

FREEDOM OF INFORMATION IN GEORGIA

MEDIA AND SOCIETY IN THE FACE
OF SYSTEMIC ILLEGALITY



Kingdom of the Netherlands



This document has been prepared in the framework of the project “Increase the Access of Media to Public Information in Georgia” which is implemented by the Institute for Development of Freedom of Information (IDFI) with the financial support of the Embassy of the Kingdom of the Netherlands in Georgia.

Institute for Development of Freedom of Information (IDFI) is solely responsible for the content of the document. The information and assessments provided in the document may not reflect the views of the Embassy of the Kingdom of the Netherlands in Georgia.

CONTENTS

Introduction	5
Findings	6
Methodology	8
1. Systemic Disregard of the Formal Requirements of the Freedom of Information Legislation	9
1.1. Leaving Freedom of Information Requests Without a Response	9
1.2. Unsubstantiated Refusal to Provide Information	10
1.3. Refusal to Consider a Request and Redirecting the Applicant to Another Institution	10
1.4. Imposing the Burden of Finding the Relevant Sub-Agency on the Applicant	11
1.5. “We Do Not Process Information in the Requested Form”	12
1.6. Violation/Clear Disregard of Request Review Deadlines	13
1.7. Ineffectiveness of the Administrative Complaint Mechanism	14
2. Violation of the Substantive Requirements of Freedom of Information Legislation	17
2.1. Tax Secrecy	17
2.2. State Secret	19
2.3. Exclusion of State-owned Enterprises from the Scope of Legislation Regulating Public Information	20
2.4. Severely Limited Access to Information about Covert Surveillance	20
2.5. Citing Personal Data Protection	21
2.6. Disregard for the Constitutional System of Georgia and Misuse of the Convention	23

3. Ineffective External Oversight Mechanism and Right to a Fair Trial 25

3.1. Lack of Effective Oversight Mechanisms over the Right of Access to Public Information 25

3.2. Right to a Fair Trial: Utterly Ineffective 26

3.3. Ineffectiveness of Strategic Litigation Aimed at Establishing a Standard..... 29

Conclusion..... 30

INTRODUCTION

Access to public information is one of the key prerequisites for developing public oversight, and open and effective governance in a just and democratic state. The openness of information facilitates the growth of the accountability of public institutions and the effectiveness of their work.¹ The right of access to public information is recognized and protected under the Constitution of Georgia.²

In a democratic society, ensuring the media's access to public information is particularly important. Unhindered access to information stored in public institutions is one of the essential tools for journalists to produce qualified and trustworthy media products, which ultimately contributes to informing society and ensuring its engagement in democratic processes.

Unfortunately, the situation in Georgia regarding access to information has deteriorated sharply since 2022.³ Starting with this period, the Institute for Development of Freedom of Information (hereinafter - IDFI) has offered full legal assistance to media representatives on issues related to access to information. From September 2023 through December 2024, IDFI has been providing legal aid to media within the framework of the project - "[Increase the Access of Media to Public Information in Georgia](#)" - supported by the Embassy of the Kingdom of the Netherlands in Georgia.

Georgia has undergone a sharp democratic backsliding in the period of 2022-2024.⁴ The adoption of the Russian-style Foreign Agents Law,⁵ various

¹ The judgment of the Constitutional Court of Georgia of 27 March 2017, №1/4/757, on the case "Citizen of Georgia Giorgi Kraveishvili v. the Government of Georgia", II-5.

² Paragraph 2 of Article 18 of the Constitution of Georgia: "Everyone has the right to be familiarised with information about him/her, or other information, or an official document that exists in public institutions in accordance with the procedures established by law, unless this information or document contains commercial or professional secrets, or is acknowledged as a state secret by law or in accordance with the procedures established by law as necessary in a democratic society to ensure national security or public safety or to protect the interests of legal proceedings."

³ See: IDFI, [Sharp Decline in Access to Public Information](#), 2023.

⁴ Civil.ge, [EP Passes Resolution on Georgia's Worsening Democratic Crisis, Calls for New Elections](#), 2024.

⁵ Civil.ge, [Parliament Overrides President's Veto on Foreign Agents Law, Adopts the Agents' Law](#), 2024.

methods of oppression and interference in the activities of the media⁶ were followed by the undemocratically conducted parliamentary elections of 26 October 2024⁷ and further unconstitutional decisions of the parliament and government, both of which remain unrecognized by democratic states.⁸ Against this backdrop, the state of media and journalists has deteriorated significantly. The threats stemming from the Russian-style Foreign Agents Law have been compounded by brutal physical violence against journalists and cameramen.⁹

The democratic backsliding has naturally led to a decline in the accountability of public institutions. This report aims to assess the current state of access to public information, based on IDFI's practical experience, in the context of declining accountability.

FINDINGS

- The sharp decline in the quality of democracy in Georgia over the past two years has had a significant negative impact on the accountability of public institutions;
- The sharply deteriorated situation in terms of access to public information is not caused by the current legislation, but by the complete and systemic disregard of this legislation;
- In most cases when media representatives request public information, public institutions disregard the most basic legal obligations. It is extremely rare to receive the requested information within the timeframes defined by the legislation and according to the established procedures;

⁶ Voice of America, [Russian Law and Critical Media Facing an Existential Threat](#), 2024.

⁷ Civil.ge, [ODIHR Final Report Reiterates Multiple Concerns over October 26 Elections, Calls for Concrete Action](#), 2024.

⁸ Civil.ge, [GD Aborts EU Accession](#), 2024.

⁹ Civil.ge, [Brutal Attack on Opposition Members and TV Pirveli Crew as Repression Intensifies](#), 2024.

- Public institutions left approximately 60% of public information requests without a response, which is a gross violation of the Constitution and legislation of Georgia;
- Out of 204 requests for public information, only 12 (6%) were granted within the ten days;
- Public institutions tend to create artificial obstacles for those requesting information to avoid having to provide the requested information;
- In practice, the mechanism of administrative complaint does not fulfill its function, which, among other reasons, is due to the inconsistent practice of reviewing the complaints in public institutions;
- Administrative bodies use incorrect/broad interpretations of the provisions restricting the right, which often leads to the requested information not being provided, even in the presence of legislative prerequisites for its release;
- There is no independent external oversight mechanism in Georgia that would provide timely and effective oversight over issues related to access to public information;
- In common courts, the consideration of cases concerning access to public information takes years. Even in cases where the courts uphold the complaint, there is still a risk that the institution may again refuse to provide information with the same/similar content;
- The consideration of cases in the courts takes several years even if the complete disregard of the Constitution and legislation by the public institutions is clearly evident.

METHODOLOGY

The information provided in the present report is largely based on the tendencies and approaches revealed in the cases (completed and ongoing) litigated by IDFI within the framework of the provision of legal aid for the media (in 2022-2024).

It should be noted that legal assistance to the media on freedom of information issues included consultations, preparation of public information requests, administrative complaints, lawsuits (all three instances), and representation before relevant bodies.

In addition, the trends reflected in the report are based on cases brought by IDFI that were not initiated as part of legal aid for media, but whose content nevertheless significantly impacts the situation of journalists given their systemic legal effects.

The challenges and trends revealed in practice have been evaluated by IDFI in light of the Constitution of Georgia, present normative framework, and case law. At the same time, the issues covered by the report are discussed in parallel with the procedures for review of public information requests/disputes provided for in the General Administrative Code of Georgia and the Administrative Procedural Code of Georgia.

In several instances, the information about identified challenges is accompanied by statistical information produced by the organization within the framework of its legal aid to the media (in 2022-2024).

1. SYSTEMIC DISREGARD OF THE FORMAL REQUIREMENTS OF THE FREEDOM OF INFORMATION LEGISLATION

IDFI's continuous legal assistance to the media on freedom of information issues since 2022 has revealed that the systemic disregard of formal legal requirements by public institutions is a key factor causing the sharp deterioration of access to public information.

The goal of the following subsections is to reveal the unlawful approaches/trends that public institutions tend to use when processing requests for public information.

1.1. LEAVING FREEDOM OF INFORMATION REQUESTS WITHOUT A RESPONSE

According to the first paragraph of Article 40 of the General Administrative Code of Georgia, a public institution must immediately provide public information, including electronically requested information. However, the Code also provides for conditions¹⁰ that, if present, allow the public institution to take a maximum of 10 days, although in this case the institution is required to notify the applicant immediately.¹¹

At the same time, Articles 41 and 53 of the Code require a public institution to immediately notify the applicant of the refusal to provide public information, and within three days to issue a reasoned written act, indicating the legal basis for the refusal and the procedure for appealing against this decision.

Based on IDFI's experience, one of the key challenges in this area is leaving public information requests unanswered.

¹⁰ If a response to the public information request requires: a) retrieving of information from its structural subdivisions in another locality or from another public institution, and its processing; b) retrieving and processing of individual uncorrelated documents of considerable size; c) consulting with its own subdivision in another locality or with another public institution.

¹¹ Paragraph 2 of Article 40 of the General Administrative Code of Georgia.



Approximately 60% of freedom of information requests sent within the framework of legal support for journalists remained without any response.¹²

1.2. UNSUBSTANTIATED REFUSAL TO PROVIDE INFORMATION

In those exceptional cases in which a public institution provides a written response to deny or partially satisfy the request, the absolute majority of such responses do not comply with the basic formal requirements established by law for an individual administrative-legal act. In addition, responses from public institutions do not indicate the legal basis for the refusal or the relevant justification. The partially satisfied requests almost never explain the legal basis for restricting access to certain parts of the information requested by the applicant.



For example, within the framework of the provision of legal assistance to media in 18 cases (72%) of the partially satisfied requests (25 in total), the applicant was not provided with an explanation of the legal basis on which access to the information covered by a particular part of the request was restricted (the existence of a specific substantive request was completely ignored).

1.3. REFUSAL TO CONSIDER A REQUEST AND REDIRECTING THE APPLICANT TO ANOTHER INSTITUTION

In some cases, a public institution refuses to consider a request for public information stating that the information does not constitute a “product” of its activities and redirects the applicant to another agency.

¹² According to 2022-2024 statistical data. The figure does not take into consideration the reaction of a public institution following the filing of an administrative complaint.

For current legislation, the sufficient and self-contained criterion for classifying information as public and obliging an administrative body to disclose it is whether certain information is stored by or accessible to the public institution, regardless of the legal bases and/or relationships that led to this information being accumulated at the public institution.

In practice, public institutions often use a narrow interpretation of this standard to avoid the review of public information requests.



For example, IDFI requested statistical data from the Prosecutor's Office of Georgia on property confiscated as punishment in 2021-2023. The Prosecutor's Office denied the request and indicated to address the common courts for this information since the decisions are made and, therefore, the penalties are determined by the courts.

1.4. IMPOSING THE BURDEN OF FINDING THE RELEVANT SUB-AGENCY ON THE APPLICANT

Public institutions often refuse to review public information requests and instead impose the burden of addressing their subordinate institution or another administrative body on the applicant.

According to Article 40 of the General Administrative Code of Georgia, if a public institution needs to retrieve and process uncorrelated documents of considerable size and/or consult with its own subdivision in or with another public institution it may use a special deadline for issuing public information - a maximum of 10 days.

This provision clearly states the obligation of public institutions to search for and process information when it has an institutional, functional, or another type of oversight over the subordinate institution that is part of the structural composition of the corresponding public institution.

In practice, in some cases, public institutions refuse to consider the part of a request that falls within the competence of their own subordinate bodies.



For example, in one of the cases, IDFI requested statistics on disciplinary cases filed against individuals employed within the system of the Ministry of Culture of Georgia, including structural and territorial units and legal entities under public law subordinate to the Ministry. In the aforementioned case, the court of first instance shared the position of the Ministry and ruled out the Ministry's obligation to search, process, and collect information available in institutionally subordinate bodies within its system.

1.5. “WE DO NOT PROCESS INFORMATION IN THE REQUESTED FORM”

According to IDFI's observations, one of the frequently used reasons given by public institutions for refusing to provide public information is that statistics and/or information are not recorded/processed in the requested form.

Public institutions also refuse to provide the requested information in cases where the request contains a specific note regarding the information - should the public institution not be processing the information in the requested form, to provide information to the applicant with all relevant documents (if needed, with redactions) that would allow one to derive the required statistics/information.¹³

It is noteworthy that, according to the first paragraph of Article 40 of the General Administrative Code of Georgia, not processing the information in the requested form is not grounds for refusal, but rather grounds for using the maximum 10-day period for providing the information. In other words, if the goal of the legislation was not to oblige public institutions to search

¹³ IDFI, [Access to Public Information by the Media: Legislation v. Reality](#), 2022, p. 19.

for, process, and obtain from other public institutions information requested by the applicant, this provision would not have been included in the Code at all.



For instance, in one of the cases where IDFI requested statistics on property confiscated as a penalty and property obtained through crime that had been transferred to state ownership, the National Agency of State Property stated that no differentiation is made concerning movable/immovable property transferred to state ownership and thus could not provide this information. It should be noted that the request for the information specifically stated that if the information were not being processed in the mentioned form, the Agency should provide information on the legal bases for the transfer of the property to state ownership (court decisions/judgments so we could process the requested information on our own). The Agency did not provide the information in this form either.

1.6. VIOLATION/CLEAR DISREGARD OF REQUEST REVIEW DEADLINES

As mentioned previously, according to the General Administrative Code of Georgia, the requested information must be provided immediately. Only in certain exceptional cases, in the presence of preconditions envisaged by the Code, the period for the provision of the information must not exceed 10 days.

However, in practice, public institutions misinterpret the legal deadlines for providing information and treat the 10-day deadline as the general deadline. In other words, the 10-day period is often applied by public institutions despite the lack of proper prerequisites, although in practice even this time limit is often not observed.



Approximately 60% (122) of the requests sent within the framework of the provision of legal aid to media remained completely unanswered/without response, and it took an average of approximately 16 days to receive information on the satisfied requests. Out of 204 requests sent, only 12 received a satisfactory response within 10 days.

1.7. INEFFECTIVENESS OF THE ADMINISTRATIVE COMPLAINT MECHANISM

Aside from exceptional cases, IDFI primarily appeals against public institutions' failure to respond to a request and/or unlawful refusal to satisfy a request through the administrative complaint mechanism.

Based on IDFI's experience, it can be said that in cases related to access to information, public institutions often violate the rules for reviewing administrative complaints.¹⁴

Administrative bodies show a non-uniform approach concerning the review/acceptance for processing of administrative complaints. Some administrative bodies completely deny the possibility of exercising the right to file an administrative complaint on disputes related to public information.¹⁵ If a complaint is accepted for processing, there is no uniform approach to the procedure for its consideration. Administrative bodies generally consider complaints without an oral hearing. Sometimes the applicant does not know whether the administrative complaint has been considered at all. Administrative complaints are considered through an oral hearing only in exceptional cases.¹⁶

In IDFI's experience, it is rare for public institutions to make a decision to grant or reject a complaint based on its examination. If the complaint is rejected the complainant is usually informed with a letter that does not even

¹⁴ Chapter XIII of the General Administrative Code of Georgia contains regulations for receiving, reviewing, and deciding on a complaint.

¹⁵ For example, the Ministry of Economy and Sustainable Development.

¹⁶ IDFI, [Access to Public Information by the Media: Legislation v. Reality](#), 2022, p. 18.

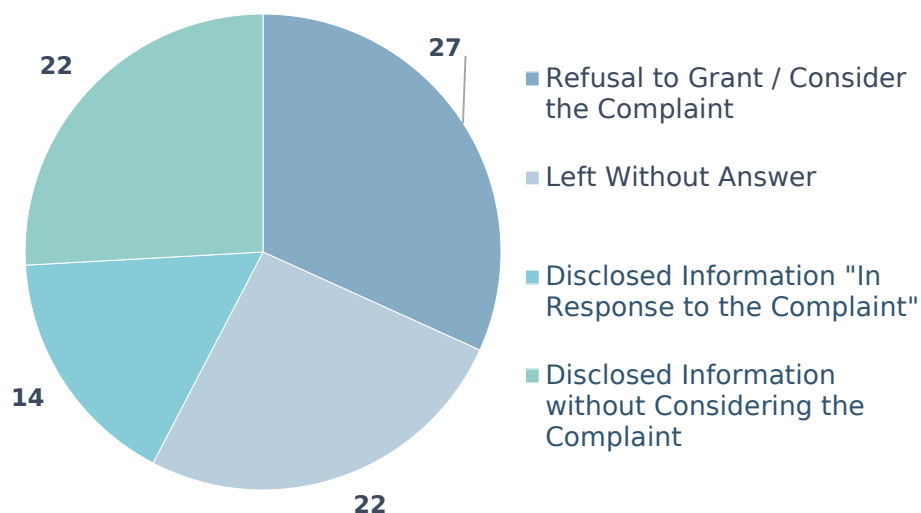
meet the minimum standard of a “decision on the complaint.” In the case of granting the administrative complaint a formal decision on the satisfaction of the complaint is practically never made - the applicant is provided with the requested information, and the complaint remains unconsidered.

The lack of clarity concerning administrative complaints, inconsistent practices in their consideration by public institutions, and unforeseeable procedures undermine the ability to effectively use this mechanism.



A total of 104 administrative complaints were prepared within the framework of the provision of legal aid to the media.¹⁷ The data on 85 administrative complaints were processed for the purposes of the present report.

Out of 85 Administrative Complaints



In approximately 42% of the cases after filing a complaint, IDFI was able to obtain the information in full or in part, although it should be noted that formally complaint was not satisfied in nearly any of the cases, and IDFI received the information “in

¹⁷ 19 administrative complaints were prepared and transferred to the journalists, with IDFI having no control over their administration.

response to the complaint” and/or in response to the initial public information request. 25% of the complaints were left without any reaction, while in the rest of the cases, the public institutions did not satisfy IDFI’s request and/or provided a written refusal to consider the complaint.

2. VIOLATION OF THE SUBSTANTIVE REQUIREMENTS OF FREEDOM OF INFORMATION LEGISLATION

Aside from disregarding formal requirements, IDFI's experience reveals that public institutions improperly interpret and apply substantive requirements/provisions of the relevant legislation.

In particular, interpretations provided by public institutions in practice regarding legislative restrictions/exceptions related to access to information unjustifiably restrict the constitutional right to access to public information.

Drawing on IDFI's experience and citing specific examples, the following subsections review a non-exhaustive list of issues that concern topics of particular public interest and to which public institutions have restricted access without proper justification.

2.1. TAX SECRECY

Public institutions use references to tax secrecy as one of the grounds for unjustifiably restricting access to public information. In particular, the refusal to provide public information on this basis disregards the principle of balancing interests provided for by the Constitution and legislation of Georgia. Oftentimes, citing general restrictions on its disclosure, public institutions do not release information and avoid considering the issue of establishing a fair balance between competing interests, which undermines the constitutional right of access to public information.



For example, in one of the cases, IDFI requested from the government of Georgia the texts of the decree by which a tax agreement was signed with several companies (the government's exclusive authority, which allows it to establish a preferential tax regime for certain persons). It should be noted

that the decree was issued in April 2023 and may have been of high public interest in the context of the upcoming parliamentary elections. The government refused to provide the information, stating that it was a tax secret.

The government of Georgia did not consider that the information, although considered as “related to a person’s health, finances, or other private matters” under the legislation, does not benefit from absolute protection, and each case requires the assessment of whether there exists an overriding legitimate interest in its disclosure.

In addition, the concept of tax secrecy was interpreted too broadly, which is contrary to the established case law of the Constitutional Court and the Supreme Court of Georgia. Specifically, according to the interpretation of the aforementioned courts, tax secrets are considered to be information that is directly related to information collected and processed by a tax authority about a taxpayer in the process of administering tax relations, which, in some cases, may be of a sensitive nature.¹⁸ It is precisely such a narrow framework that must be used concerning tax secrecy when deciding on the public accessibility of information. This concept should not include relations concerning the granting of tax benefits to persons. Based on these and other arguments, IDFI filed a lawsuit against the Government of Georgia on May 28, 2024. A court hearing date has not yet been set.

¹⁸ The judgment of the Constitutional Court of Georgia of 30 October 2008, №2/3/406,408, in the case “Public Defender of Georgia and Georgian Young Lawyers’ Association v. Parliament of Georgia”, II-7; The decision of the Supreme Court of Georgia of 7 December 2017, №BS-680-676(k-17).

2.2. STATE SECRET

Public institutions often use a reference to the Law “On State Secrets” as a reason for rejecting public information requests. It should be noted that, in general, state secrets are indeed a legal interest worthy of protection, although their protection is limited to the legitimate aim for which the information was made secret and the period established by law. Nevertheless, information tends to be made secret by using this ground in violation of the rules and procedures stipulated by the law on secrecy. Specifically, the concept of state secret is incorrectly applied to information that, by its very nature, cannot be classified, and it is practically impossible for this information to be considered a state secret. In addition, there are cases where access to information remains restricted despite the term of secrecy having expired, which is a clear violation of the law.



For example, IDFI requested from the Ministry of Internal Affairs of Georgia quantitative data on bullets and tear gas used to disperse a rally in 2023. As a basis for deeming the information secret, the Ministry indicated that this information is part of the security action plan, which, following the procedure established by law, represents a state secret. The security action plan is a pre-developed document that defines the actions required to plan and implement the police measures. Information about the specific means used cannot be part of the plan, since it is impossible to predict in advance the amount used to disperse a gathering. However, the Ministry of Internal Affairs retroactively extends the protection of state secrets to information related to the results of the practical implementation of the Action Plan.

2.3. EXCLUSION OF STATE-OWNED ENTERPRISES FROM THE SCOPE OF LEGISLATION REGULATING PUBLIC INFORMATION

Another reason cited for restricting access to public information is the narrow, formalistic definition of a public institution that completely precludes access to public information stored in a certain category of public institutions and does not allow for public oversight over the institutions performing public functions.

In particular, there have been cases in IDFI's experience where legal entities under private law that have connections to state finances, administrative functions, and/or state capital used in their establishment, have refused to issue public information.



For example, IDFI had requested information from “Gardabani TPP LLC” and “Georgian Oil and Gas Corporation JSC”, which are companies established by the government and serve the public interest. In both cases, the cited reason for the refusal to issue the information was that the companies are entrepreneurial entities and therefore not subject to administrative legislation.

2.4. SEVERELY LIMITED ACCESS TO INFORMATION ABOUT COVERT SURVEILLANCE

Access to information about covert surveillance is very limited in practice. Statistics produced by public institutions regarding covert investigative actions are very scarce in terms of content. In addition, obtaining any information (including the most basic statistical data) regarding electronic surveillance carried out within the framework of counterintelligence activities is difficult, leaving no room for drawing any type of substantive or quantitative conclusions regarding these activities.¹⁹

¹⁹ See: IDFI, [Oversight of Covert Surveillance: Law and Practice](#), 2024.

Similarly, assessing the effectiveness and legality of judicial control over covert surveillance is practically impossible.



IDFI requested copies of court rulings based on which consent to covert surveillance measures had been granted from the common courts. It should be noted here that the requests were formulated in such a way as to cover not all rulings in a broad sense. Instead, IDFI requested only rulings where the need for secrecy of investigation and/or any other legitimate interest was disproved and/or where any state secrecy seal on the judgment had been lifted on one or other bases (due to reasons such as expiration, automatic revocation, end of the investigation, destruction of information, notification of addressee, or other grounds for removing confidentiality, etc.).

IDFI has not received this kind of document from any court. IDFI's observations revealed that, concerning these acts, contrary to the requirements of the law, the state secret protection regime (both de facto and, in some cases, de jure) is widely applied. This makes it impossible to access even the earliest judicial acts, whose protection value is undoubtedly expired.

2.5. CITING PERSONAL DATA PROTECTION

Invoking the interest of personal data protection in responses from public institutions is another common method of avoiding the release of public information. On a practical level, when an applicant requests any information that has even a minimal connection to personal data, this is immediately used by the public institution to avoid providing any amount of the requested information.

In IDFI's experience, it is practically impossible to obtain information containing personal data, regardless of the contents of the information and grounds for the request. Public institutions refuse to issue personal data

even in cases where the legislation indicates directly that the specific data should be accessible. For example, the General Administrative Code of Georgia (Article 44) provides for the publicity of personal data of a public official, as well as of a candidate nominated for a position, while the Organic Law of Georgia “On Common Courts” (Article 13, Paragraph 3¹) establishes the accessibility of the full text of court decisions (including the personal data reflected therein) made as a result of an open court session.



In one of the cases filed by IDFI, on September 11, 2024, a journalist had requested a copy of the court ruling in the case of the father of a member of Parliament of the 10th convocation - Nino Tsilosani, in which the court acquitted the Tsilosani's father, along with other defendants, in misappropriation-embezzlement of 65 million GEL.²⁰ The Tbilisi City Court did not satisfy the public information request in its response of September 16, 2024, and nor did it satisfy the administrative complaint with its decision of October 28. The court stated that the reason for refusal was that the decision contained personal data and that it was therefore unable to provide the information.

Leaving aside the fact that the aforementioned case is of special public interest, the accessibility of court rulings is established by the Organic Law “On Common Courts” (Article 13, Paragraph 3¹), according to which, “the full text of a judicial act adopted by a court as a result of an open court session shall become public information upon the adoption of that act and shall be issued under the procedure established by the General Administrative Code of Georgia for issuing public information.”

The issue was resolved in favor of the accessibility of information in the Organic Law based on the legislative amendments adopted in 2023 and 2024, the goal of which was to implement

²⁰ Publika, [Tsilosani's father acquitted by appeals court in embezzlement case of 65 million](#), 2024.

the judgment of the Constitutional Court of Georgia of 7 June 2019.²¹ The new normative regulation, in a higher normative act - the Organic Law, established the general rule of accessibility of judicial acts and removed normative obstacles related to the receipt of these acts as public information. Nevertheless, the Tbilisi City Court violated the clear requirement of the law and did not issue a copy of the judicial act. At this time, the refusal to issue the information has been appealed. The Tbilisi City Court accepted the case into consideration on 17 December 2024.

2.6. DISREGARD FOR THE CONSTITUTIONAL SYSTEM OF GEORGIA AND MISUSE OF THE CONVENTION

One of the methods that is being developed for avoidance of constitutional requirements for public information is the misuse of the case law of the European Court of Human Rights. In particular, the standards established by the European Court of Human Rights about freedom of information are applied superficially, without understanding the context and the mandate of the regional court. In its judgments, the European Court of Human Rights establishes the minimum standards for the protection/recognition of the right, which each Member State is obliged to protect, although this, of course, does not mean that if the national legal system of a state establishes stricter requirements for the protection of the right, it is exempted from the obligation to protect it before the domestic courts.

The common courts of Georgia disregard the constitutional system of Georgia and the country's domestic legislation, which contains higher guarantees of the protection of access to public information than the Convention or other international human rights protection documents. In

²¹ The judgment of the Constitutional Court of Georgia of 7 June 2019, №1/4/693,857, in the case N(N)LE "Media Development Foundation" and N(N)LE "Institute For Development of Freedom of Information" v. The Parliament of Georgia.

such circumstances, citing the practice of the European Court of Human Rights to justify the restrictions on access to public information cannot be considered as a self-contained basis for limiting access.²²

²² For more detailed information on the standards of the European Convention of Human Rights and their relation to national legislation, see IDFI's articles: [Case law of the European Court of Human Rights regarding public information](#); [Recognition of the Right of Access to Public Information: Process of Development of the Convention and Main Precedents](#); [Secrecy of the Results of the Audit of Public Officials' Property Declarations is in Opposition to the Requirements of the Constitution and the Convention](#).

3. INEFFECTIVE EXTERNAL OVERSIGHT MECHANISM AND RIGHT TO A FAIR TRIAL

There is no independent oversight mechanism that would provide effective and timely supervision over issues related to freedom of information, including through the use of fines and/or other liability measures against the unlawful actions of public institutions.

The mechanisms currently in place are either limited in their mandate or the proceedings are so lengthy that it becomes pointless to file complaints about the arbitrariness of a public institution.

At the same time, the scope of arbitrariness of public institutions is so wide that even under the conditions of establishing good judicial practice, there is no guarantee that after the successful conclusion of the dispute, the public institution will satisfy the same or similar request.

The following subsections of the report review the challenges that, based on IDFI's experience, are revealed about the functioning of existing supervisory mechanisms.

3.1. LACK OF EFFECTIVE OVERSIGHT MECHANISMS OVER THE RIGHT OF ACCESS TO PUBLIC INFORMATION

There is no effective external administrative oversight body on public information issues in the legal system of Georgia that would have the authority to issue mandatory instructions or impose liability (fines or other forms) on an administrative body violating the relevant laws. The general mandate of the Public Defender of Georgia - to protect fundamental human rights, including freedom of information - cannot fulfill this role. The authority of the Public Defender of Georgia is limited to examination of the

issue, issuing recommendations, documenting, and submitting a report to the Parliament.²³

Chapter 7 of the 2022 report²⁴ of the Public Defender of Georgia is dedicated to the practical and normative deficiencies concerning public information, as well as their negative impact on the state of the media and the quality of public awareness. The need for legislative reform and the creation of an effective supervisory institution is the key conclusion of the report.²⁵ The Public Defender's 2023 report²⁶ confirms numerous unlawful obstacles that the public and media face in their attempts to obtain public information and reiterates the importance of creating an effective oversight mechanism.²⁷

3.2. RIGHT TO A FAIR TRIAL: UTTERLY INEFFECTIVE

The main obstacle to the effective restoration of rights through the courts is the gross violation of the legal deadlines for reviewing cases by common courts and prolonged legal proceedings.

Under such circumstances, the significant delays in the consideration and resolution of cases related to public information effectively preclude the effectiveness of judicial review. Moreover, due to the peculiarities related to public information, disputes of this category should be resolved in even less time than the maximum period established by law. In the vast majority of cases, such disputes are not characterized by particular legal complexity, while the interest in obtaining the requested information is immediate.²⁸

²³ Proceedings initiated within the framework of the Law of Georgia “On Elimination of All Forms of Discrimination”, which is used exclusively in relation to cases related to right to equality, is an exception.

²⁴ Public Defender of Georgia, 2022 report [On the Situation of Protection of Human Rights and Freedoms in Georgia](#), chapter 7.

²⁵ Ibid, p. 161.

²⁶ Public Defender of Georgia, 2023 report [On the Situation of Protection of Human Rights and Freedoms in Georgia](#), p. 156.

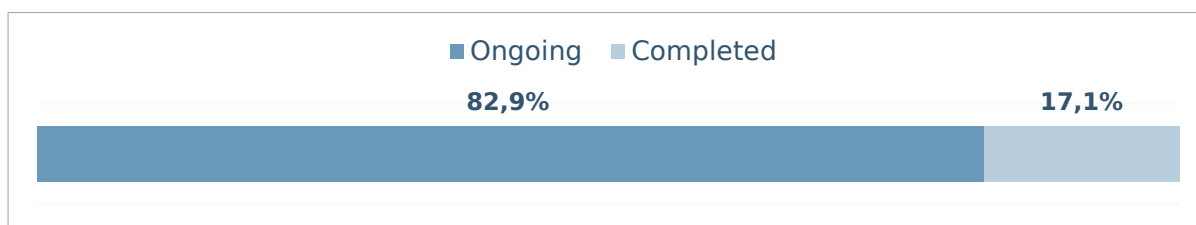
²⁷ Ibid, p. 158.

²⁸ IDFI, [Access to Public Information by the Media: Legislation v. Reality](#), 2022, p. 39.

Timeliness is particularly important for human rights defenders, including journalists, since the information provided late may lose its initial value to the public. All of this significantly hinders the creation of high-quality and evidence-based media products, effective public oversight over public institutions, and accountability of public authorities.

To ensure access to public information, it is essential that judicial control be effective and that information seekers have the expectation that in the event of an unlawful action by a public institution, the court will ensure the restoration of the violated right by ordering the release of public information. In the face of protracted litigation, the motivation to initiate and pursue a legal dispute to the end is significantly reduced as the information received may lose its relevance by the time the litigation is concluded, which further encourages public institutions to continue their unlawful practices.

In 2022-2024, IDFI filed 35 cases in the Tbilisi City Court within the framework of legal aid for the media.²⁹ Of these, only 7 were completed at the stage of the first instance, and of these, in 3 cases the court had to issue a decision, while in the remaining 4 cases, the proceedings were terminated for other reasons.³⁰ Among the 3 cases concluded in the court of first instance, 1 was fully satisfied, 1 - partially, and 1 was not satisfied. IDFI appealed the decision that did not satisfy the media's request to the Court of Appeals.



²⁹ IDFI became involved in one case in 2023, but the lawsuit on said case was filed in 2019.

³⁰ The remaining 4 cases were withdrawn on IDFI's initiative (in 3 of the cases, the respondent issued the requested information and thereby eliminated the subject of the dispute, while in 1 case the proceedings were terminated for another reason).

Among the 29 ongoing cases, 28 were filed after 2022. The court of first instance has not completed the consideration of any of the lawsuits filed after 2022. On the lawsuit filed in 2019, the first instance court completed the consideration on 27 December 2023 - 52 months after the submission of the lawsuit. According to the procedural legislation, the deadline for completing the consideration of a case in the first instance court is 2 months. Based on IDFI's experience, no case has been completed within this statutory period. To illustrate unreasonably prolonged court proceedings, a good example is one of IDFI's cases. In this case, although the 5-year period for considering the requested information as a state secret has expired, the court proceedings have still not been completed.

Under procedural law, in special cases, a judge is authorized - depending on the complexity of the case - to extend the deadline for consideration of the case by no more than 5 months. IDFI's practice has revealed that judges exercise this authority even in cases where a public institution has clearly violated the formal requirements of the Constitution of Georgia. Namely, in 16 out of 29 ongoing cases, the respondent public institution completely ignored the formal requirements of the Constitution and legislation and did not even formally respond to the public information request and complaint. In 7 of these cases, the court deemed that the case required an additional 5-month period due to its particular complexity. **It should be emphasized that, in every instance, the judges violated the deadlines they themselves had extended.**³¹

Given the actual timeframes for reviewing public information disputes, IDFI believes that there is no effective judicial control over this type of dispute. In terms of court proceedings, while there are other substantive and procedural challenges, the main problem at present is the duration of the proceedings.

³¹ One lawsuit was filed in December 2024. The court extended the review period. At the moment, the 5-month period has not expired, although there is nothing to indicate that this case will be an exception.

3.3. INEFFECTIVENESS OF STRATEGIC LITIGATION AIMED AT ESTABLISHING A STANDARD

Information obtained as a result of years of litigation usually has less public value. However, such cases may have strategic legal value - establishing good judicial precedents that would later facilitate the effective exercise of the right to access public information.

Unfortunately, in addition to their disregard for the law, administrative bodies often ignore legal clarifications obtained as a result of strategic litigation, which further limits the effectiveness of the courts in addressing public information issues.



For example, in 2022, IDFI successfully concluded a four-year litigation (initiated in 2018) against the National Archives of Georgia in the Supreme Court of Georgia.³² IDFI received the requested information as of 2018, but after IDFI requested similar information for 2018-2022, the National Archives once again refused to provide it.

³² See: IDFI, [The Supreme Court Ruled in Favor of IDFI and Obligated the National Archives of Georgia to Release Public Information, 2022.](#)

CONCLUSION

IDFI's completed and ongoing cases on freedom of information issues reveal that the media faces substantial, mostly unlawful legal and practical obstacles to accessing public information.

The systemic disregard by the public institutions for the formal and substantial requirements of the Constitution of Georgia is the primary obstacle. One rarely encounters a public institution that does not grossly violate the legislation regulating freedom of information. Overall, there is practically no legitimate expectation in the media that journalists will be given the opportunity to exercise their constitutionally guaranteed rights. In addition to the systemic violations of the law by public institutions, there are various types of challenges that arise directly from the law and/or from misinterpretation of the law.

The judicial system fails to respond effectively to systemic unlawfulness. Court proceedings last for several years, even in cases of obvious disregard of constitutional and legal requirements by the state.

IDFI believes that the current alarming situation is due to/connected with democratic backsliding in Georgia, which naturally leads to a decrease in the accountability of public institutions. The lack of accountability of public institutions is particularly facilitated by the absence of a timely and effective external oversight institution/instrument.

INSTITUTE FOR DEVELOPMENT OF FREEDOM OF INFORMATION (IDFI)



20, T. Shevchenko Str.
0108, Tbilisi, Georgia



info@idfi.ge



+ 995 32 292 15 14



www.idfi.ge