and judicial authorities are included. The definition in 3.2.8 of ‘public sessions’ suggests that they are. If this is so I advise to state this explicitly.

All in all, the definition in the ML is in my opinion clearer than the definition in the GD.

3.3 General principle

Rec. (2002) 2: III. General principle on access to official documents

Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.

Relevant articles

GD: 6.3, 12, 19.3

ML: 5, 14.3, 14.4, 17.3, 17.5

Comments

The general principle that everyone has access to official documents means that there are no individuals or groups (for example journalists) that have a privileged position. If someone receives information after having filed a request, this information is from that moment in the public domain. It is in the words of the GD ‘open information’. That means that anyone who thereafter requests the same information will get this. The, seemingly paradoxical, result of this principle is that when someone requests to see his personal file that is held by a public authority, this authority can refuse to disclose it because making this file public may harm the privacy of this person.

Of course, this does not mean that under no circumstances an individual or a public authority can have a right to receive information that will not be disclosed to anyone else. For example, the equality of parties in a court procedure implies that they disclose all relevant information to each other and the judge. Public authorities may also have a right to demand confidential information from companies to be able to judge whether they are living up to, for example,

tax regulations. But, most importantly, individuals have as a rule a right to know what private information on them rests with the public authorities.

But these are all ‘special rights of information’, that are not dealt with by Recommendation (2002) 2. It is important in a law on access on public information not to mix these things up. These special rights of access can best be dealt with in a separate law or at least a separate chapter of a public access law.

Both draft laws, in fact, mix up the general right of everyone to receive public information and the special rights of individuals and public authorities. In article 19.12 GD rules are given for persons to see their personal data. Articles 14.3-14.5 and 17.3 ML regulate also the disclosure of private information to the person concerned. Article 17.5 ML deals with information requests by public authorities.

This being said, I must add, though, that I find the rules formulated in articles 14.3 and 14.4 ML as such perfectly in order. The subject is, however, best being dealt with in another law or at least in a separate chapter of this law.

Art. 5 ML is not in accordance with the Recommendation as it discriminates against citizens of foreign states and stateless persons. If I understand it correctly art. 50 of the Constitution guarantees to everyone the right to search, obtain etc. any information, so I wonder also whether this limitation is constitutional.

Art. 12 GD seems to be in accordance with the Recommendation provided that the expression ‘except cases prescribed in legislation of the Republic of Azerbaijan’ in art. 12.3 en 12.4 does not imply the possibility to create general provisions in other laws excluding foreign citizens and stateless persons from obtaining information.

3.4 Limitations

Rec. (2002) 2: IV. Possible limitations to access to official documents

1. Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:

- i. national security, defence and international relations;
- ii. public safety;
- iii. the prevention, investigation and prosecution of criminal activities;
- iv. privacy and other legitimate private interests;
- v. commercial and other economic interests, be they private or public;
- vi. the equality of parties concerning court proceedings;
- vii. nature;
- viii. inspection, control and supervision by public authorities;
- ix. the economic, monetary and exchange rate policies of the state;
- x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

2. Access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.
3. Member states should consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply.

Relevant articles

GD: 11, 20

ML: 2.2, 13, 14, 15, 22

Comments

The limitations of public access to information are the backbone of any law on freedom of information. The present limitations of art. 20.1-20.3 GD and art. 13 ML reflect fairly adequately the limitations mentioned in principle IV of the Recommendation. It is, nevertheless, unclear to me what is meant by art. 13.2.10 ML. Why would it be a problem that the disclosure of information would “harm unfair enrichment”. Even if something has gone wrong in the translation and it has been meant to state that disclosure may not be the cause of unfair enrichment, I would advise to delete this limitation. In practice it will not be possible to foresee why the disclosure of information will lead to enrichment and especially not why this would be unfair as disclosure of information means that it is public for anyone.

I find it important to note that art. 20.4 GD and art. 13.3 ML are crucial in applying the actual limitations. From 20.4 GD and art. 13.3 ML it follows that a public authority has to do two things when it refuses to give access to information. Firstly, it has to justify that making this information public would harm one or more specific interests mentioned in art. 20.1 and 20.2 GD art. 13.2 ML respectively, and, secondly, it has to justify why this harm is not outweighed by an overriding public interest in disclosure. It goes without saying that these justifications are crucial for the decision and that they can be reviewed by the courts.

A major point of discussion regarding laws on public access is always how to deal with documents that are classified (top secret, secret or confidential). It is essential to keep in mind that rules on classification serve a completely different goal from and are of a completely different nature than the rules of a freedom of information law. Classification rules regard the safety of the document. Their goal is to prevent information from becoming public in an illegal way (because the information is leaked by public officials or stolen). The goal of a freedom of information law is to lay down the rules and procedures by which to decide whether information can be made public in a legal way. Therefore, the two types of rules are not related.

As a consequence, it is not in accordance with the Recommendation to exempt documents from the scope of the law only because they are classified. The decision whether a document can be disclosed or not has to be based on the content of the document and not on the fact that it has been stamped ‘top secret’, ‘secret’ or ‘confidential’.

The fact that a request is made for a “classified” document should only have procedural consequences: the request will have to be dealt with by an official who is authorised to familiarise himself with the content of the document. The official has to judge whether it is still justified to classify the document and if that is not the case, because no limitations allow the refusal to disclose it, it should be declassified. Of course, if the document is classified for

the right reasons and therefore the classification is still valid, it can be refused (mostly, because of the harm done to national security).

With respect to classified documents both art. 11.1 GD and art. 22.1.1 and 22.1.2 ML are not in accordance with the Recommendation as classified documents as such are exempted from the scope of the law. Regarding art. 11 GD this problem could be solved if it was made clear that the legal regime mentioned in art. 11.2 is the regime of this law on freedom of information. In that case art. 11.4.2 would provide for a procedure that would guarantee that the classification of a document would be reviewed following a request for information. Regarding the ML draft, I am puzzled by art. 27.3. This article stipulates that the Commission for Access and Protection of Information may have access to state secrets marked 'Specially Important'. This competence is superfluous when state secrets are exempted from public access. Therefore, it may be possible that art. 22.1 is simply formulated in an unfortunate manner.

I am also not sure about the meaning of article 2.2 ML. It is wise to have rules, procedures and periods of classification of information as a state secret in another law. The rules regarding public disclosure, though, should be solely in this law.

As is explained regarding classified documents it should only be possible to refuse to disclose information because the disclosure of (part of) the content harms certain specified interests. The form of the document, its status or who composed it, is not important. Art. 20.6 GD is therefore not in accordance with the Recommendation as it makes the disclosure of documents originating from a third party dependent on permission of this third party. It is, of course, possible to consult a third party or to give him/her the right to prevent disclosure by disputing the disclosure before a court of law or another independent and impartial body established by law, as is done in art. 13.4 ML.

3.5 Requests

Rec. (2002) 2: V. Requests for access to official documents

1. An applicant for an official document should not be obliged to give reasons for having access to the official document.
2. Formalities for requests should be kept to a minimum.

Relevant articles

GD: 13, 15, 18

ML: 17, 18

Comments

In both drafts it is explicitly stated that under normal circumstances an applicant does not have to state reasons for his or her request (art. 13.6 GD, art. 17.4 ML). (I have dealt with the exceptions on this rule under 3.3.)

The number of formalities is relatively small. Oral requests are possible according to both drafts. I would advise, though, to abolish the strict identification rules. In the ML the applicant is even obliged to give a personal identification document number. There is in general no reason why it should not be possible to have anonymous requests. The information that is given is public information that would be given to anyone upon request. Therefore, there is no

reason why the identity of the applicant should be known. This is different in case of information of a private nature. But, as I have pointed out before, these kinds of request should be dealt with separately.

3.6 Processing of requests

Rec. (2002) 2: VI. Processing of requests for access to official documents

1. A request for access to an official document should be dealt with by any public authority holding the document.
2. Requests for access to official documents should be dealt with on an equal basis.
3. A request for access to an official document should be dealt with promptly. The decision should be reached, communicated and executed within any time limit which may have been specified beforehand.
4. If the public authority does not hold the requested official document it should, wherever possible, refer the applicant to the competent public authority.
5. The public authority should help the applicant, as far as possible, to identify the requested official document, but the public authority is not under a duty to comply with the request if it is a document which cannot be identified.
6. A request for access to an official document may be refused if the request is manifestly unreasonable.
7. A public authority refusing access to an official document wholly or in part should give the reasons for the refusal.

Relevant articles

GD: 7, 16, 17, 19, 21

ML: 20, 21

Comments

Both draft laws have rules dealing with the processing of the requests that are in accordance with the Recommendation.

In the GD, authorised bodies are obliged to designate an ‘official person for the problems of information’. Apart from many other tasks regarding information this official is responsible for a correct and fast processing of a request. I think the appointment of an official responsible for the implementation of the public access law will help to obtain a professional attitude regarding information requests. The detailed obligations of the ‘official person’ to report to the ‘Commissioner for problems of information’ add to this.

3.7 Forms of access

Rec. (2002) 2: VII. Forms of access to official documents

1. When access to an official document is granted, the public authority should allow inspection of the original or provide a copy of it, taking into account, as far as possible, the preference expressed by the applicant.
2. If a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to the remainder of the information it contains. Any omissions should be clearly indicated. However, if the partial version of the document is misleading or meaningless, such access may be refused.

3. The public authority may give access to an official document by referring the applicant to easily accessible alternative sources.

Relevant articles

GD: 14

ML: 19

Comments

Both art. 14 GD and art. 19 ML are in accordance with the Recommendation.

3.8 Charges

Rec. (2002) 2: VIII. Charges for access to official documents

1. Consultation of original official documents on the premises should, in principle, be free of charge.
2. A fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs incurred by the public authority.

Relevant articles

GD: 22

ML: 23

Comments

Art. 22 GD is not in accordance with the Recommendation as it stipulates that the applicant has to pay for the expenses concerned with searching and the preparation of the information. These expenses go well beyond the costs of copying of the information. In fact, these costs may be so high that they make the right to access obsolete.

Art. 23 ML is in accordance with the Recommendation.

3.9 Review procedure

Rec. (2002) 2: IX. Review procedure

1. An applicant whose request for an official document has been refused, whether in part or in full, or dismissed, or has not been dealt with within the time limit mentioned in Principle VI.3 should have access to a review procedure before a court of law or another independent and impartial body established by law.
2. An applicant should always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review in accordance with paragraph 1 above.

Relevant articles

GD: 23-33

ML: 24-27

Comments

Both draft laws regulate extensively the establishment of respectively a Commissioner for problems of information (GD) and a Commission for Access and Protection of Information

(ML). In my opinion both drafts are fully in compliance with the Recommendation. I have no strong preference for a single member or a multi-member body.

The Commissioner of the GD as well as the Commission in the ML have extensive powers and tasks. It is very important for the implementation of the law that in practice the Commissioner or the Commission be allowed to do his work properly.

3.10 Complementary measures

Rec. (2002) 2: X. Complementary measures

1. Member states should take the necessary measures to:

- i. inform the public about its rights of access to official documents and how that right may be exercised;
- ii. ensure that public officials are trained in their duties and obligations with respect to the implementation of this right;
- iii. ensure that applicants can exercise their right.

2. To this end, public authorities should in particular:

- i. manage their documents efficiently so that they are easily accessible;
- ii. apply clear and established rules for the preservation and destruction of their documents;
- iii. as far as possible, make available information on the matters or activities for which they are responsible, for example by drawing up lists or registers of the documents they hold.

Relevant articles

GD: 6, 7

ML: 7, 8, 9

Comments

Articles 7-9 ML contain an excellent implementation of principle X of the Recommendation. The enumeration of the duties of the holders of information is clear and complete. The GD holds the basic rules required by this principle, though it is less elaborate than the ML.

3.11 Information made public at the initiative of the public authorities

Rec. (2002) 2: XI. Information made public at the initiative of the public authorities

A public authority should, at its own initiative and where appropriate, take the necessary measures to make public information which it holds when the provision of such information is in the interest of promoting the transparency of public administration and efficiency within administrations or will encourage informed participation by the public in matters of public interest.

Relevant articles

GD: 7.9, 7.10, 9

ML: 8, 10, 11, 12

Comments

Both draft laws are in accordance with the Recommendation. It is clear, though, that the extensive obligations for holders of information in art. 10 of the ML to disclose information at their own initiative is to be preferred to the perspective of transparency.

3.12 Miscellaneous

- The GD distinguishes between open information and restricted access information. I find this somewhat confusing. The underlying principle of the Recommendation is that all official documents held by public authorities is 'open information', unless it can not be disclosed due to the fact that one of the limitations is applicable. The danger of speaking of restricted access information is that it will not be disclosed just because it has been stamped 'restricted access' and not because the official persons has looked at the actual content of the document. In a way this is the same problem as I have described regarding classified documents.
- I think article 12.5 GD is important. Several studies of the European Commission of the EU have demonstrated that large economic gains are won, if the re-use of public information is free.
- In article 2.3 ML it is stated that 'in the event of discrepancy between provisions of this law and any other laws related to right of access to information, the provisions of this law prevail'. I think this is an important article, but it may be wise to add something like: 'unless the other law extends the right to information'. This is especially important in case specific persons have a special right to information in another law (for example with respect to court proceedings).
- In addition to the last remark, articles 3.1 GD and 11.2 GD should be amended along the same lines.
- In addition to the foregoing I take it that the law on archives mentioned in article 2.4 ML differs from this law, in that it contains less restrictions.
- It may be due to the translation but I find it strange that in article 3.1.3 ML 'public information' is defined whereas in the rest of the draft law only the word 'information' is used.
- In article 27 GD and article 28 ML a yearly report on the implementation of the law is introduced. This is a very good thing to do.
- I am completely puzzled regarding the meaning of art. 20.8 GD.

4. Conclusion

In this review, two draft laws on freedom of information for the Republic of Azerbaijan are analysed as regards their compatibility with the Council of Europe Recommendation on access to official documents: the draft by the government authorities and the draft by the Media Law Institute. It is clear that the drafters of both laws have made an extensive study of the principles laid down in the Recommendation. The quality of both drafts is high.

Both draft laws have their strong and their weak points. If the strong points are combined a very good freedom of information law will be the result. Therefore, I have no strong preference for the one or the other draft. In general, I think the wording and structure of the ML is clearer and better comprehensible. It may be wise therefore to take this draft as the starting point for further discussion.

APPENDIX I

THE LAW OF THE REPUBLIC OF AZERBAIJAN "On freedom of information"

This law determines the regulations of realization of freedom of information and regulates obligations and functions of state bodies, municipalities and all juridical persons regardless of ownership form relating to providing rights of citizen concerned with obtaining of information.

Part I

General provisions

Article 1. Freedom of information

1.1. According to article 50 of the Constitution of the Republic of Azerbaijan, each person has the right to search, obtain, send, prepare and disseminate any information in legitimate ways.

1.2. Realization of freedom of information must not be a reason for breaking rights, freedoms and legitimate interests of other persons.

Article 2. Basic regulations

2.1. Meanings of the notions used in development of this law are as follows:

- 2.1.1. Information – a set of facts, opinions, knowledge, news and other data on physical medium regardless of the dates of origin, form of presentation and classification stored in the authorized bodies;
- 2.1.2. Data – facts, opinions and knowledge of natural or public events, processes, manifestations, activities and subjects;
- 2.1.3. Personal data – facts, opinions and knowledge of events, activities and situations enabling to identify citizens directly or indirectly;
- 2.1.4. Information resources – documents and files of documents from information systems (libraries, archives, funds, databanks and so on) as well as single documents and files of documents
- 2.1.5. Information service – authorized bodies' activities with a view to provide information for each person appealing with query to these bodies;
- 2.1.6. Authorized body – state bodies, municipalities and juridical persons financed from the state budget in full or partly and eligible to possess, use and dispose of information resources
- 2.1.7. User of information – a natural or juridical person who submitted a written query to obtain information or have an access to work with information in authorized bodies in accordance with the procedure established by this law;
- 2.1.8. Publication of information – dissemination of information in mass media, publication of information in reference books, sending information by means of Internet or electronic facilities, reporting information at briefings, conferences or in information releases, reporting information at official or mass arrangements, presentation of information on the basis of written or oral query;
- 2.1.9. Public interest – the criterion which necessitates informing each person and all the public as a whole of stability, peace, security and sustainable development of the society and providing publicity in state management.

Article 3. Legislation of the Republic of Azerbaijan on freedom of information

- 3.1. Legislation of the Republic of Azerbaijan on freedom of information involves the Constitution of the Republic of Azerbaijan, this law and other statutory acts.
- 3.2. In case of contraversions between this law and international agreements signed by the Republic of Azerbaijan, the priority is given to those international agreements.

Article 4. The principles of freedom of information

- 4.1. The basic principles of realization of freedom of information are as follows:
- 4.1.1. the state warranty for freedom of information;
 - 4.1.2. legality of obtaining of information;
 - 4.1.3. openness of information and unhindered access to it;
 - 4.1.4. comprehensiveness and authenticity of information;
 - 4.1.5. timeliness of presentation of information;
 - 4.1.6. protection of civil rights concerned with obtaining of information including protection of the judicial bodies;
 - 4.1.7. liability for breaking rights to obtain information;
 - 4.1.8. protection of rights and legitimate interests of third persons in provision of information;
 - 4.1.9 the degree of limitation of rights to obtain information must not exceed the level necessary for protection of independence, security and territorial integrity of the state, prestige and neutrality of judicial bodies as well as rights, freedoms and legitimate interests of natural and juridical persons.

Article 5. The documented information (document)

- 5.1. The documented information (document) is an information presented in physical medium in the form of text, sound or image and having any essentials enabling to test its identity regardless of source and dates of origin, place of storage, official status, ownership form and organization where it was created.
- 5.2. Authorized bodies possess the document, if:
 - 5.2.1. The document stored in these bodies is not another person's or state's ownership;
 - 5.2.2. The document stored by another person or state is authorized bodies' ownership.

Article 6. Storage, integration and custody of a document

- 6.1. Corresponding executive body develops regulations of storage, integration and custody of documents and in case of necessity makes additions and changes in these regulations.
- 6.2. Authorized bodies are liable for storage, integration and custody of documents they possess in accordance with the regulations specified in article 6.1 of this law.
- 6.3. Authorized bodies determine corresponding regulations to enable persons to become familiar with their personal data and, if necessary, make additions and changes in them and provide execution of these regulations.

Article 7. Provision of obtaining of information

- 7.1. Authorized bodies create information resources on the basis of documents they possess and keep the register of these documents.

- 7.2. The regulations of creation, storage and periodical refreshment of the register are confirmed by the corresponding executive body.
- 7.3. Authorized bodies are obliged to provide for each person the right to use their information resources in an unhindered, free and equal manner. For this purpose they designate the official person for the problems of information and make information services. Absence of the official person for the problems of information may not be a reason for denial of provision of information by query.
- 7.4. The official person for the problems of information executes the following functions:
 - 7.4.1. makes the decision and registers queries for obtaining of information;
 - 7.4.2. considers queries carefully and makes decisions for them;
 - 7.4.3. sends the answers for queries in accordance with the established procedure and in terms envisaged by this law;
 - 7.4.4. exercises control for storage, integration and custody of documents and rendering information services;
 - 7.4.5. prepares reports to present to Commissioner for the problems of information;
 - 7.4.6. considers complaints sent to the authorized body concerned with obtaining of information and makes decisions for them;
- 7.5. The following data must be indicated in the report submitted to the Commissioner for problems of information:
 - 7.5.1. the general number of queries for obtaining of information, number of queries satisfied partly or in full, number of dismissed queries;
 - 7.5.2. complaints accepted by the authorized body concerned with obtaining of information and the results of processing of these complaints;
 - 7.5.3. appeals concerned with the cases of dismissal in provision of information;
 - 7.5.4. the sum of payment obtained for provision of information;
 - 7.5.5. the data on information published in accordance with requirements of article 7.7 of this law;
 - 7.5.6. the data on storage, integration and custody of documents in accordance with requirements of article 6 of this law;
 - 7.5.7. the data on development of professional manpower working with information resources;
- 7.6. Reports are submitted to the Commissioner two times per year – in the first and seventh months of the current year. Authorized bodies are obliged to submit additional reports at Commissioner's request.
- 7.7. Authorized bodies render information services of the following types:
 - 7.7.1. search of information;
 - 7.7.2. usage of information;
 - 7.7.3. provision of documented information;
 - 7.7.4. provision of documented information by means of an automatized information system;
 - 7.7.5. creation of Internet sites;
 - 7.7.6. provision of consultations for users and others.
- 7.8. Authorized bodies publish the following data on their activities no later than three months after turning the current year:
 - 7.8.1. the body structure, its functions, profit, expenses and indexes at the turn of year;
 - 7.8.2. names and surnames of the official persons, their appointments, phone numbers and other data;
 - 7.8.3. services rendered for the community;

- 7.8.4. information resources, information system, types and categories of information, summary of classification of information;
- 7.8.5. list of press organs where the information on the authorized body's annual activities was published and dates of publication.
- 7.9. Authorized bodies are also obliged to report data on considerable decisions and carried out official arrangements at the periodical briefings, press conferences, in information releases and in other ways.
- 7.10. State bodies:
 - 7.10.1. inform on extraordinary accidents, natural disasters causing danger for life and health immediately;
 - 7.10.2. inform the community on ecological, meteorological, radiological, sanitary and epidemiologic and criminal situations in time;
 - 7.10.3. publish results of each financial and auditing examination;
 - 7.10.4. refute false information disseminated in the society;
 - 7.10.5. publish information on their activities necessary to satisfy public interests or which would become necessary for it.
- 7.11. The state with a view to ensure obtaining of information:
 - 7.11.1. forms and realizes state policy in the field of information;
 - 7.11.2. creates for each person the conditions for unhindered, free and equal obtaining of information;
 - 7.11.3. creates corresponding legislative base and exercises control for implementation of legal requirements;
 - 7.11.4. creates the system to attract investments and stimulating mechanism for development and realization of the projects and programmes in the field of information systems and technologies;
 - 7.11.5. supports development of all ownership forms for information resources, systems, technologies and facilities, stimulates forming the market of information products and services.

Article 8. Dataware subjects

- 8.1. Authorized bodies, commercial and non-governmental organizations including political parties, religious organizations and trade-unions as well as other juridical persons regardless of ownership form are dataware subjects
- 8.2. All the requirements relating to authorized bodies except articles 7.1–7.9 and 9 of this law relate to other dataware subjects as well.
- 8.3. Information interchange among the dataware subjects is regulated by legislation of the Republic of Azerbaijan.
- 8.4. In case the bodies equated to authorized bodies on the basis of article 8.2 of this law do not possess information specified in a query, they are obliged to provide written data on it to user of information (further – user).

Article 9. Automatized information system and regulations of using it

- 9.1. Authorized bodies with a view to ensure obtaining of information for users from automatized information system:
 - 9.1.1. connect the automatized information system to public access line and publish on their official server information of their ownership to enable citizens to use this system freely and without limitations;
 - 9.1.2. create subscriber stations in public places (administrative buildings of authorized bodies, libraries, post-offices and other places prescribed by legislation) and connect them to public access lines;
 - 9.1.3. provide electronic mail address to accept queries and send information by public access lines;
 - 9.1.4. are liable for contents, comprehensiveness and reliability of information published on the official server.
- 9.2. Reliability of information presented in electronic form is confirmed in accordance with the procedure established in legislation of the Republic of Azerbaijan. The documents created at computers and sent by telecommunication lines must contain all the essentials determined for these documents.

Article 10. Open information

- 10.1. Information can belong to one of two types: open information and restricted access information.
- 10.2. Open information is information with access not limited by the law of the Republic of Azerbaijan.
- 10.3. Limitation of access is prohibited to the following information on:
 - 10.3.1. the objects of intellectual property except the patents concerned with State secrets, and integrated circuit topologies;
 - 10.3.2. the state privileges, advantages and compensations granted to citizens, the official persons and juridical persons regardless of ownership form
 - 10.3.3. facts of breaches of law committed by public authorities and their official persons;
 - 10.3.4. health of supreme official persons of the Republic of Azerbaijan;
 - 10.3.5. the facts of breaches of civil rights and freedoms and legitimate interests of juridical persons;
 - 10.3.6. extraordinary accidents and disasters causing danger for life and health, their consequences and natural disasters, their official forecasts and consequences as well;
 - 10.3.7. situations in ecology, public health, demography, education, culture, agriculture and criminality;
 - 10.3.8. tariffs for goods and services of state bodies;
 - 10.3.9. past or future changes in environment components as a result of activities which impact or may impact on the environment and public health as well as arrangements directed to assess and protect them and rational usage of the environment and expenses for them;
 - 10.3.10. municipalities' and state bodies' activities and their vacancies;
 - 10.3.11. using budgetary funds, economic circumstances in the country and needs of population;
 - 10.3.12. the amount of state gold and exchange currency reserves;
 - 10.3.13. official instructions of workers serving in state bodies and municipalities;

- 10.3.14. statutory acts published in accordance with legislation of the Republic of Azerbaijan including standard acts;
- 10.3.15. protocols and verbatim reports of public sittings of Milli Majlis;
- 10.3.16. court acts;
- 10.3.17. special data on hydrometeorology and monitoring of natural resources;
- 10.3.18. list of data forming State secrets;
- 10.3.19. another information storing in open funds of archives, museums, libraries.
- 10.4. Obtaining of open information is ensured in the following ways:
 - 10.4.1. by the way of publication of information in accordance with the procedure specified in Articles 7.7, 7.8 and 7.9 of this law;
 - 10.4.2. on the basis of written or oral query of natural persons and written query of juridical persons.

Article 11. Restricted access information

- 11.1. The following information belongs to restricted access information:
 - 11.1.1. data forming State secrets;
 - 11.1.2. data forming professional (medical, notarial, advocatory) secrecy;
 - 11.1.3. data relating to trade secrets;
 - 11.1.4. data forming investigatory secrets;
 - 11.1.5. secrets relating to citizens' private life (personal data).
- 11.2. Legal regime of restricted access information is regulated by laws of the Republic of Azerbaijan and statutory acts developed in accordance with these laws. Legal regime of restricted access information can be one of two types – information forming State secrets and confidential information.
- 11.3. Information not forming State secret for which secrecy must be ensured with a view to protect citizens' and juridical persons' legitimate interests regardless of ownership form is confidential information.
- 11.4. Secrecy of information forming State and confidential secrets is repealed and this information becomes open information in the following cases:
 - 11.4.1. in case the Republic of Azerbaijan assumes international obligations in open exchange of information forming State secrets;
 - 11.4.2. if expediency of data secrecy was repealed due to changed objective circumstances;
 - 11.4.3. if secrecy period has completed;
 - 11.4.4. when disseminating by mass media or informing the community by means of other facilities.

Article 12. The right to obtain information

- 12.1. Each person has the right to select authorised body, type of information and form to work with information personally or through his representative as well as to appeal with a view to obtain information.
- 12.2. Each person appealing to authorized bodies has right to:
 - 12.2.1. get additional data on the presence of queried information in this body, and in case of absence, – additional data to obtain this information;
 - 12.2.2. get the queried information in free, unhindered and equal way, if authorized bodies possess the queried information.

- 12.3. To have unhindered access to documented information on natural and juridical persons except cases prescribed in legislation of the Republic of Azerbaijan, demand making corrections in this information, know who and for what used this information.
- 12.4. Foreign citizens and stateless persons except cases prescribed in legislation of the Republic of Azerbaijan may use the right to obtain information in free, unhindered and equal way.
- 12.5. It is permitted to use documented information obtained from authorized bodies in accordance with requirements of this law for creation the product with derived information for commercial purposes provided reference to the origin when creating derived information is indicated.
- 12.6. Sending, sale, copying and publication of documented information obtained from authorized bodies in accordance with requirements of this law in commercial purposes is regulated by legislation.

Part II Obtaining of information

Article 13. Query for obtaining of information

- 13.1. Query for obtaining of information may be submitted in written or oral form including electronic form, by electronic mail or by phone.
- 13.2. Oral query with presenting the person himself is submitted directly to the official persons of authorized bodies, and, as a rule, is answered orally except cases specified in article 13.3 of this law.
- 13.3. An oral query of citizen who is not capable to appeal with written query due to his illiteracy or corporal defect must be composed in written form by the official persons of authorized bodies with indication of their names, surnames and positions and registered with indication of dates.
- 13.4. Written query must contain the following data:
 - 13.4.1. Name of body appealed by user;
 - 13.4.2. Brief and clear data on required information or document enabling to get information or a part of this document;
 - 13.4.3. form to obtain required information;
 - 13.4.4. name, surname and address of the appealing person.
- 13.5. Written query is signed by a natural person or a chief of juridical person or their representatives.
- 13.6. User is not obliged to ground the necessity of obtaining of information except cases specified in Articles 19.12 and 21.3 of this law.
- 13.7. Withholding acceptance of a written query is prohibited.

Article 14. Forms of obtaining of information

- 14.1. User may demand in his application to present information in one of the following or other existing forms:
 - 14.1.1. studying a document;
 - 14.1.2. rewriting a document;

- 14.1.3. copying a document or giving a confirmed copy of a document using technical facilities of the body appealed by user;
- 14.1.4. studying a document using technical facilities of the body appealed by user;
- 14.1.5. duplicating a document using users' technical facilities;
- 14.1.6. modifying verbatim reports or documents coded in another form to form suitable for reading and their presentation;
- 14.1.7. translating a document;
- 14.1.8. writing the document copy to an electronic medium and so on.
- 14.2. Obtaining of information has the following juridical forms:
 - 14.2.1. information presented without fail in accordance with requirements of this law;
 - 14.2.2. information presented by an agreement including by request.
- 14.3. obtaining of information in cases specified in article 14.2.1 of this law is realized in free, paid or privileged way.
- 14.4. Regulations and conditions of obtaining of information in cases specified in article 14.2.2 of this law including the term of presenting information and payment are determined on the basis of mutual arrangement between authorized body and user.

Article 15. Notification about registering a query

- 15.1. The official person for problems of information of authorized body registers the accepted query and gives (sends) the notification about registering the appeal immediately, but if impossible, in 48 hours (excluding holidays and rest-days).
- 15.2. In case the query was composed not completely or is inexact, the official person enumerates discovered lacks in the notification and requires to remove them.
- 15.3. If user is not capable to remove lacks and submit a new query in 7 days after obtaining of notification, the official person withholds to answer the query.
- 15.4. The requirement of removal of lacks on the basis of mutual agreement between user and the official person may be made in oral form as well.

Article 16. Processing a query

- 16.1. The query must be considered carefully by the official person of authorized body. For this purpose specifications are made:
 - 16.1.1. is the query composed in accordance with requirements of this law;
 - 16.1.2. is the queried information in information resources;
 - 16.1.3. where the query will be sent if there is not the queried information in information resources;
 - 16.1.4. what type of obtaining it is belonging to – open information or restricted access information – if the queried information is in information resources;
 - 16.1.5. is it possible to extract the queried open information from restricted access information;
 - 16.1.6. is it possible to provide information in the form specified in the query, if the queried information is in information resources;
 - 16.1.7. is the information paid or free; and the decision on the results of processing is made.

Article 17. Decision on the results of processing

- 17.1. The official person of authorized body depending on the results of processing makes one of the following decisions:
- 17.1.1. withholds to provide answer to the query;
 - 17.1.2. presents the queried information;
 - 17.1.3. withholds to provide information;
 - 17.1.4. sends the query to another authorized body possessing the queried information.

Article 18. Denial of provision of answer to a query

- 18.1. Authorized bodies may withhold provision of answer to the query in the following cases only:
- 18.1.1. if the query is anonymous;
 - 18.1.2. if user did not remove the lacks specified by the official person and did not submit a new query in 7 days.
- 18.2. The query of juridical person composed at letter-head or query of natural person with his address is not considered as an anonymous query and authorized bodies are obliged to answer this query.

Article 19. Presentation of information

- 19.1. In case of positive result of processing of query, the official person permits the following actions and creates the conditions for obtaining of information:
- 19.1.1. to enter the building where information resources are stored and study the document if legislation does not envisage other restrictions;
 - 19.1.2. to make a copy or rewrite the contents of document or a part of it;
 - 19.1.3. to translate and provide the queried information or a part of it;
 - 19.1.4. to modify verbatim reports or documents coded in other form to form suitable for reading and provide them;
 - 19.1.5. to implement other requirements not envisaged in this article;
 - 19.1.6. to send the queried information in the corresponding way if the query was sent by mail or electronic mail (fax).
 - 19.1.7. If the queried information is in restricted access document, user may obtain only the part containing open information.
- 19.3. Authorized body is not obliged to answer queries relating to information published in mass media. In this case the data on when and what press organ published this information must be provided to user.
- 19.4. If the queried information belongs to a statutory act, authorized body can report only the mass media which published this information and dates of publication or present the data on its repeal or making additions and changes.
- 19.5. Authorized body who provided incomplete or inexact information is obliged by user's first demand to make additions and changes in information and provide it to user free of charge.
- 19.6. If authorized body does not possess the queried information, the official person sends this query to the corresponding authorized body where this information is stored and presents data on it in written form to user
- 19.7. The official person is not obliged to present answer to the query in form specified by user in the following cases:

- 19.7.1. if a great number of queries was presented for obtaining of information that may influence negatively on efficient organization of activities;
- 19.7.2. if the original document may be damaged as a result of copying.
- 19.8. In case of damaging the original document when copying it, authorized body is obliged to create the conditions for user to:
 - 19.8.1. study the manuscript or printed output;
 - 19.8.2. audition of audio cassettes;
 - 19.8.3. viewing audio-video cassettes and reading remarks.
- 19.9. If the queried information is presented in several languages, the document is presented in the language user prefers.
- 19.10. Withholding provision of information with repealed secrecy is prohibited.
- 19.11. Authorized bodies except cases specified in article 19.12 of this law are not obliged to inform about presence or absence of personal information and present it.
- 19.12. Personal information may be provided in the following cases:
 - 19.12.1. if a third person gave his consent to present the queried information on him;
 - 19.12.2. if user is a legitimate representative of a third persons or an executive of his testament;
 - 19.12.3. if query subject is the official person in a state body or was the official person and this information concerns with his service or is of public interest;
 - 19.12.4. if the term envisaged in legislation of the Republic of Azerbaijan has passed after a third person's death and the query relates to him.

Article 20. Denial of provision of information

- 20.1. In accordance with requirements of article 11.1 of this law, authorized bodies may withhold informing about presence or absence and provision of information with access restricted by legislation, if it:
 - 20.1.1. creates or can create a danger to independence, security and territorial integrity of the Republic of Azerbaijan;
 - 20.1.2. causes or can cause a damage to life, health, security, rights and freedom of citizens;
 - 20.1.3. prevents or can prevent preclusion of a crime or revelation of it, seizure of a crimer or pursuing him;
 - 20.1.4. creates or can create preventions for doing justice;
 - 20.1.5. creates or can create a danger for environment, causes or can cause a damage to the environment components;
 - 20.1.6. impacts or can impact negatively on commercial interests of natural or juridical persons when publishing or anticipatory publishing.
 - 20.1.7. State bodies are not obliged to inform about presence or absence of information specified in the query and present it in the following cases:
 - 20.1.8. If anticipatory publication of information prevents or can prevent forming, development and successful completion of the state policy; if anticipatory publication of information breaks or can break exchange of views, free and fair process of consultations in the state body;
 - 20.2.3. if anticipatory publication of information creates or can create serious danger for effectiveness of testing and financial examination carried out by the state body;
 - 20.2.4. If anticipatory publication of information impacts or can impact negatively on the realization of legitimate commercial or financial interests of the state body.

- 20.3. Article 20.2 of this law does not concern to facts, fact appreciations, technical indexes and statistical information.
- 20.4. Taking into account the grounds envisaged by Articles 20.1 and 20.2 of this law, a denial of publication or anticipatory publication of the information is possible only when the damage of dissemination of information can exceed public interest to this information.
- 20.5. If the queried information is in a document relating to a third person and the document is used by a state body and the third person is a state body, his consent is not required to present this information.
- 20.6. If the queried information is in a document relating to a third person and the document is used by a state body and the third person is a non-state body, or the document belongs to several persons, in this case these persons' consent is required to present this information. If such consent is not given, the data on the denial of provision of information with description of reasons are presented to user.
- 20.7. If the queried information is not in information resources of authorized body and impossible to determine the authorized body possessing this information, in this case the data on impossibility of presentation of information with description of reasons are presented to user.
- 20.8. If the queried information is in the restricted access document and liquidation of secrecy may damage or destroy the original document, in this case the data on the denial of provision of information are presented to user.
- 20.9. If user has not paid for presentation of information during the term determined by this law, authorized body may withhold provision of this information.
- 20.10. In all cases answer about denial of provision of information must be composed in clear and grounded form with specification of concrete articles of legislation of the Republic of Azerbaijan, and user's right to appeal the answer in court must be represented.

Article 21. Term of presentation of answer to a query

- 21.1. Answer to a written query is presented at the earliest possible date but no more than 15 days.
- 21.2. If information has lost its efficiency during this term, answer to query must be provided immediately, but if impossible, no later than 24 hours.
- 21.3. In case of real danger for citizens' life and health or personality's freedom the information requiring certain time to be searched is presented, as an exception, in 48 hours (excluding holidays and rest-days).
- 21.4. If authorized bodies accept a great number of queries, or certain term is required to prepare information, or it is necessary to consider numerous documents and materials, the term determined by this law may be prolonged 15 days more with presentation data in written form to user.
- 21.5. Term of presentation of answer to query in cases specified in article 15.2 of this law is counted from the day of presentation of the query after removal of lacks, but term of processing a query in cases specified in article 19.6 of this law is counted not from the day of initial acceptance but the date it was registered in the body which accepted it.
- 21.6. Query about liquidation of secrecy of information is considered during the term envisaged in legislation of the Republic of Azerbaijan.

Article 22. Payment for presentation of information

- 22.1. User must pay all the expenses concerned with searching and preparation of information.
- 22.2. User does not pay presentation of information when studying information, rewriting the contents of the document by hand or copying using his own technical facilities as well as in other cases when technical assistance is not provided.
- 22.3. No payment is required to present information representing public interests or relating to civil rights and freedoms.
- 22.4. Payment for presentation of information cannot exceed the real cost of searching and preparation of information
- 22.5. Corresponding executive body after consent with Commissioner for problems of information determines and confirms:
 - 22.5.1. list of presented payable information services;
 - 22.5.2. tariff categories of information depending on form of obtaining;
 - 22.5.3. regulations of conducting payment for presentation of information;
 - 22.5.4. cases of presentation of information with preliminary payment;
 - 22.5.5. requirements for paying on preferential terms.

Part III **Commissioner for problems of information**

Article 23. Election of Commissioner for problems of information

- 23.1. Commissioner for problems of information (further - Commissioner) is elected by Milli Majlis of the Republic of Azerbaijan among 3 nominees proposed by the President of the Republic of Azerbaijan with presence of majority of 63 votes.
- 23.2. Nominee for the position of Commissioner is determined on the basis of the following principles:
 - 23.2.1. community's participation in proposing a nominee;
 - 23.2.2. publicity and transparency;
 - 23.2.3. publication of the list of corresponding nominees.
- 23.3. Nominees for the position of Commissioner are proposed by the community of journalists, non-governmental organizations as well as the Confederation of Trade-Unions and National Academy of Sciences and determined by the competitive commission consisting of intelligent people, scientists and educational specialists not engaged in political activities and having an experience in the field of protection of human rights. The competitive commission is created by the corresponding executive body.

Article 24. Requirements to Commissioner

- 24.1. A citizen of the Republic of Azerbaijan aged 30, having higher education and an experience in the field of protection of human rights and having high moral qualities may be elected for the position of Commissioner.
- 24.2. The following persons may not be designated to the position of Commissioner:

- 24.2.1. persons serving in the system of executive and judicial power, persons working at payable positions except ones concerned with scientific, pedagogical and creative activities, persons with liabilities to other states;
 - 24.2.2. persons who have not served time in accordance with the procedure established by legislation and persons who have not gained amnesty;
 - 24.2.3. persons with disability or limited ability to work confirmed by the court.
- 24.3. Commissioner cannot be engaged in political activities or be a representative of any political party or hold a position in the administrative body of any non-governmental organization.
 - 24.4. Commissioner must suspend the activities not corresponding to his status in 5 days after he had been elected for the position.
 - 24.5. Commissioner is elected for the term of 7 (seven) years.
 - 24.6. Commissioner has the right to be reelected, but he may not be elected for this position more than the second consecutive time.

Article 25. Preschedule suspension of Commissioner's activities

- 25.1. Commissioner's activities may be suspended ahead of schedule by the proposal of the President of the Republic of Azerbaijan on the basis of decision made by Milli Majlis of the Republic of Azerbaijan with presence of majority of 63 votes in the following cases:
 - 25.1.1. When breaking requirements determined by this law relating to Commissioner;
 - 25.1.2. When denial of citizenship of the Republic of Azerbaijan, when becoming a citizen of another state or taking liabilities to other states;
 - 25.1.3. When confirming disability or limited ability to work, when being admitted of guilt in committing of crime, when declaring him as missing or died in accordance with the procedure established by legislation, on the basis of resolution of the court which came into force;
 - 25.1.4. When proposing for another position or submitting the written application of voluntary designation.
- 25.2. In accordance with the procedure established by article 23.3 of this law, new nominees are proposed for the vacant position of Commissioner whose activities were suspended ahead of schedule, and the new Commissioner is elected in accordance with the procedure established by article 23.1 of this law.

Article 26. The status of Commissioner

- 26.1. The institution of Commissioner is a juridical person and financed from the state budget.
- 26.2. Commissioner has the right to possess, use and dispose of his property. He is fully independent in his activities and not subordinated to anyone except cases envisaged by this law.
- 26.3. Personnel, list of staff members and salary of Commissioner are determined by the corresponding executive body. Commissioner carries out Confirmation of the Regulation of Personnel, development and execution of annual budget, taking on and discharge of employees.
- 26.4. Monthly salary of Commissioner is fixed at the rate of monthly salary of judges of the Supreme Court of the Republic of Azerbaijan.

Article 27. Report on Commissioner's activities

No later than 3 months after turning the current year, Commissioner submits to Milli Majlis of the Republic of Azerbaijan the detailed report on his activities including financial condition, auditors' examinations and the results of management of requirements of this law. These reports may be submitted several times per year on request of Milli Majlis or on Commissioner's initiative.

Article 28. Powers of Commissioner

28.1. Commissioner:

- 28.1.1. brings to the notice of the community the regulations of this law, explains civil rights in the field of freedom of information determined by this law;
 - 28.1.2. manages the implementation of requirements of this law by authorized bodies;
 - 28.1.3. makes concrete suggestions on improvement of information services rendered by authorized bodies;
 - 28.1.4. collaborates closely with authorized bodies with a view to ensure obtaining of information in a more effective way, develops and realizes different educational arrangements to raise the professionalism of specialists working in this field;
 - 28.1.5. sends affairs resulted in criminal liability in view of breach of requirements of this law to corresponding law machinery;
 - 28.1.6. considers accepted applications and complaints and makes decisions on them;
 - 28.1.7. Considers affairs concerned with administrative breaches in accordance with legislation of the Republic of Azerbaijan
 - 28.1.8. carries out investigations in accordance with requirements of this law;
 - 28.1.9. renders legal assistance to citizens in view of obtaining of information;
 - 28.1.10. carries out seminars, scientific and practical conferences and other mass arrangements periodically with a view to instruct problems of information for the community and the official persons of authorized bodies;
 - 28.1.11. develops and realizes special programmes in the field of information jointly with corresponding executive body;
 - 28.1.12. develops unified regulations to regulate complaints sent to authorized body in view of rendering information services and presenting information, and publishes these regulations in mass media.
- 28.2. The regulations must be developed in accordance with requirements of this law and comprise the following matters:
- 28.2.1. working hours of the official persons for problems of information and the procedure to render information services;
 - 28.2.2. types of information services (including automatized information systems)
 - 28.2.3. regulations and conditions of rendering information services;
 - 28.2.4. regulations and terms of processing of complaints concerned with obtaining of information;
 - 28.2.5. classification of documented information;
 - 28.2.6. example of query form submitted for obtaining of information;
 - 28.2.7. the fundamentals of presentation of information under the contract or by request
 - 28.2.8. requirements to specialists working with information;

- 28.2.9. other matters issuing from requirements of this law.
- 28.3. Commissioner or representative carrying out his commitments in accordance with requirements of this law may not be called to civil, administrative or criminal liability for words and thoughts expressed by them in an unprejudiced manner when realizing his powers.

Part IV
The regulations of processing a complaint

Article 29. Complaints submitted to Commissioner

- 29.1. User may appeal to Commissioner with complaint about the official person of authorized body and (or) information services in the following cases:
- 29.1.1. denial of acceptance of a query;
 - 29.1.2. denial of provision of information or notifying of presence or absence of this information breaking requirements of this law;
 - 29.1.3. if answer was not provided to a query during the term envisaged in this law as well as if the notification was not sent during the term envisaged in this law
 - 29.1.4. if information which lost its efficiency or information capable to prevent real danger to life and health of citizens or freedom of the individual was not provided during the term envisaged in this law;
 - 29.1.5. if information is provided not in the form specified in a query without grounds;
 - 29.1.6. when classifying open information as restricted access information and as a consequence, denial of provision
 - 29.1.7. when breaking the regulations determined for access to work with information and obtaining of information;
 - 29.1.8. when providing false, inexact and incomplete information and not processing a user's repeated appeal in view of it;
 - 29.1.9. when breaking legal requirements in other cases not envisaged in this article.

Article 30. Terms of processing of a complaint

- 30.1. Commissioner must at the earliest possible date, but no later than 7 days, consider accepted complaints and make a decision.
- 30.2. In case processing a complaint needs in obtaining of additional materials or carrying out other arrangements, written data are presented to the complainant, and the term of processing of the complaint may be additionally prolonged 7 days more.

Article 31. Processing of a complaint

- 31.1. After initial processing a complaint Commissioner makes the decision to:
- 31.1.1. withhold processing of the complaint;
 - 31.1.2. demand authorized body to publish information or;
 - 31.1.3. consider the complaint.
- 31.2. in accordance with requirements of article 31.1.3. of this law, Commissioner possesses the power to:
- 31.2.1. obtain an explanation from the complainant;

- 31.2.2. demand authorized body to submit the explanation;
- 31.2.3. study any document relating to sphere of influence of this law.
- 31.3. Authorized bodies may not withhold delivery of documents necessary for Commissioner to carry out processing.

Article 32. Decision on the result of processing of a complaint

- 32.1. After careful and comprehensive processing of the complaint Commissioner:
 - 32.1.1. dismisses requirements specified in the complaint in full or partly;
 - 32.1.2. makes the decision on solving the requirements specified in the complaint.
- 32.2. Commissioner sends to the complainant and authorized body his decision on the result of processing in written form.
- 32.3. Commissioner withholds the following processing of the complaint and informs the applicant with description of reasons of denial only in the following cases:
 - 32.3.1. if the complaint is presented repeatedly, without grounds and in a prejudiced manner;
 - 32.3.2. if the applicant uses opportunities created by authorized body to solve the complaint ineffectively.
- 32.4. In accordance with requirements of article 32.1.2. of this law, Commissioner requires of authorized body to:
 - 32.4.1. establish strict procedure of storage, management and destruction of documents;
 - 32.4.2. hand in documents in ownership of authorized body to the National Archival Fund;
 - 32.4.3. designate the official person for problems of information;
 - 32.4.4. publish concrete information;
 - 32.4.5. raise the professional level of specialists working in information services;
 - 32.4.6. pay expenses incurred by the complainant and the damage caused to him.
- 32.5. The upper limit of the fine determined by Commissioner may not exceed two hundred equivalences of the conventional financial unit.
- 32.6. In all cases authorized body must substantiate correspondence of information specified in complaint to requirements of this law.
- 32.7. Commissioner's decision may be appealed in legal form in 10 days after obtaining of the copy of it.
- 32.8. When appealing a Commissioner's decision judicially, execution of this decision is suspended.

Article 33. Execution of Commissioner's orders and decisions

- 33.1. If Commissioner's decision on cases about administrative breaches is not executed, then after completion of the term prescribed for appeal of decision in legal form, Commissioner appeals to bodies of compulsory execution determined by legislation of the Republic of Azerbaijan to execute his decision.
- 33.2. The body of compulsory execution sends Commissioner's decision for execution in accordance with the procedure established in the law of the Republic of Azerbaijan "On execution of court decisions".

Part V
Concluding regulations

Article 34. Protection of rights to obtain information in legal form

Natural and juridical persons have the right to appeal authorized bodies' and their official persons' actions (inaction) in legal form.

Article 35. Liability for a breach of the law

According to legislation of the Republic of Azerbaijan, the official persons of authorized bodies are civilly, administratively and criminally liable for breaking regulations of this law.

Article 36. Coming the law in force

This law comes in force beginning from January 1, 2005.

APPENDIX II**LAW ON ACCESS TO PUBLIC INFORMATION
Media Law Institute Project****CHAPTER 1****PURPOSE, SCOPE, EXPRESSIONS AND PRINCIPLES OF THE LAW****Article 1. Purpose of the Law**

This Law shall, in furtherance to Article 50 of the Constitution of the Azerbaijan Republic, based on the principles of a democratic and social rule of law and an open society, regulate basics, procedures and methods applicable to access of any person to public knowledge (information) (hereinafter referred to as the “information”) for the purpose of strengthening control over performance of public duties.

Article 2. Scope of application of this Law

2.1. This Law shall regulate general principles, conditions, methods and rules applicable to access to information, purposes, principles and periods of restriction, as well as implementation of control over provision, of access.

2.2. Rules, procedures and periods of classification of information as state secret, protection, verification and disclosure thereof shall, subject to general principles and purpose of restriction of freedom of information and access to information as stipulated under this Law, be regulated by an appropriate law.

2.3. In the event of discrepancy between provisions of this Law and any other laws related to right of access to information, provisions of this Law shall prevail.

2.4. Access to documents stored in public archives shall be regulated in accordance with law on archives.

Article 3. Main terms

3.1. Where used in this Law the following terms shall have the below meanings:

3.1.1. Holder of information has a meaning specified in Article 4 of this Law.

3.1.2. Persons authorized to receive information has a meaning specified in Article 5 of this Law.

3.1.3. Public information means information which is recorded and documented in any manner and on any medium and which is obtained or created upon performance of public duties provided by legislation by holders of information.

3.1.4. Document means, irrespective of origin, date of production, form of presentation and classification, any information stored by holders of information upon appropriate material mediums.

- 3.1.5. Information request means an application for information filed with holders of information by persons authorized to receive information in accordance with procedures stipulated under this Law.
- 3.1.6. Applicant means a person applying in accordance with procedures stipulated under this Law to holder of information for the purpose of receipt of information.
- 3.1.7. Public disclosure of information means disclosure of information referred to in Article 10 of this Law by holder of information without information request through methods specified under Article 11 of this Law.
- 3.1.8. Public sessions means sessions arranged in furtherance to the legislation by state (legislative, executive and court) authorities and municipalities, as well as other holders of information as stipulated under the legislation in accordance with formal procedures without restriction of public access.

Article 4. Holders of information

- 4.1. The following persons shall be holders of information:
 - 4.1.1. state authorities and municipalities;
 - 4.1.2. legal entities fully owned or subordinated to the state and engaged into performance of public duties (including, state and municipal legal entities carrying out education, health, cultural, social and other duties);
 - 4.1.3. private legal entities and physical persons (in connection with carrying out of public duties further to law, other normative-legal acts and contracts, as well as provision of education, health, social services and performance of other public duties).
- 4.2. The following are deemed to be equal to holders of information:
 - 4.2.1. commercial entities which have a dominant position in the market or special or exclusive rights or which are natural monopolies;
 - 4.2.2. commercial and non-commercial entities of which the state or municipalities are participants, founders or members – with regard to information concerning the use of funds allocated from the state or a municipal budget.
- 4.3. Except for cases where holders of information hold information in substitution of other persons, the former shall be holders of information acquired or created by such holders of information.

Article 5. Persons authorized to receive information

- 5.1. Each citizen of the Azerbaijan Republic shall have the right to receive information.

5.2. Citizens of foreign states or persons without citizenships residing or being in the Azerbaijan Republic, as well as foreign legal entities operating in the Azerbaijan Republic shall only have the right to receive information related to such persons and their operations. Other foreign legal and physical persons may receive information covered by this Law upon principles of reciprocity.

5.3. Citizens of the Azerbaijan Republic residing outside the Azerbaijan Republic may receive information through consular departments.

Article 6. Principles of ensuring access to information

6.1. Information shall be open to a maximum extent. Restriction of access to information for purposes not stipulated under this Law and to the extent in excess of degree required for such purposes shall not be permitted.

6.2. Access to information shall be provided through the simplest and the quickest method.

6.3. Personal security, public safety and state security shall be preserved in course of disclosure of information.

6.4. Information requests shall be considered in a quick and fair manner.

6.5. Persons disclosing information associated with breaches related to holders of information shall be protected.

CHAPTER 2

DUTIES OF HOLDERS OF INFORMATION ASSOCIATED WITH PROVISION OF ACCESS TO INFORMATION

Article 7. Duties of holders of information

7.1. Holders of information shall provide access to information possessed by such holders of information through:

7.1.1. public disclosure of information;

7.1.2. compliance with information request;

7.1.3. holding of public sessions.

7.2. Holders of information shall have the following obligations:

7.2.1. to ensure free access to information;

7.2.2. to clearly explain procedure, conditions and methods of access to information to the applicant, to provide full assistance in course of submission of information request, establishment of required information and location thereof and selection of a method being the most suitable for access to information by the applicant;

- 7.2.3. to maintain records of information possessed by such holders of information;
 - 7.2.4. to disseminate information subject to public disclosure within periods and in accordance with procedures stipulated by the legislation;
 - 7.2.5. to store information sources possessed by such holders of information for a specified period of time, to protect such information sources from destruction, deletion and unauthorized modifications;
 - 7.2.6. to provide public with periodic information related to performance of public duties;
 - 7.2.7. to enforce restrictions upon access to information, to notify applicants of existing restrictions;
 - 7.2.8. to undertake proper technical and organizational measures for ensuring access to public sessions;
 - 7.2.9. to develop regulations on rights and duties arising out of this Law for employees engaged into operations with information in accordance with this Law.
- 7.3. State authorities and municipalities shall allocate special facilities for simplified access to information, shall appoint and instruct employees engaged into works related to access to information.
- 7.4. Head of the holder of information shall bear responsibility specified by the legislation for ensuring access to information being in possession of such holder of information.

Article 8. Public sessions

- 8.1. Holders of information shall disseminate information related to public sessions, place, time and agenda thereof at least 7 days in advance of such public session. Where number of persons willing to participate in open sessions is large, holder of information shall, through appropriate technical arrangements, ensure access for a large number of persons.
- 8.2. Sessions of holders of information may be declared closed only for purposes specified in Article 13.2 of this Law upon substantiated decision of the holder of information. Decisions of holders of information on closed session shall be disseminated through means used for dissemination of information on public sessions.

Article 9. Written collection of documents (register)

- 9.1. Written collection of documents (register) shall mean documents bank kept upon paper and stored in electronic-digital format for the purpose of simplifying access to documents acquired or developed by any holder of information referred to in Article 4 of this Law.
- 9.2. Written collection of documents (register) shall contain the following information:

- 9.2.1. incoming and outgoing documents, incoming or outgoing date or the next business day; register shall, at least, refer to sender of incoming documents and recipient of outgoing documents, incoming or outgoing date, incoming or outgoing method (post, electronic mail, fax, courier, personal delivery), details and type (application, inquiry, letter, decision, etc.) of the document, restriction imposed upon access to document;
 - 9.2.2. legal acts produced and signed by the entity – date of signing;
 - 9.2.3. concluded agreements.
- 9.3. Accounting documents shall not be treated as register.
- 9.4. Written collection of documents shall refer to the established by the legislation period of consideration of, or submission of reply to, documents awaiting consideration or submission of reply, structural unit assigned with duty for consideration or submission of reply, as well as names of staff members responsible for the preparation of reply.

CHAPTER 3

INFORMATION SUBJECT TO PUBLIC DISCLOSURE

Article 10. Duty of holder of information to disclose information to public

10.1. Holder of information shall be obliged to personally disclose the following information to public:

10.1.1. General information on holders of information

- 10.1.1.1. addresses, staff schedules of state authorities and municipalities, as well as first and last names, telephone numbers, electronic mail addresses of persons occupying positions therein;
- 10.1.1.2. regulations and employee instructions of state authorities and municipalities;
- 10.1.1.3. addresses of legal entities engaged into performance of public duties, names and electronic mail addresses of members of administration bodies and officials thereof;
- 10.1.1.4. time allocated for receipt of visitors by heads of state authorities and municipalities;
- 10.1.1.5. forms of applications and other documents filed with state authorities and municipalities, rules of completion thereof.

10.1.2. General information on affairs of holders of information

- 10.1.2.1. agenda, place, time of public events, name and details for contact person – at least 7 days in advance of the event;
- 10.1.2.2. information on researches and studies ordered by state authorities and municipalities;
- 10.1.2.3. information on revenues of state authorities and municipalities budgets, as well as out-of-budget funds;
- 10.1.2.4. information on use of funds and assets allocated to private legal entities by state authorities and municipalities where such state authorities and municipalities participate;
- 10.1.2.5. information on pricing in commercial entities holding prevailing position on commodity market, possessing special or exclusive right or being natural monopolies;
- 10.1.2.6. information on provision of public consumer services;
- 10.1.2.7. information and documents subject to public disclosure under other laws, international agreements and normative-legal acts enacted thereupon, or information considered by holders of information as necessary for disclosure;
- 10.1.2.8. draft budgets and budgets of state authorities and municipalities, reports on implementation thereof, reports on expending resources of out-of-budget funds;
- 10.1.2.9. reports on results of activities of, and performance of duties by, state authorities and municipalities;
- 10.1.2.10. reports on activities of legal entities carrying out public duties and report on revenues and expenses of such legal entities;
- 10.1.2.11. information on conditions, results and grounds for state and municipal purchases, as well as on sale and other methods of disposal of state and municipal property;
- 10.1.2.12. information on privileges, benefits, compensation granted by state authorities and municipalities to individuals, officials, legal entities;
- 10.1.2.13. reports on loans and grants received by state authorities and municipalities, or loans received under state guarantees, conditions and use thereof.

10.1.3. Personal information

- 10.1.3.1. information on education and professional specialization of officials of state authorities and municipalities;

- 10.1.3.2. information subject to disclosure under legislation with respect to movable and immovable property of persons appointed or elected to positions in state authorities and municipalities and on movable and immovable property of relatives of such persons, as well as on source, category and amount of annual personal income of such officials.

10.1.4. Information on extraordinary situations

- 10.1.4.1. information on risks for life, health and property of individuals;
- 10.1.4.2. information on status of environment, environmental damage and dangerous ecological impacts.

10.1.5. Statistical, forecast and supervision information

- 10.1.5.1. summarised statistics on crimes and administrative defaults;
- 10.1.5.2. summarized economic statistics and economic forecasts for state authorities and municipalities.

10.1.6. Personnel information

- 10.1.6.1. information on vacancies in state authorities and municipalities;
- 10.1.6.2. information on changes in working regime or duties of state authorities and municipalities associated with services to the public, at least 10 days in advance of the effective date of such changes.

10.1.7. Information on draft documents

- 10.1.7.1. draft laws and draft decrees produced by the central executive authorities, accompanied with explanatory notes, effective from the time of sending to the President of the Azerbaijan Republic;
- 10.1.7.2. drafts of decrees of the President of the Azerbaijan Republic and drafts of resolutions of the Cabinet of Ministers prepared by central executive authorities, effective from the time of sending to the President of the Azerbaijan Republic and the Cabinet of Ministers of the Azerbaijan Republic;
- 10.1.7.3. acts of central executive authorities, prior to enactment;
- 10.1.7.4. draft concepts, development plans, programs and general perspective plans, prior to submission for approval to authorized bodies, as well as appropriately approved or enacted documents;
- 10.1.7.5. information on changes in terms and prices of public consumer services, prior to introduction of such changes;

10.1.7.6. draft normative legal acts submitted for discussion at legislative authority, effective from the time of submission for discussion at permanent commissions (accompanied with amendments made after each reading);

10.1.7.7. laws passed by the National Assembly, effective from the time of sending to the President of the Azerbaijan Republic.

10.1.8. Documents of holders of information

10.1.8.1. instructions and orders issued by state and service control authorities, effective from the time of coming into legal force;

10.1.8.2. salary levels, labour payment regulations, as well as rules of establishment of supplements upon salary and special benefits applied in state authorities and municipalities;

10.1.8.3. acts on allocation of funds, assets, property rights, benefits and privileges by state authorities and municipalities to private legal entities and physical persons, from the time of signing;

10.1.8.4. court decisions, on the date of being entered into register;

10.1.8.5. normative-legal acts, inter-state agreements, treaties, international acts of the country;

10.1.8.6. normative acts of state authorities and municipalities, including orders issued by central and local executive authorities.

10.1.9. Documents register of holders of information

10.1.9.1. data from main state registers and, to the extent specified by the legislation, information from ordinary state registers;

10.1.9.2. documents registers of holders of information referred to in this Law;

10.2. Person making disclosure, time of disclosure, act formalising disclosure (registration, certification and other official act) or contact person who can be approached for receipt of explanation of disclosed information shall be indicated in course of disclosure of information.

10.3. Information referred to in this Article shall be published on the world wide web. Furthermore, this information may also be disclosed through other means referred to in Article 11 of this Law.

Article 11. Methods of disclosure of information

11.1. Holders of information shall disclose the information through:

11.1.1. Internet;

11.1.2. television and radio broadcasts or periodic publications;

11.1.3. exhibition of documents for public review in facilities of holders of information and in public libraries;

11.1.4. official publications;

11.1.5. other methods specified by the legislation.

11.2. Holder of information shall disclose information to a person in need of such information through methods ensuring the quickest delivery of information. Where disclosure method is specified in law or international treaty, such information shall be disclosed through a specified method.

11.3. Holder of information shall disclose information related to risks upon life, health, property of individuals or upon environment immediately, through the quickest and the most appropriate method.

Article 12. Duty to maintain Internet site

12.1. Legislative authorities, central and local executive authorities, courts, other state bodies, all legal entities engaged into performance of public duties shall maintain active Internet sites for the purpose of making public disclosures. To ensure simple access to information, holders of information may maintain Internet sites jointly with other holders of information.

12.2. Entities maintaining Internet sites shall:

12.2.1. notify public of addresses of their Internet sites and modifications made therein;

12.2.2. publish on Internet sites actual information;

12.2.3. disclose through Internet sites true and accurate information;

12.2.4. undertake urgent measures for elimination of technical defects impeding access to Internet site.

12.3. Holder of information shall be liable for truthfulness of information published on the Internet.

12.4. Holder of information shall indicate the date of disclosure and update of information to public.

12.5. The relevant executive authority shall ensure free access to public libraries in the country through the Internet.

CHAPTER 4

RESTRICTED ACCESS INFORMATION

Article 13. Restriction of access to information

13.1. Access to information may be restricted only for purposes referred to in Article 13.2, to the extent and for the period of time required in democratic society, only in accordance with rules and through methods specified in the Law.

13.2. Access to information which disclosure may harm:

13.2.1. security, integrity, sovereignty and defence, foreign policy, normal operation of civil and military intelligence and counter-intelligence services of the country;

13.2.2. safety, health of population of the country, public order;

13.2.3. prevention and investigation of crimes, prosecution, fair trial, safety of persons engaged into criminal proceedings;

13.2.4. private immunity protected by legislation and other legitimate personal interests;

13.2.5. private and public interests and other legitimate economic interests;

13.2.6. protection of historical monuments, natural reserves or protected flora and fauna species, places of living or habitat thereof;

13.2.7. outcome of audits, investigation and control carried out by state authorities, normal course of such audits, investigation and control measures;

13.2.8. implementation of economic, fiscal-credit and currency policy of the state;

13.2.9. confidentiality of any discussions undertaken between state authorities and within state authority in connection with preparation for any matter;

13.2.10. unfair enrichment,

shall be prohibited.

13.3. Restriction shall be legitimate where public interests causing restriction of information prevail over public interest in disclosure of such information.

13.4. Where persons referred to in Article 5 of this Law treat restriction of access to information as breach of their rights and freedoms, such persons may raise disputes over restriction of access to information.

13.5. Where access is restricted only to certain part of a requested document, holder of information shall release to applicant unrestricted part of the document and shall mark undisclosed part of the document with confidentiality sign.

13.6. Except for private legal entities, holders of information can not refer the following information into the category of information access to which is restricted:

- 13.6.1. information on status of environment, health, education, culture, demography, agriculture and crimes;
- 13.6.2. economic and social forecasts;
- 13.6.3. summarized statistical reviews;
- 13.6.4. public polls;
- 13.6.5. information related to quality of goods and services and designated for protection of rights of consumers;
- 13.6.6. information on breaches of law by officials and formal representatives of state authorities and municipalities, as well as by physical persons performing public duties, which may affect performance of such duties;
- 13.6.7. state of health of high state officials;

reports on affairs of, or assignment of affairs, by holder of information, as well as quality of performance of duties and errors made in course of administration;
- 13.6.8. information on use of budget funds by state authorities and municipalities, legal entities performing public duties;
- 13.6.9. information on assets and obligations of the holder of information;
- 13.6.10. information on acts and orders issued and become effective for enforcement of state and professional control, or made through disciplinary proceedings, imposed sanctions and punishments;
- 13.6.11. information on funds and assets allocated to private legal entities and physical persons from state and municipal budget and information on use of such funds and assets.

Article 14. Restriction of access to information on private life

14.1. Access to the following information related to private life shall be restricted:

- 14.1.1. information on political views, religious appurtenance and general views of an individual, except for membership information formally registered by appropriate authorities;
- 14.1.2. information on ethnic origin and race;
- 14.1.3. information on health and sexual life of an individual;

- 14.1.4. information collected in course of criminal and other legal proceedings – prior to summon to open court sessions or issue of a court decision, or for the purpose of protection of morals or family and personal life, or in the interests of minors, suffering persons or witnesses, or for administration of fair trial;
 - 14.1.5. information on certain aspects of family life;
 - 14.1.6. information on personal distinguishing features, abilities or other characteristic features of an individual;
 - 14.1.7. information on physical or mental incapacity of an individual;
 - 14.1.8. information collected in course of levying taxes from an individual, except for information on tax debts, and information referred to in Article 10.1.3.2 of this Law.
- 14.2. Holder of information shall disclose information related to private life in cases specified in this Law and for the purpose of legitimate public needs.
- 14.3. Holder of information possessing personal information shall, upon request of such person, release the information to the latter except where:
- 14.3.1. disclosure of such information may impede prevention of crime, seizure of a person suspected of committal of crime or establishment of truth in a criminal case;
 - 14.3.2. access to information is restricted for the purpose of protection of rights and freedoms of other persons;
 - 14.3.3. disclosure of personal information to a minor may reveal secret of adoption or origin;
 - 14.3.4. information on a person resident in a foreign state was collected for the purpose of national security.
- 14.4. Under the following circumstances information on personal life may be disclosed to:
- 14.4.1. parents (adopters) or guardians and trustees – information on minors;
 - 14.4.2. guardians – information on persons without action capacity;
 - 14.4.3. persons authorised by such individual;
 - 14.4.4. officials of state authorities and municipalities – in connection with performance of official duties.
- 14.5. Holder of information shall keep records of recipients of information on private life, purpose, date, method of disclosure and categories of disclosed information.

14.6. Information related to health of a person in a health establishment may, where there is no objection raised by such person or where an investigation authority has not established a claim for imposition of restrictions upon access to such information, and in other circumstances, be released to close relatives of such person.

14.7. Closed information referred to in Article 14.1 may be disclosed by investigation authority or a body or official exercising state control for the purpose of establishment of truth in relation to a crime, as well as for ensuring safety of individuals. Where restriction of access to personal information imposes risks upon life, health or property of other persons, such information shall be disclosed through the quickest and the most appropriate method.

Article 15. Term of restriction of access to information

15.1. Restriction of access to information related to private life shall remain in effect for 30 years upon death of the relevant person. Where the fact of death is unknown, restriction shall be in effect for a period of 100 years from the date of birth of the relevant person.

15.2. Access to other information shall be restricted as necessary, but not for a period exceeding 5 years. Where necessary, upon decision of head of entity – holder of information access to such information may be restricted for further 5 years.

15.3. Upon elimination of circumstances giving rise to restriction of access to information, owner of restriction shall cancel restriction and shall make appropriate notes in the document and in documents register.

15.4. Holder of information shall undertake requisite administrative and technical arrangements for prevention of access of unauthorized persons to information access to which is restricted.

Article 16. Procedure of restriction of access to information

16.1. Decision on restriction of access to information may be issued by the head of the holder of information.

16.2. Medium of information access to which is restricted shall be marked with sign “For Internal Use”. Medium of information related to private life, access to which is restricted shall be marked with the sign “For Internal Use. Private Life Information.” Date of the note and date of expiration of restriction regime shall be shown below the sign.

CHAPTER 5

OBTAINING INFORMATION THROUGH REQUEST

Article 17. Submission of request

17.1. Information request may be submitted either in an oral form (in person or by telephone) or in a written form (in person or through post, fax or electronic mail).

17.2. The following information shall be contained both in oral and written requests:

17.2.1. applicants identification details (first and last name, personal identification document number, address for a physical person, full name, registration number and address for a legal entity, electronic signature for requests submitted through electronic mail);

17.2.2. contact details to be used by holder of information (telephone or fax numbers, address, electronic mail address);

17.2.3. contents of requested information or category, title or contents of requested document, or identification details of the document as available to the applicant;

17.2.4. requested method of compliance with the request.

17.3. Oral or written information request related to personal life shall be submitted personally by presentation of personal identification document.

17.4. Except for circumstances referred to in Article 17.5, reference to reasons for request of information shall not be required.

17.5. State and municipal official shall, in their information request filed in connection with performance of professional duties, indicate reason for request of information. Submission of information requests under the guise of reasons related to performance of professional duties shall not be permitted.

Article 18. Registration of receipt, compliance or refusal to comply with information request

18.1. Holder of information shall register information request on the date of submission of the request. Information referred to Article 17.2 of this Law, as well as name of a staff member or structural division responsible for processing of the request and period of processing shall be shown in the documents register.

18.2. Anonymous request and requests complied with at the time of submission shall not be subject to registration.

18.3. Except for circumstances referred to in Article 18.2, compliance or refusal to comply with information request shall be subject to registration. Register shall, at least, refer to the following details:

18.3.1. person responsible for processing of information request;

18.3.2. details of a document which copy or extract has been submitted for the purpose of compliance with the request;

18.3.3. date of compliance or refusal to comply with information request;

18.3.4. method of compliance with the request, procedures referred to in Article 21 of this Law for treating information request as complied with or grounds referred to in Article 22 of this Law for refusal to comply with the request.

Article 19. Methods of compliance with information request

19.1. Information request may be complied with through one of the following methods to be specified by the applicant:

19.1.1. orally;

19.1.2. by copying to electronic-digital information medium or by sending to electronic address indicated in the information request;

19.1.3. by copying document or a section thereof to paper and submission directly to applicant (or representative of the applicant) or by sending by post or by fax to address indicated in the information request;

19.1.4. by presentation for review at the place of holder of information;

19.1.5. through other method, subject to category of information medium.

19.2. Under the following circumstances request shall be submitted in an oral form:

19.2.1. information request related to proceedings commenced upon claim or application of the applicant;

19.2.2. request for availability with holder of information of information being of interest for holder of information.

19.3. Holder of information shall not be obliged to read text of documents in the event of submission of oral request.

19.4. Under the following circumstances holder of information may refuse method of compliance with the request indicated in the information request:

19.4.1. holder of information is not in possession of relevant technical means;

19.4.2. implementation is impossible due to nature of information medium;

19.4.3. oral reply is to take substantial period of time.

19.5. Where information is released for review at the place of holder of information, where required for the purpose of acquaintance by applicant with document or other source of information, holder of information shall:

19.5.1. supply requisite technical devices (where holder of information is not in possession of requisite technical devices, applicant may use personal technical devices provided that such use shall not cause any damage to information medium);

19.5.2. bring encoded protocols or other types of encrypted information into legible format;

19.5.3. translate information available in other languages into Azeri language.

19.6. Where requested in the information request, holder of information shall submit officially certified information. In cases specified by the legislation, information disclosed to public shall also be disclosed in an officially certified form.

19.7. Where certain section of a document contains information access to which is restricted, except for cases where there is a risk that confidentiality of such section is going to be impaired, holder of information shall, upon request of applicant, facilitate review of open sections of the relevant document.

19.8. In cases referred to in Article 19.2, as well as where information request fails to identify a method of compliance with the request, or where a method of compliance with the request is unclear from the request, where possible, holder of information shall, through discussions with the applicant and subject to consideration of method of submission of the request, select method of disclosure of information.

Article 20. Time periods for compliance with information requests

20.1. Reply to information request shall be submitted without delays, latest within 7 business days from the date of registration of the request.

20.2. Where holder of information is unable to reply to request due to lack in contact details of the applicant, holder of information shall within 5 business days submit to the applicant notice for clarification of contents of the request. Upon receipt of reply to notice clarifying contents of the request, holder of information shall submit its reply within a period of time referred to in Article 21.1.

20.3. Where certain period of time is required for the provision of reply to request, holder of information shall within 5 business days submit to the applicant notice showing reasons for delay and may extend period of time for submission of reply to the request for a total of 20 business days.

Article 21. Compliance with information requests

21.1. Holder of information shall disclose information to the applicant within period of time and through methods referred to in Article 20 of this Law.

21.2. Where holder of information is not in possession of requested information, such owner shall clarify which holder of information is in possession of such information and shall without delay, latest within 7 business days, transfer request to the relevant holder of information and shall submit appropriate notice to the applicant. Upon oral request, applicant shall be orally notified of holder of information possessing the requested information.

21.3. Where requested information is not free-of-charge, holder of information shall within 5 days notify the applicant of the amount of the fee and procedure for the payment thereof.

21.4. Private legal entity or physical person – holder of information shall not be obliged to transfer information request to any other holder of information. They shall without delay,

latest within 7 business days notify the applicant that they are not in possession of the information.

21.5. Where request information has been published, except for cases referred to in Article 19.6 of this Law, holder of information shall not release such information and shall latest within 7 business days notify the applicant of methods of access to, and place of, information.

21.6. Information requests requiring analysis and synthesis of collected information or collection and documentation of supplementary information shall be processed in accordance with legislation on applications of individuals.

Article 22. Refusal to comply with information request

22.1. Under the following circumstances, holder of information shall refuse to comply with information request:

22.1.1. requested information constitutes state secret;

22.1.2. access to requested information is restricted and applicant is not authorized to have access to such information;

22.1.3. holder of information is not in possession of requested information and is not aware which holder of information possesses such information and is not able to establish holder of information;

22.1.4. despite efforts, it is impossible to establish which information has been requested by the applicant;

22.1.5. applicant fails to pay duty prescribed by the legislation for complying with information request;

22.1.6. there are no contact details applicable to the applicant.

22.2. Holder of information shall without delay, latest within 7 business days submit to the applicant notice of refusal to comply with information request. Notice shall refer to grounds specified in Article 22.1 and refusal shall be substantiated. Simultaneously, electronic-digital form of notice of refusal shall be sent to the Commission.

Article 23. Charge for disclosure of information

23.1. Under circumstances stipulated by the legislation, fee in the amount specified by the legislation shall be levied from the applicant for disclosure of information. Amount and procedure for payment of fee for disclosure of information shall be established by the relevant executive authority upon agreement of the Commission for Access and Protection of Information.

23.2. Amount of fee levied for disclosure of information shall not exceed costs of copying, dispatch and translation of information.

23.3. No fee shall be levied for disclosure of:

- 23.3.1. information affecting rights and freedoms of the applicant;
- 23.3.2. information released in oral form and information processed orally;
- 23.3.3. information disclosed for review at the place of holder of information;
- 23.3.4. information beneficial for public interests, which disclosure serves the purpose of broader clarification of publicly significant actions of the holder of information.

CHAPTER 6

CONTROL OVER ACCESS TO PUBLIC INFORMATION

Article 24. Commission for Access and Protection of Information

- 24.1. Commission for Access and Protection of Information (hereinafter referred to as the “Commission”) shall be an independent state authority exercising, upon personal initiative and further to complaints, state control over dissemination of public information by holders of information, processing of information requests, restriction of access to information and protection of information related to personal life.
- 24.2. Commission shall be composed of 5 members.
- 24.3. One member of the Commission shall be appointed by the President of the Azerbaijan Republic, one member - by the Constitutional Court, one member – by Ombudsman, one member – by a party having majority in the National Assembly [Milli Majlis], and one member – by an opposition party having the largest number of representatives in the National Assembly. Any substitute in place of a withdrawing member of the Commission shall be appointed for the period of office of the latter member by the party which made the initial appointment.
- 24.4 Any person above the age of 30, holding university degree in law, having experience in the field of law, who has not been a member of any political party for a period of three years prior to the date of appointment may be appointed as a member of the Commission.
- 24.5. Term of office of Commission member shall be 7 years. Commission member cannot be reappointed for the second term. Within 15 days upon expiration of the term of office of Commission member the appropriate party referred to in Article 24.3 shall make appointment of the new Commission member.
- 24.6. Commission member shall not be authorized to hold any temporary or permanent, paid or unpaid position in any holder of information and shall provide advance notice of any conflict of interest such member may have in cases considered by the Commission.
- 24.7. Salary of Commission member shall be equal to the salary payable to a judge of the Supreme Court of the Azerbaijan Republic.

24.8. Commission shall be financed from the state budget of the Azerbaijan Republic for operation upon principle of independent, efficient and professional activities.

24.9. Commission member shall be independent. No official or authority, including a party making an appointment, shall be authorized to interfere with activities of the Commission member.

24.10. Commission member shall enjoy immunity equal to immunity granted to Ombudsman of the Azerbaijan Republic. Commission member shall be dismissed from the position in accordance with procedures applicable to dismissal of Ombudsman of the Azerbaijan Republic.

Article 25. Filing of complaint

25.1. Persons considering that holder of information has been in breach of rights and legitimate interests may submit to the Commission complaints from the following circumstances:

25.1.1. unsubstantiated refusal to accept and register information request;

25.1.2. refusal to provide access to open registers of holder of information;

25.1.3. breach of provisions applicable to time period and procedures of compliance with information request;

25.1.4. failure to disclose or improper disclosure of information;

25.1.5. unsubstantiated refusal from disclosure of information;

25.1.6. unsubstantiated restriction of access to information;

25.1.7. imposition and amount of fees for disclosure of information;

25.1.8. damages caused through failure of holder of information to perform obligations specified under this Law;

25.1.9. failure to provide access to public sessions, unsubstantiated declaration of session as closed.

25.2. Complaint shall be made in writing and shall contain the following information:

25.2.1. first and last names, address and contact details for a person submitting a complaint (or a representative of such persons);

25.2.2. information on holder of information being complained of;

25.2.3. material contents of complaint, where complaint is related to compliance with information request – contents of the request, as well as, where necessary, copy of letter of reply submitted with respect to information request;

25.2.4. arguments of a person filing a complaint with respect to illegality of actions of the holder of information.

Article 26. Consideration of complaint

26.1. Commission shall consider complaint within 7 business days from the date of receipt thereof and shall verify legality of actions of the holder of information. Where it is necessary to collect additional explanations or documents or to obtain additional information on requests made by a person filing the complaint, the Commission may extend such period of time for a maximum of 20 business days.

26.2. Commission shall not consider complaint where the complaint is anonymous, or complaint is not filed against any specific holder of information, or where there is a court proceeding related to the subject matter of the complaint. In such cases the Commission shall issue a decision referring to reasons of the refusal.

26.3. Commission shall notify results of consideration of the complaint to a person submitting complaint, holder of information and its higher authority or to a state authority exercising control over activities thereof.

Article 27. Powers of the Commission

27.1. Commission authorised to exercise control shall have the right to clarify the following matters:

27.1.1. whether access to information was restricted in correspondence to the law;

27.1.2. failure of holders of information to perform duty related to disclosure of information as required by this Law;

27.1.3. failure of holders of information to maintain Internet sites as per requirements of this Law;

27.1.4. registration or otherwise of information request, compliance with information request in accordance with procedure, through method and during a period of time stipulated in the Law;

27.1.5. legitimacy of refusal to comply with information request.

27.2. Commission shall have the following rights:

27.2.1. to require holders of information to submit explanations and documents;

27.2.2. to review documents related to restriction of access;

27.2.3. to issue to holder of information orders related to enforcement of this Law;

27.2.4. to submit to holder of information proposals on improvement of access to information;

27.2.5. in accordance with procedures referred to in the Administrative Default Code, to commence proceedings on cases of administrative default and to impose administrative sanctions, and upon establishment of elements of a criminal action – to transfer documents to authorities engaged into investigation of crimes.

27.3. State secrets marked “Specially Important” shall be submitted to the Commission upon consent of the relevant executive authority. Commission shall have the right to appeal refusal of such authority in the court.

27.4. Where holder of information illegally refuses to implement the order, fails to process information request in due order and within due period of time, fails to disclose information subject under legislation to public disclosure or fails to disclose the information through methods stipulated by the Law, fails to maintain Internet site as prescribed by this Law, imposes illegal restrictions upon access to information, fails to limit access to information access to which is to be restricted in accordance with legislation, including information on personal life, Commission shall issue to such holder of information substantiated order for elimination of breaches.

27.5. Holder of information shall within 7 business days undertake due measures for implementation of orders and shall submit appropriate notice to the Commission. On the date of receipt Commission shall publish such notice on its Internet site. Holder of information disagreeing with the decision of the Commission may within 7 business days appeal the decision in the court.

27.6. Complainant disagreeing with the decision of the Commission shall have the right to appeal the decision in the court.

27.7. Proceedings of the Commission and apparatus thereof shall be established by the Regulations to be approved by the Commission.

Article 28. Report on implementation of this Law

28.1. Before March 1 of each following year the Commission shall submit report on status of implementation of this Law during preceding year to the National Assembly and the President of the Azerbaijan Republic. Upon submission the report shall be published on the Internet.

28.2. Report shall refer to cases of breach of the Law and holders of information responsible for such breaches, complaints, orders issued by the Commission, status of implementation thereof, administrative proceedings commenced, sanctions imposed by the Commission, other matters related to implementation of this Law.

CHAPTER 7

LIABILITY

Article 29. Liability

29.1. Holders of information and officials thereof shall bear liability specified by the legislation for breach of this Law.

29.2. Holders of information and officials thereof shall bear civil, administrative and disciplinary liability for non-disclosure of information within a period of time specified by the Law, unsubstantiated refusal to disclose information, disclosure of false information, failure to provide access to public sessions or disclosure of closed information causing damages to legitimate rights and interests of other persons or to public interests, while deliberate submission by officials of holders of information of false information or deliberate disclosure of closed information causing material damage to rights and interests of other persons or to public interests shall entail criminal liability.

TRANSITION PROVISIONS

1. This Law shall come into force on January 1, 2005.
2. With respect to state authorities Articles 11.1.1 and 12.1 of this Law shall come into effect on June 1, 2005, while with respect to other holders of information Articles 11.1.1 and 12.1 shall come into effect on June 1, 2006.
3. Holders of information shall by June 1, 2005 bring their document processing procedures into correspondence with this Law.
4. Upon effective date of this Law, the Law of the Azerbaijan Republic On Freedom of Information shall be repealed.
5. Parties referred to in Article 25.3 shall within one month from the date of publication of this Law appoint members of the Commission.
6. Commission shall commence its activities latest on November 1, 2004.