

Report on Access to Public Documents 2013-2014

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Published by	Balkans Investigative Reporting Network - BIRN
Author	Gresa Musliu
Editor and	
Legal Advisor	Flutura Kusari
Editor in Chief	Jeta Xharra
Editing	Bekim Muhaxheri

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List of Abbreviations

BIRN – Balkans Investigative Reporting Network

KBRA – Kosovo Business Registration Agency

PAK – Privatization Agency of Kosovo

PRB – Public Review Body

KCC – Kosovo Chamber of Commerce

UP – University of Prishtina

NAPDP – National Agency for Personal Data Protection

OGP – Open Government Partnership

OPM – Office of the Prime Minister

1. Executive Summary

From June 2013 to May 2014, the Balkan Investigative Reporting Network submitted a total of 125 official requests to access public documents in the majority of public institutions in Kosovo. Of the requests submitted, 68 were denied, 50 were approved and 7 were partially denied. This means that documents were received in only 40 percent of cases. A similar experience was in 2012/2013, when BIRN submitted 300 requests, and only 30 percent of these requests received responses.

These figures do not reflect well on a country that four years ago approved a law that obliges all institutions to allow access to official documents. In addition, one cannot argue that there is a lack of capacities to respond to official requests, since they are abundant. BIRN found no instances where officials have complained that their daily duties prevent them from responding to document requests. In reality, off the record, heads of institutions and political advisors are explicitly prohibited from permitting access to public documents. This is a result of a mentality comprised of fear and distrust surrounding the media and public. The right to access public documents is seen by heads of institutions as the right of the public to expose incompetence in the institutions. Denying access to public documents is viewed as a defense against public shaming, in cases where 60-70 percent of the requested documents should have been public.

No document requested from BIRN involves exposing national security, state secrets or ongoing investigations. Documents that are largely requested relates to data that BIRN's legal team considers public information that are not sensitive to security institutions and entirely useful to the public interest to be published or accessed. These requests, for instance, involve the Office of the Prime Minister and various ministries, decisions of the President on the pardoning of convicted persons, and the PAK Board documents on decisions to privatize enterprises, several years ago.

Moreover, local and international judges and prosecutors do not allow access to public documents of prosecutions and courts, such as indictments of court cases, however in other countries such documents are posted online. Thus, this gives the impression that in order to gain access to state bodies – even regarding the most basic documents – you have to knock on doors in hopes that you won't be required to a) know someone, b) pay something, c) return a favor to someone for a service that should be considered public information.

It is very interesting that with EULEX, the European Rule of Law Mission, which is expected to introduce a positive influence with examples of best practices from European countries in terms of access to public documents, the experience is quite the opposite. EULEX also doesn't allow access to indictment – documents which even in Bosnia and Herzegovina and Croatia are public, not to mention the Western Europe.

When an organization such as BIRN, a professional organization which professionally and determinedly addresses requests for access to public documents, an organization with a ten-year experience in developing contacts with institutions, and with specific information on documents which should be public, has only a 40 percent success rate with its request, the institutional response to requests for public access is rather poor. This bureaucracy developed to hide from the citizens, rather than be at their service, is not acceptable for a country seeking a European future.

2. Theory: the legal right to request and receive public documents

In Europe, access to public documents is guaranteed by the European Parliament Regulation 1049/2001, which regulates in detail parties eligible to access public documents, definitions, exemptions, processing documents, responding to requests and deadlines.

This right, considered a guarantee of transparency, is also provided in the two recommendations of the Council of Europe, respectively recommendation R (81) 19 on Access to Information held by Public Authorities¹ and Recommendation R (2002) 2 on Access to Public Documents², according to which European citizens have the right to request and receive public documents and all states must guarantee this right.

The legislation that guarantees access to public documents is rather new. According to the British organization "Article 19", in the 90s, only 13 states had laws that guarantee public access to documents, while today there are around 100 countries that allow such access³. According to "Access Info", one of the largest organizations in Europe that promotes the right to know, in the 48 of the 56 OSCE countries participating states have specific laws on access to public documents.⁴

Access to public information is also guaranteed by law in countries in the region, which have now adopted laws on accessing documents and information, such as Albania (1999), Macedonia (2006), Montenegro (2005), Serbia (2003), Bosnia and Herzegovina (2000), and Croatia (2003).⁵

Kosovo laws also guarantee access to public documents. In the Constitution of Kosovo, adopted in 2008, Article 41 reads: "Every person enjoys the right to access public documents." However, the legal basis guaranteeing public access to documents dates earlier than the Constitution. The first law on access to public documents was first introduced in 2007, when journalists, civil society activists, citizens and other stakeholders acquired the legal basis for requesting access to public documents.

This law was never fully implemented, therefore the European Commission, through Progress Reports, repeatedly criticized local institutions for failure to enforce this law. In 2008, one year after the law was adopted, the progress report stated: "the implementation of the law on accessing official documents should be improved."⁶ A year later, in 2009, the Progress Report, the text stated, "the law is not being fully implemented." The Progress Reports of 2010, 2011, 2012, and the feasibility report and 2013 do not measure access to all official documents and public. This is another reason why it is important for organizations and local media to test the implementation of this legislation and monitor the extent to which such rights, which are supposedly available to Kosovo citizens, are functioning in practice.

¹ See recommendation [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec\(1981\)019_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(1981)019_EN.asp)

² See recommendation <https://wcd.coe.int/ViewDoc.jsp?id=262135>

³ International standards Report: Right to information, April 2012, can be found at http://www.article19.org/resources.php/resource/3024/en/international-standards:-right-to-information#_ftnref32

⁴ The instruction manual for reporters on access to public documents, Access Info Europe, and N-OST, p. 32, can be found at:

⁵ Legal leaks Toolkit, Access Info, p. 63, can be found at http://www.legalleaks.info/images/stories/legal%20leaks%20nov%202011_impresion.pdf

⁶ Progress Report on Kosovo 2008, p. 15, can be found at: http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/kosovo_progress_report_en.pdf

At the end of 2010, the Assembly of Kosovo improved the legal framework of allowing access to public documents, adopting the Law on Access to Public Documents – previously called the Law on Access to Official Documents.

Fortunately, with the exception of the title, in theory, the law has changed for the better, in favor of citizens, in the following points:

a) The request form – The current law is more favorable for document requests. While the old law explicitly states that the request is submitted in writing, the current law allows for requests to be made “in any way”, precisely in writing (which can be submitted to the office in person and by mail) as well as verbally, through phone or in person.

BIRN’s experience, after submitting over 420 requests for access to public documents in the last three years, indicates that because postal services in Kosovo are not reliable, public authorities often use this fact as an excuse for not responding to official requests. This is why BIRN, in addition to requests sent by mail to public institutions, also submitted them via email and hard copy, allowing officials to make less excuses for not addressing access to public document requests.

b) Deadline to respond – Another positive aspect is the deadline for an institutional response, which is now reduced to seven days, compared to 15 days in the previous law. The European Parliament Regulation No. 1049/2001 on Access to Public Documents envisages a deadline of 15 days, with the possibility of extension if the request is for a large number of documents. In Kosovo, the deadline of seven days can be extended in two cases: if the information or the document requested is outside the premises of the institution, and if the same party submits an additional request for information or public documents.⁷ However, what happens in practice in Kosovo is that if the institution doesn’t have the information requested, it usually rejects access to public documents, rather than forwarding the request to the relevant institution, which the law requires.

c) Responsible officials: Finally, what makes the law more suitable to the public is the fact that according to the law on public documents, all public institutions are obliged to appoint a unit or an official responsible to address and review requests for public documents (Article 5.1), a positive change from the previous law.

However, despite such theoretical improvements in the law, its implementation in practice is lacking – virtually similar to previous law. Now, when institutions do not respond to requests they are violating both the public and their senior officials. Despite the legal requirement of all public institutions to report requests to the Office of the Prime Minister (OPM), this is not happening. According to a comprehensive report of public institutions on the implementation of the right of access to public documents, published each year by the OPM, public institutions do not report to the Office of the Prime Minister on requests they receive from the public and their responses. According to the report: “there are a number of independent institutions established by the Assembly, courts, prosecutors and other institutions ...” that did not submit reports to the Office of

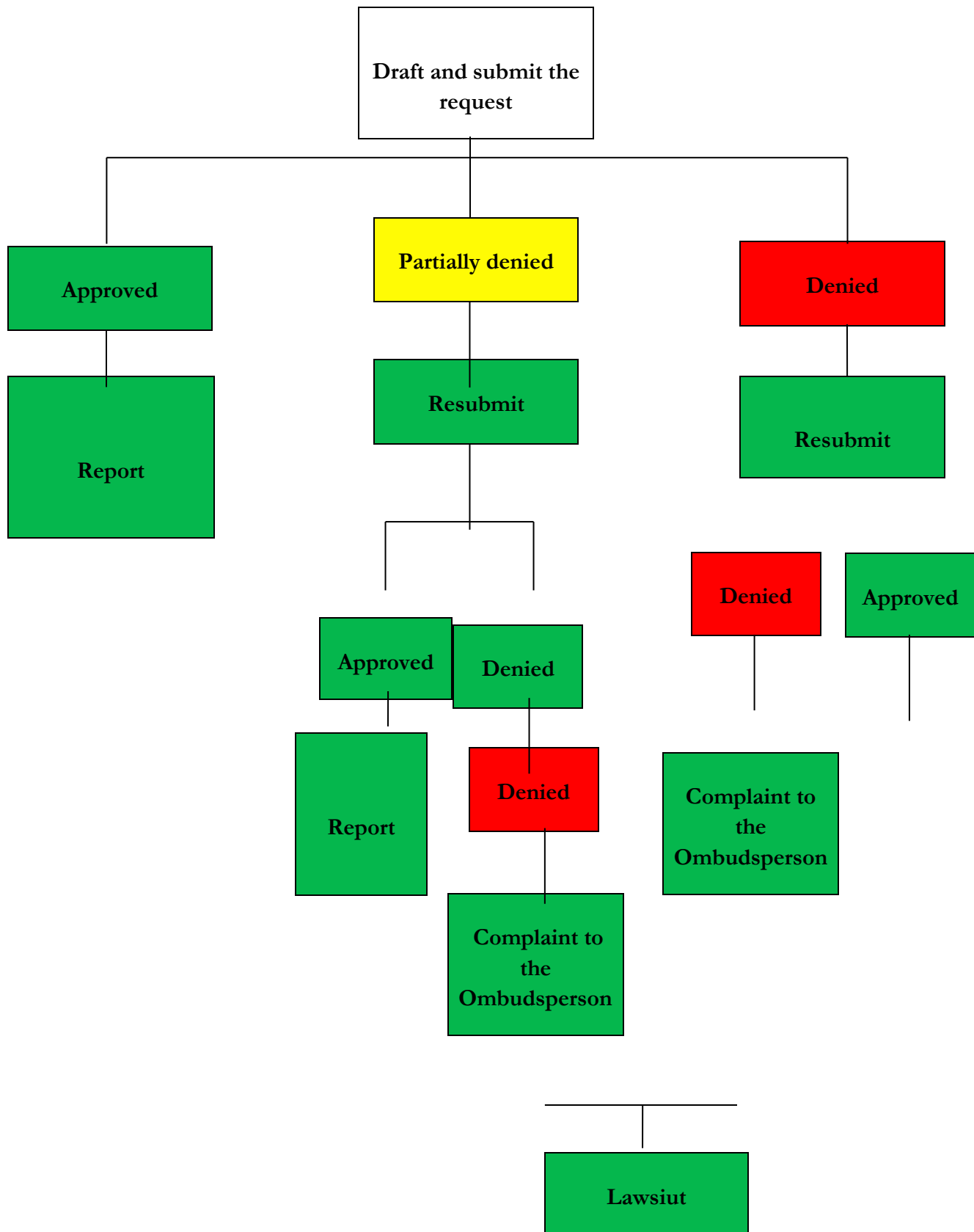
⁷Law on Access to Public Documents, Article 6, paragraph 1, can be found at [http://gazetazyrtare.rks-gov.net/Documents/Ligji%20per%20qasien%20ne%20dokumentet%20publike%20\(shqip\).pdf](http://gazetazyrtare.rks-gov.net/Documents/Ligji%20per%20qasien%20ne%20dokumentet%20publike%20(shqip).pdf)

the Prime Minister on the implementation of the right of access to public documents and, according to them, this is a major challenge.⁸

However, all actions to ensure access to public documents have strict deadlines that must be observed.

The following is an illustration of the steps to be undertaken when requesting access to public documents.

⁸Comprehensive Report of the Public Institutions in Implementing the Right to Access Public Documents, Office of the Prime-minister, Office for Public Communication, p. 17. Can be found at: http://www.kryeministri-ks.net/repository/docs/Raporti_Gjithperfs hires_Final_Shqip_7_April.pdf



3. Practice: BIRN's Experience with Submitting Requests

From June 2013 to May 2014, the Balkan Investigative Reporting Network (BIRN) submitted a total of 125 official requests for accessing public documents in almost all of Kosovo's public institutions. Public institutions denied 68 requests, while 50 were approved, and 7 were partially denied. Expressed as a percentage, for this period, institutions were about 40 percent open to citizens. In the period 2012-2013, BIRN submitted 300 requests for access to public documents of which only 30 percent were answered.

The majority of the documents and information requested are about the amount of budget envisaged for the work of departments of various institutions, CVs of senior officials prior or after their appointments, among others.

3.1 Judicial institutions

Even documents, which are publicly available to the majority of the democratic world, are considered secretive in Kosovo. Also, there is little improvement in making judicial documents public, such as indictments, but judicial institutions have taken steps backwards, which isolates the public.

BIRN has faced difficulties in accessing indictments, which are considered public documents. This occurs because court and prosecution officials are yet to be fully informed on the importance of accessing public documents and have the mentality, or culture, that perceives the provision of information as an additional service which the court and prosecution is not obliged to give, and that parties must knock through various offices to ask for the document. The greatest challenge was observed with the state prosecution, particularly in Prishtina, which is not responsive towards the requests of reporters, although the special prosecution has a spokesperson for some time now. Many citizens, unaware of their right of access to public documents, often come to the conclusion that such services require a form of payment.

Reporters, who are supposed to have a greater understanding in how to access indictments, instead spend their time searching and asking judicial officers to give access to documents that are supposed to be public. When court officials are asked, off the record, why they do not allow access to the indictment, the general impression created from the excuses given is that publishing the indictments causes the accused parties to 'lose face' and be humiliated in public, which judges and prosecutors do not like as they cannot stand the pressure of the media and the public on their performance. Among others, there is the impression that the court personnel do not prefer their documents, such as indictments, to be available to the public to such an extent where anyone may assess how professionally they are written. This conclusion is drawn when BIRN monitors, after long efforts in courts to understand why the court did not use the audio-visual recording tools in trials (tools that exist in all Kosovo courts, paid by foreign donors), were told unofficially that "not even doctors or patients are recorded in operations, so why record the work of a prosecutor or judge".⁹ This shows that officials view free access to documents as an opportunity for individuals to challenge their

⁹Interview with judges closely-related to what used to be the Prishtina District Court, in July 2013.

performances. Isolating the public is, in a way, an easier protection than taking the efforts to be precise and competent.

Through 2012 to 2013, BIRN requested, unsuccessfully, indictments from EULEX and the State Prosecution, which are public documents. Such an example is the indictment filed against the Ministry of Justice on July 29, 2013. BIRN requested the prosecutor of the case, Besim Kelmendi, in July, 2013, to access the indictment, but the prosecutor denied access. Reporting on this matter is in the public interest, since the prosecutor is charging three Ministry of Justice officials and two representatives of businesses on issues involving public procurements.¹⁰

BIRN has also requested EULEX to grant access to other indictments. Recently, on June 24, 2014, after EULEX issued a press release that they have filed an indictment on organized crime and prostitution, BIRN requested access to the indictment, but has yet to receive a reply.

It is surprising that EULEX, instead of serving as a model of transparency to the local prosecutions and court, European judges and prosecutors use other standards, different from those of their country of origin, when it comes to public access in indictments and other judicial documents.¹¹

On the other hand, there are international and regional practices where public judicial documents are online and are easily accessible to the public – experiences that should be applicable for Kosovo courts and EULEX. The following are three examples of states publishing their judicial documents.

Bosnia and Herzegovina – The official website for the Court of Bosnia and Herzegovina¹² acts as a good model of transparency for the country's judicial system. The website includes judgments rendered by the court as well as detailed information relevant for criminal charges, issuance of court orders (such as detention order, arrest warrants and other similar orders). Judgments are easily accessible and are categorized by the instance of the court that issues the judgments. The pages are presented in an organized manner, first providing a description of the case, the names of the accused, main charges, judgments, and in some cases defendants' pictures.¹³ This website also has a search engine for information through case numbers and surnames of the accused, as well as decisions. In addition, it provides information on judges, a biography and a picture¹⁴ as well as a

¹⁰BIRN has, however, provided this indictment through unofficial sources. What is actually happening is that our courts and prosecutions are nonetheless filled with people who understand the absurdity of closing up to the public, and people who work hard, who are firm and fearless in their work, find ways to inform trustworthy reporters who believe in cases that are clearly of public interest. What is unfortunate is that this policy is not that of the judiciary proper, but one that is entirely dependent on unofficial relationships that reporters create with those who work in the courts.

¹¹Similarly, the issue of publishing the names of persons arrested, charged and convicted by the European Mission Rule of Law in Kosovo (EULEX). For example, on May 27, 2014, EULEX gave a press release informing about the detention of Florim Ejupi, where the latter's full name had been mentioned. However, on June 10, 2014 EULEX informed on the confirmation of charges against Fatmir Limaj and others, but the press release didn't give the full name of Limaj. This move marks a regression in the right to know, as each public institution is obliged to take public interest into consideration when deciding what information they are to publish. In the case of former telecommunications minister and former MP Fatmir Limaj, there was high public interest in discovering his name, as Limaj held high state positions and has been one of the most voted persons in Kosovo.

¹²The website is titled: The Court of Bosnia and Herzegovina; but it includes information on basic and Appellate courts.
<http://www.sudbih.gov.ba/>

¹³<http://www.sudbih.gov.ba/index.php?opcija=predmeti&id=179&završen=1&jezik=e>

¹⁴<http://www.sudbih.gov.ba/index.php?opcija=bio&jezik=e>

short instruction guide for reporters covering court cases, which reveals where filming and recording is not permitted without prior approval from the court.¹⁵

Croatia – Access to court information is enabled through the project e-Predmet (e-Case), which provides the possibility for citizens to have access to court cases online. A link to this service can be found in the official website of the Ministry of Justice of Croatia¹⁶ where basic information can be requested on a case, by case number, offense, and date of court hearing. After a case has ended, judgments are also published online in a PDF format.¹⁷

International Criminal Tribunal for the former Yugoslavia - Detailed information on the filing of indictments and verdicts can be found on the official website of the International Criminal Tribunal for the former Yugoslavia.¹⁸ This website publishes summaries of indictments¹⁹ which include information on the accused persons, including their name, photograph and a background summary of the accused. In addition, the International Criminal Tribunal for the former Yugoslavia publishes judicial decisions,²⁰ transcripts of hearings and video footage of the prosecution's opening statements, closing arguments and hearing sessions. Cases can be found easily, searching by name of defendant or case number.²¹

Despite all this regional experience, international presence aimed at professionalizing the legal system, and large donor funds spent on digitization of judicial case management – it is a mystery why Kosovo doesn't make the indictments public.

3.2 Other institutions

Requests for accessing public documents have been submitted to central executive institutions, including all Government ministries, Office of the President, local institutions, including municipalities; judicial institutions, and the Constitutional Courts.

Requests were also submitted to independent institutions, such as the Kosovo Business Registration Agency (KBRA), Privatization Agency of Kosovo (PAK), the Procurement Review Body (PRB), Kosovo Chamber of Commerce (KCC), and the University of Prishtina (UP).

Issues in which requested information were related to public expenditures, senior appointments and requests for accountability and transparency in public contracts.

A small trend of improvement is visible, compared to previous years, in terms of the approach of public officials towards requests for access to public documents, but only when these requests do not involve detailed information on expenses, including salaries, wages and travel costs. The experience of this year indicates that there are more public institution officials that are aware of the

¹⁵<http://www.sudbih.gov.ba/index.php?opcija=sadrzaj&kat=7&id=92&jezik=e>

¹⁶<http://e-predmet.pravosudje.hr/?q=o>

¹⁷<http://sudovi.pravosudje.hr/zszg/index.php?linkID=25&type=L>

¹⁸<http://www.icty.org>

¹⁹See a form of the indictment published online:

http://www.icty.org/x/cases/karadzic/ind/en/markedup_indictment_091019.pdf

²⁰See a form of the indictment published online: <http://www.icty.org/sections/TheCases/JudgementList>

²¹<http://www.icty.org/action/cases/4>

law on access to public documents, but this does not imply that there is an increased access to public documents. It should be noted that in comparison with the previous monitoring period 2012 to 2013²² of the implementation of the law on access to public documents, the officials tasked with access to public documents are more aware of the requests, particularly when they the media submits them.²³

The research indicates that they are ultimately allowing public access to documents depending on the political will of the leaders of the institution rather than the will of civil servants or the legal obligation towards citizens.

In contacts with numerous officials for access to public documents, BIRN uncovered that some documents such as larger contracts, costs for salaries and wages, unapproved draft-laws are still not disclosed since officials are not allowed by political leaders to do so. Hence, officials for access to public documents informally apologize since they are aware of their legal obligation to provide access to these documents, but state their ‘bosses’ are not allowing it.

4. Cases when access to public documents was denied

a. Office of the President of Kosovo

From 2013 to 2014, the office of President of Kosovo carried out an erroneous practice by not disclosing public documents, preventing access to the files of individuals pardoned by the President. The President has the right to pardon individuals convicted of criminal offenses in the form of rewarding their good behavior. However, in 2012 and 2013, *Gazeta Jeta në Kosovë* portal and *Koha Ditore* daily, reported that two individuals who have not met the required legal criteria were pardoned.²⁴

Given the irregularities in the process, as reported in the media, BIRN asked for access to requests for pardon, submitted earlier by convicted persons to the Office of the President²⁵. Specifically, it requested access to the files of applicants for presidential pardon, as received by the President from the Ministry of Justice, and meetings of professional committees for pardons.²⁶

The Office of the President of the Republic of Kosovo rejected the aforementioned request under the reasoning that allowing access to these documents violated personal data, privacy and other legitimate interests, and those meetings are considered to be internal discussions.²⁷

²²See report “State is 30% Accessible for the Citizens”, June 2013 -

http://jetanekosove.com/repository/docs/Raporti_per_qasje_ne_dokumente_publice_final_40191.pdf

²³BIRN cannot make assessments of requests sent by citizens, as we do not have any data regarding the type of requests citizens have submitted. Our assessment is made on the 100 plus requests we have submitted ourselves between June 2013 – June 2014.

²⁴Article “Presidential Pardoning Returns Businessman to Conquered Land”, October 2013:

<http://gazetajnk.com/?cid=1,987,6719> and article “President unaware of pardoning a thief”, 19 February 2014:

http://koha.net/index.php/repository/repository/docs/03_konkluzionet_e_dakorduara.pdf?pid=27&l=516

²⁵Request submitted on date 20 February 2014

²⁶See request in Appendix B

²⁷President’s response came on 27 June 2014, within the time foreseen by law

The Law on Personal Data and the Law on Access to Public Documents envisage instances where the public must not have access to information. However, both laws have specific articles, which guarantee access to documents that may have sensitive information but there is a public interest for them to be disclosed. For example, personal information, such as ID number, phone number, or private address, can be hidden.

More specifically, the negative response of the Office of the President of Kosovo is unacceptable and BIRN argues that the information requested by the Presidency, in a way, were public until they arrived at the President's office and should remain so to this day. Initially, the indictment against a person is in a public document; therefore, information about an accused person is public. Later, hearings where defendants go through prior to serving their sentences are public. Finally, judgments rendering them guilty are public documents. It is still unclear why the Presidency has decided to deny access to the files of pardon persons.

To receive a confirmation that the files cannot be published because of the personal data, on March 17, BIRN requested an opinion of the National Agency for the Protection of Personal Data (NAPDP) on this issue. Two weeks later, NAPDP issued an opinion stating files of pardoned individuals should become public²⁸.

Following the positive opinion of NAPDP, BIRN resubmitted a request to the Presidency²⁹. However, the negative reply of the Presidency for the second time was through a different legal basis, namely the Law on Execution of Criminal Sanctions, and again refused access to such documents. This law is applied when a court decision is issued to impose a criminal sanction; for example if a person is issued a prison sentence, this law regulates the procedure of when prison time starts.

It is also unacceptable that the Presidency initially tried to deny access by means of the adequate legal basis, namely the Law on Access to Public Documents and the Law for Protection of Personal Data, and after seeing that under such laws access must be allowed, they tried to find another legal basis, which was entirely irrelevant to the matter. This shows the tendency of legal officials in the Presidency, similar to other institutions, to find ways to hide information, rather than do the opposite, find forms, articles and laws to keep information from the public – particularly for such important information on pardons, a process that was manipulated in the past. BIRN has filed a complaint to the Ombudsperson on this matter, and is awaiting a response.

b. Constitutional Court

The Constitutional Court has allowed BIRN to have access to a document after a request made on June 19. BIRN has requested access in writing to the President sent to the Constitutional Court for the interpretation of constitutional provisions on the establishment of the government. BIRN submitted the same request to the President's office, but the Presidency denied access.

²⁸See the full opinion of the NAPDP regarding this case: http://www.amdp-rks.org/web/repository/docs/OPINIONI_per_BIRN-in.pdf

²⁹A second request was sent on 2 April 2014

On June 8, 2014, parliamentary elections were held in Kosovo. After elections, it was expected that the next government of Kosovo will be established by the party that won the highest number of votes from citizens, which in this case was the Democratic Party of Kosovo (PDK). The current practice in Kosovo was that the largest party formed the government in coalition with other parties with a lower number of votes. After the June 8 elections, parties that won fewer votes than PDK created a post-election coalition with the purpose of forming the government, preventing PDK from establishing the government.

The Constitution of Kosovo has provisions regulating the formation of the government and, as the President must certify the elections and must decide on the primary candidate to establish the Government, filed a referral to the Constitutional Court to seek an interpretation of constitutional provisions regulating this issue.

On June 19, BIRN requested the document (request) of the President addressed to the Constitutional Court, and the Constitutional Court replied on June 24, 2014, five days after all the media had already published the President's request. The Constitutional Court, through its reply, granted access to the request for interpretation of provisions of the constitution submitted by the President.

Another case where the Constitutional Court allowed access was in January 2013, when BIRN requested access to the request of the Constitutional Court to the Supreme Court regarding the case of former Mayor of Ferizaj, Bajrush Xhemajli. Xhemajli was on trial for several years after being in a traffic accident on May 21, 2009. The matter had reached the Constitutional Court, and the Court had yet to decide on the case. BIRN requested to know the reasons for the delay in the decision on Xhemajli. The Constitutional Court stated that they are waiting for the Supreme Court to send the case files of Xhemajli, and the Supreme Court stated there were no requests. BIRN asked the Constitutional Court for access to the letter sent to the Supreme Court, requesting Xhemajli's case files. The Constitutional Court replied timely.

c. Privatization Agency of Kosovo

Another non-transparent institution, which, for several years, denied access to documents that are of high public interest, is the Privatization Agency of Kosovo. On February 21, 2014, BIRN requested PAK to grant access to all minutes of meeting of PAK Board and the list of beneficiaries of privatization tenders since PAK's establishment.

The activity of the Privatization Agency of Kosovo, which operates since August 2008³⁰ remains one of the most-discussed topics of high interest, since it involves large amounts of money and significant Kosovo assets.

Thus far, 59 privatization waves of SOEs have been published, the value of which is around €650 million.³¹

³⁰Prior to 2008 it was the Kosovo Trust Agency

³¹480 million Euro – (this amount represents the sale of assets through privatization without conditions (a regular spin-off)) whereas the amount of sales of social enterprises through privatization with conditions (special spin-off) reaches up

Given the importance of this process, for many years BIRN and the media³² have reported on allegations of irregularities that occurred during the privatization process and BIRN believes that minutes of meetings of the PAK Board are key documents that show what was discussed during the review of privatization bids, whether bidders' documentation were duly reviewed, was there a precise examination of documents and other important actions that guarantee the right of the privatization process. Also, an additional reason why the minutes must be public is that it is the only way to understand which companies PAK board members favored. On April 30, 2014, the Kosovo Police arrested 11 persons for suspicions in PAK and some of the charges relate to the manner of voting in board meetings.

Referring to the statute of the Board of Directors, the Institution stated that the minutes of board meetings fall under the category of confidential documents and may be made available only to the court. According to PAK, confidentiality applies because of the confidentiality agreement signed between buyers of enterprises and PAK.

BIRN believes that PAK's decision is unjust and does not take any account of the public interest in having access to these files. Regarding the legal basis referred by PAK, namely the statute of the Board of Directors, it is unacceptable that a regulation of an institution has a higher legal power.

However, it should be noted that the Public Information Office in PAK has consistently shown a willingness to reply to journalists and in most cases the reply is quick and thorough.

d. Office of the Prime Minister

During 2013-2014, BIRN submitted six requests to access public documents to the Office of the Prime Minister. This institution has approved three and denied two requests.

BIRN requested access to the framework agreement signed between Kosovo and Japan's Prime Minister. This request was made after OPM informed the public, on April 14, 2014, an agreement was signed with Japan for cooperation between the two countries.

BIRN wished to have access to the document signed between the two prime ministers, which contained both of the Prime Ministers' signatures. Instead of this document, the Public Information Office provided us with a link to the press release published on the official website of the Prime Minister³³. OPM did not grant access to the document after a second and third request.

In general, the Public Information Office uses the right of administrative silence (administrative silence occurs when an institution does not respond, either positively or negatively, on a request for access to public documents) not only to requests for access to public documents but also to information requests. The lack of a spokesperson, for several years now, in the Prime Minister's office, is an additional argument of a lack of political will from part of the Prime Minister's Office to offer the public transparency.

to 93 million Euro. Ndërkaq, Meanwhile, the amount of funds earned from the sales process through the liquidation of assets has reached up to 77 million euros.

³²See the research on the car-bumper factory, Bab Club, Baja e Pejës

³³See link sent by OPM: <http://www.kryeministri-ks.net/?page=1,9,4207>

BIRN also requested access to the agreement signed by the Prime Minister of Kosovo and the Minister of Foreign Affairs of Austria for financing of the Project “*Modernization of the Education System in Kosovo through e-Education*” and the letter signed with the agreement involving culture between Kosovo and Austria.³⁴

Given that the Prime Minister’s Office did not have the requested document, its officials stated that Ministry of Finance is the signatory party of the requested agreement, therefore the request should be submitted to the Ministry of Finance.

In this case, OPM violated Article 7.2³⁵ of the Law on Access to Public Documents according to which if the institution doesn’t possess the document, it must forward it to the appropriate institution.³⁶

e. Inter-Ministerial Group for Dealing with the Past.

This body was established by the Kosovo Government and other institutions, and deals with violations of human rights during the war and transition period.

Ministry of Justice is also part of this group, and BIRN requested access to the transcripts of the group’s meetings³⁷. The Ministry of Justice, in its reply, denied the request, without providing explanations, although the law on Access to Public Documents requires a written reasoning on any denial. In addition, the ministry asked BIRN to address the request to the Office of the Prime Minister, an action which is in violation with the Law on Access to Public Documents, as the institution which doesn’t possess the must forward the request to the relevant institution. On the other hand, it is unlikely that the Ministry of Justice, as a participant and deputy chair of this group, doesn’t have access to the transcripts of meetings, if they actually exist.

f. University of Prishtina

BIRN has submitted six requests to the University of Prishtina, requesting, inter alia, the list of academic staff, administrative staff, and lists of students enrolled in Bachelor, Master and PhD³⁸ programs, a list of individuals financed for scientific studies³⁹, payments for wages and salaries made

³⁴Request submitted on 28 February 2013

³⁵See the Law on Access to Public Documents – <http://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2724>

³⁶In July 2013 the Kosovo government decided on commencing procedures for Kosovo’s membership in the organization for the Open Government Partnership (OGP). Part of this initiative is the coordinating group composed of civil society organizations, private sector representatives and other relevant stakeholders. In April 2014, the Ministry of EU Integrations, which coordinates this initiative, adopted a national action plan prepared by the coordinating group. This plan was sent to the OGP and soon we’ll know whether Kosovo has met all the conditions for membership in this organization.

³⁷Request submitted on 12 May 2014

³⁸Request submitted on 17 January 2014

³⁹Request submitted on 7 May 2014

to the former leadership of the University⁴⁰, and access to new contracts of assistants in the Medical School⁴¹. The University of Prishtina has not provided the information requested on any item.

Based on the experience of BIRN's reporters over the past years, the University of Prishtina – through its Rector's Office – were extremely closed off not only in providing documents but also in providing the necessary information for public information. Reporters' requests were constantly ignored, and responses were delayed. This negative approach that took place during the performance of Acting Rector Ibrahim Gashi began to change after Rector Anton Berishaj arrived in March 2014.

g. The Kosovo Chamber of Commerce

On April 1, 2014, BIRN requested a list of the professional staff's travels from of the Kosovo Chamber of Commerce (KCC). Not only did the KCC not respond to the request, but it has been extremely difficult to contact this institution's Officer for Public Access to Documents.

5. NAPDP more open to publishing documents

Throughout 2013 and 2014, the National Agency for Personal Data Protection has shown a more open access towards handling personal data in cases of requests.

One of the most positive opinions of this Agency was published on March 28, 2014, in the case of BIRN vs. Presidency of Kosovo. As mentioned above, in April, the Presidency rejected the requests to access files of convicts pardoned as well as access to the minutes of committee meetings for pardoning, saying that "... access is not possible because documents in mention constitute prisoners' personal data" and that "access to these records is excluded according to Article 12, paragraph 1.6 [privacy and other legitimate private interests] of the Law on Access to Public Documents, and access to the minutes of the meetings were rejected because according to the Presidency "official records within the committee are confidential"

After this reply, BIRN requested the NAPDP's opinion whether the publication of convicts' data and committee minutes violates personal data.

In its opinion, the NAPDP⁴² said that personal data such as convicts address, or telephone number - data which neither BIRN nor the public is interested to know – should be omitted, but that it is an imperative that names of convicted persons are published.

The NAPDP's opinion has already confirmed that access to requests for pardon is not a violation of the Law on the Protection of Personal Data and that access to such documents serves public interest.

⁴⁰Request submitted on 24 March 2014

⁴¹Request submitted on 18 February 2014

⁴²See the opinion of the National Agency for Personal Data Protection – http://www.amdp-rks.org/web/repository/docs/OPINIONI_per_BIRN-in.pdf

It is worth mentioning that the NAPDP used a very good practice, which is rarely applied in Kosovo institutions, as its opinion was referring to the court practice of the European Court of Human Rights.

6. Small request for accessing public documents

Small requests for accessing public documents – while writing this report, BIRN has requested information from the media⁴³ in order to see how many requests reporters sent out to public institutions. Most of the media did not respond to our request, showing that the utilization of the right to access to public documents by reporters themselves is low. This is further illustrated by the small number of reporters that have applied for the “Access” award, organized by BIRN since 2013.

The aim of this award is to reward the best written or televised story based on the documents obtained through requests to access public documents. Only four reporters have applied for this award, representing a powerful indicator that reporters in Kosovo rarely use legal ways to obtain necessary documents in order to address the issues they are dealing with.

In regards to informing reporters about their rights of accessing public documents, the Madrid-based European organization for accessing public documents AccessInfo, published a guide containing information on how to send requests for accessing documents in different countries of the world. The assisting team from Kosovo is also part of this guide, providing legal assistance to reporters on the right to access public documents.⁴⁴

As far as the international importance of access to documents is concerned, the ECHR practices are important for the Kosovo courts, as they are obliged to follow the judicial decisions of this court when deciding on claims filed against public institutions. Consequently, following is an elaborate example in which the ECHR has considered that countries that have not published the required data have violated Article 10 of freedom of expression of the European Convention.

Last year, the European Court granted the right to an organization called Youth Initiative for Human Rights⁴⁵ – which had requested from the Intelligence Agency of Serbia eight years prior, in 2005, access to the number of individuals that had been under surveillance/tapped. On December 31, 2005, the YIHR requested that the intelligence agency enabled access to the number of surveillances, but the agency had rejected the request saying that the electronic surveillance is a state secret. On December 22, 2005, the Public Information Commissioner in Serbia (in Kosovo, this duty is carried out by the Ombudsman) requested from the Intelligence Agency to reveal details, but lacked results.

⁴³ Key media in the country: RTK, RTV21, Klan Kosova, Koha Ditore, Zëri, Tribuna, Kosovo2.0, Indeksonline.net, Telegrafi.com, Express

⁴⁴ BIRN is part of the assisting team of AccessInfo, and the guide can be found here: http://www.legalleaks.info/images/stories/legal%20leaks%20nov%202011_impression.pdf

⁴⁵ This judicial decision can be found here: <http://rs.yihr.org/en/article/1047/European-Court-of-Human-Rights-Ordered-Intelligence-Agency-to-Deliver-Information-on-the-Number-of-Persons-Subjected-to-Electronic-Surveillance>

This event marks a positive judicial practice that obliges institutions to uncover even more sensitive data and marks a good example that the judicial institutions in Kosovo should take into consideration.

7. Recommendations

1. Institutions must respond to all requests for accessing public documents, including requests submitted in writing, by email or made verbally.
2. Institutions should have a higher consideration regarding matters of public interest before rejecting a request for access to public documents.
3. Institutions should have the names and contact officials for access to public documents published on their own websites.
4. Public institutions should also recognize and respect verbal requests for access to public documents.
5. Institutions should seriously address not only requests for access to documents, but also to information.
6. Rejections must be given in writing and be duly reasoned.
7. Public institutions should undertake continuous awareness-raising campaigns to inform the public regarding their right to access to public documents.
8. Institutions should provide ongoing training for the officials of access to public documents regarding the application of legislation dealing with the right to know.
9. Heads of institutions and departments as well as their political advisors should create a working atmosphere such that the public provision of documents by officials for access to public documents is a task to be done responsibly and without retribution from their superiors.

Appendix A – Contacts for municipal officials for access to public documents

		First Name	Last Name	Phone	Email
	Municipalities				
1	Deçan	Ibish	Gërvalla	038/200/44-349; 044/237-282	e-mail: Ibish.Gervalla@rks-gov.net
2	Gjakova	Kastriot	Shehdadi	044/237-282	k_shehdadi@hotmail.com
3	Glllogoc	Bekim	Dobra	044/394-019; 049/745-064	bekim.dobra@rks-gov.net
4	Gjilan	Muhamet	Pajaziti	0280/321-486	muhamet.Pajaziti@rks-gov.net
5	Istog	Gjevahire	Ibrahimaj	038/200/43-854; 038/200/43-881	gjevahire.ibrahimaj@rks-gov.net
6	Kaçanik	Hetem	Krasniqi	038/200/46-441; 044/225-127	hetem.krasniqi@rks-gov.net
7	Klinë	Samije	Gjergji	038/200/43-716	samije.gjergjaj@rks-gov.net samije.gjergji@yahoo.com
8	Fushë Kosovë	Lindita	Tërmkolli	044/276-208	lenditazagraxha@hotmail.com
9	Prizren	Valdete	Shpendi	038/200/44-757	valdete.shpendi@rks-gov.net
10	Ferizaj	Shyhrete	Topalli	044/604-360	ferizaj_komuna@yahoo.com
11	Viti	Mustafë	Mehmeti	0280/381-647	mustaf.mehmeti@rks-gov.net mehmeti.m@hotmail.com
12	Hani i Elezit	Bashkim	Sopa	0290/385-112; 049/754-112	bashkim.sopa@rks-gov.net bashkim.sopa@gmail.com
13	Lipjan	Burim	Gashi	044/647-877; 038/200-415-08	burim.h.gashi@rks-gov.net
14	Podujevë	Bujar	Dimolli	038/200 41-018	Bujar.dimolli@rks-gov.net
15	Peja	Budak	Shala	049/432 875; 039/432 875	shala_471@hotmail.com
16	Junik	Qendrim	Knushi	044/ 270 865; 0390/ 370 114	qendrim.knushi@rks-gov.net
17	Vushtrri	Bahri	Brivolaku	044/426-529; 028/ 572-171	bahri.bivolaku@rks-gov.net
18	Suharekë	Haxhi	Mamaj	049/519-899; 044/887-470; 029/ 271-282	haxhimamaj@live.com
19	Skenderaj	Hamit	Geci	044/196-121; 028/ 582-522	hamit.geci@rks-gov.net
20	Malishevë	Afërdita	Duraku	044/407-990; 049/745-089; 029/269-043	aferdita.duraku@rks-gov.net

21	Obiliq	Mehmet	Ismajli	049/831-128	mehmet.ismaili@rks-gov.net mehmet.ismaili@gmail.com
22	Mitrovica	Hysni	Syla	049/391-000 028 530-202	hysnisyla@yahoo.com
23	Kamenica	Faton	Biçkaj	044/413-817	fatonbiçkaj@hotmail.com
24	Novobërdë	Sinisa	Markovic	045/379-631; 038/576-012	sinisa.mark@live.com
25	Rahovec	Feim	Fetoshi	044/112-528; 029/276 943	feim.fetoshi@rks-gov.com
26	Shtime	Lulzim	Sahiti	044/201-984	lulzimsahiti@hotmail.com
27	Prishtina	Adonis	Tahiri	044/590-918; 038/223-594	adonis.tahiri@rks-gov.net
28	Dragash	Avni	Nebiu	044/203-177	avninebiu@hotmail.com

Appendix B – Request to access files of persons pardoned by the Presidency



Nga: Rrjeti Ballkanik i Gazetarisë Hulumtuese - BIRN
Për: Zyren e Presidentës së Kosovës Atifete Jahjaga
Lidhur: Kërkesë për qasje në dokumente publike
Data: 20 shkurt 2014

Rrjeti Ballkanik i Gazetarisë Hulumtuese – BIRN më anë të kësaj kërkesë kërkon t'i mundësohet qasje në dokumente publike.

Konkretisht, ne kërkojmë të na ofroni qasje (kopje elektronike dhe/ose fizike) në:

- a) Të gjitha kërkesat për falje nga të dënuarit të bëra në Presidencë (drejtar Presidentes Atifete Jahjaga) nga viti 2011.
- b) Të gjitha dosjet me informata për aplikuesit për falje të cilat i pranon Presidentja nga Ministria e Drejtësisë që nga viti 2011
- c) Të gjitha procesverbalet e takimeve të komisioneve profesionale për falje të mbajtura që nga viti 2011

Këtë kërkesë e bazojmë në ligjin për qasje në dokumente publike **Nr 03/L-215**.



Ju lutem që për këto të dhëna të kontaktojmë përmes e-mailit: jeta@birn.eu.com ose na ftoni të vijmë t'i marrim në zyrën tuaj.

Ju faleminderit paraprakisht,

Jeta Xharra

Kryeredaktore

Appendix C – PAK’s response in regards to access to files of persons pardoned

 REPUBLIKA E KOSOVËS – ZYRA E PRESIDENTIT REPUBLIC OF KOSOVO – OFFICE OF THE PRESIDENT REPUBLIKA KOSOVO – URED PREDSEDNIKA	
	
DATE:	22.04.2014
PËR:	Flutura Kusari, këshilltare Ligjore në BIRN
NGA:	Florent Rrahmani, zyrtar për Qasje në Dokumente Publike në Zyrën e Presidentit të Republikës së Kosovës
TEMA:	Përgjigjeje në kërkesën me nr. prot: 321, datë 2 prill 2014

E nderuara znj. Kusari,

Po ju shkruaj, pas kërkesës që kemi marr nga Ju me datë 2 prill 2014, nr. prot: 321, për qasje në dokumente publike, ku keni kërkuar rishqyrtimin vendimit në lidhje me dosjet që kanë të bëjnë me falje, qasje në:

- Të gjitha kërkesat për falje nga të dënuarit të bëra në Zyrën e Presidentit (drejtuar Presidentes Atifete Jahjaga) nga viti 2011.
- Të gjitha dosjet me informata për aplikuesit për falje të cilat i pranon Presidentja nga Ministria e Drejtësisë që nga viti 2011 dhe
- Të gjitha procesverbalet e takimeve të komisioneve profesionale për falje të mbajtura nga viti 2011.

Ju njoftojmë se Zyra e Presidentit të Republikës së Kosovës e ka rishqyrtuar edhe njëherë Vendimin e saj për Qasje të BIRN në dokumentet që ka kërkuar dhe ka vendosur se:

Qasja në dokumentet e kërkuara nuk është e mundur duke u bazuar në nenin 232 paragrafi 4 të Ligjit Nr. 04/L-149, për Ekzekutimin e Sanksioneve Penale ku thuhet se “Të gjitha informacionet lidhur me personat e dënuar dhe të paraburgosurit janë konfidenciale, nuk zbulohen dhe nuk bëhen të njohura për opinionin apo për mediat”, në nenin 12 paragrafi 1 pika 1.6 dhe 1.11 të Ligjit Nr. 03/L – 215, për Qasje në Dokumente Publike, në nenin 3 paragrafi 1 dhe 2 të Ligjit Nr. 03/L-172, për Mbrojtjen e të Dhënave Personale si dhe në përgjigjëjen e Ministrisë së Drejtësisë të ardhur në Zyrën e Presidentit me datë 18 prill 2014, me nr. prot. 364/1.

Me respekt!

Appendix D – The request model for accessing public documents



Nga: Rrjeti Ballkanik i Gazetarisë Hulumtuese - BIRN

Për: Ministrinë e Punëve të Jashtme

Lidhur: Kërkesë për qasje në dokumente publike

Data: 13 Maj 2014

Rrjeti Ballkanik për Gazetari Hulumtuese – BIRN, përmes kësaj kërkesë kërkon qasje në raportin për vitin 2013 të Zyrës së Auditimit të Brendshëm e cila operon në kuadër të ministrisë suaj.

Këtë kërkesë e bazojmë në të drejtën tonë të garantuar me Ligjin për Qasje në Dokumente Publike, me numër **03/L-215**.

Ju lutem që këto të dhëna të na dërgoni me e-mail në gresa.musliu@birn.eu.com, përmes postës në adresën: Jeta në Kosovë, Mensa e Studentëve, Kati i Parë, 10000, Prishtinë, Kosovë ose na ftoni të vijmë t'i marrim në zyren tuaj.

Ju faleminderit paraprakisht,

Gresa Musliu

About BIRN

BIRN was founded in the summer of 2005, its goals being the development of the media, capacity building of reporting, as well as the stimulation of public debate towards a political and economic reform in the country. The organization is made up of a close group of editors and trainers dealing with analytical and investigative journalism on complex political, economic and social issues. BIRN exists to give propulsion to the democratic transition in Kosovo by providing quality reporting in an area of poor public information, in order to support transparency and accountability. www.birn.eu.com

Gazeta Jeta ne Kosove – is an Albanian language media launched in September of 2011 with the aim to provide objective information and its analysis in line with global reporting standards. Primarily, it focuses on the quality of public institutions, its main genre being that of research/investigative reporting. Gazeta Jeta ne Kosove has established its identity through research, analysis, chronicles and news on current events in the country and in the world. In December 2012, two articles from gazetajnk.com won the award for best reporting on corruption, awarded by the Development Programme of the United Nations in Kosovo. www.gazetajnk.com

Jeta ne Kosove, TV show – is one of the most highly watched weekly shows in Kosovo, which airs on Kosovo's Public Television. Jeta ne Kosove addresses issues of the political, economic and social area, with a particular focus on corruption, conflict of interest and accountability of public institutions. So far, 470 televised debates have been produced, serving to an increase of transparency and accountability among key players and decision-makers in Kosovo. From 2006 until now, Jeta ne Kosove has won four awards for best television news-stories, and it is the only Albanian-language show featured in the New York Times. www.jetanekosove.com

Drejtesia ne Kosove, TV show – gives a particular focus to the area of judiciary, police and security. The most interesting part of the show is the block called "Police", based and developed on the concept of 'Cops' in the United States. This block shows the Kosovo police actions on the ground, and BIRN has the exclusive rights from the Kosovo Police to follow and broadcast their actions. Drejtesia ne Kosove has so far won two awards for best TV news story and an award for best story of the year. www.drejtesianekosove.com

Prishtina Insight – is the only newspaper in Kosovo published in the English language, with over 1500 issues printed every two weeks. Prishtina Insight has gained a strong reputation amongst local and international decision-makers. Its detailed investigative analyses get regularly re-printed in full by other local media of Kosovo, thus ensuring a more widespread readability. Furthermore, Prishtina Insight aids the development of cooperation between nongovernmental organizations, donors and the civil society in general. www.prishtinainsight.com