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**Good Governance in  
Georgia Program (G-3)**

## **Freedom of Information - A Guide for Public Institutions 2013**

The Guide was developed by the Institute for Development of Freedom of Information (IDFI) in the frameworks of the United States Agency for International Development (USAID) Good Governance in Georgia (G-3) program.

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# 1. State Transparency and Accountability

The modern world society is called a society of information and knowledge. In legal states, for the purpose of proper functioning of the democratic system, it is important that the general public have access to information stored in public institutions. Without information it is impossible to shape an independent opinion. Therefore, freedom of information is one of the fundamental rights guaranteed in a legal state.

State transparency is one of the parts of an effective democracy. In turn, one of its most important elements is freedom of information. Otherwise the “public control” of the activities of a public institution would be impossible. When the society is informed about government activities, public trust for the government is high. When a citizen is able to receive desired information from a public institution, he gets a feeling that the government is acting lawfully and in good faith. However, when access to information is artificially restricted, this causes the decrease of public trust in the government.

Interest in protecting information comes into conflict with the principle of availability of information. When the information contains personal data or state or commercial secrets, it is important to make sure that this information does not become public. Ensuring access to information means taking into account both interests. Legislation is the mechanism that can provide a balance between these two rights. However, it should be noted that the right to access information is so important that a public institution is obliged to use the proportionality test to determine whether the openness of information should be given priority.

## 2. Freedom of Information

### 2.1. Legislative Basis of Freedom of Information

Legislative basis of freedom of information and access to information is given in Chapter 2 of the Constitution of Georgia and Chapter 3 of the General Administrative Code of Georgia.

The fact that the regulatory norms of freedom of information were incorporated into Chapter 2 of the Constitution and its recognition as a constitutional human right underlines its special role with regards to other rights guaranteed by the constitution and the protection of information. According

to Article 24 of the Constitution of Georgia, any human being has a right to receive and share information, express and spread his opinion verbally, in written form or through other means. Article 37 of the Constitution of Georgia guarantees the right to receive complete, objective and timely information about the individual's home and work environments. According to Article 41 of the Constitution of Georgia, all citizens of Georgia have the right to access information stored in the governmental institutions of Georgia regarding themselves, as well as official documents if they do not contain state, professional or commercial secrets, in accordance with the guidelines established by law. The mentioned norm also establishes the obligation of personal data protection.

According to Article 10 of the European Convention on Human Rights, everyone has freedom of expression, which encompasses the right to receive and spread information freely. The realization of the rights guaranteed by the above-mentioned norms is the purpose of Chapter 3 (Freedom of Information) of the General Administrative Code of Georgia.

To understand the essence of freedom of information, it is important to define a number of concepts and institutions, which is done in Chapter 3 of the General Administrative Code of Georgia and has special meaning for the purposes of this chapter. First of all, we should take into consideration the fact that freedom of information implies *public information* accessible in *public institutions*. Considering the above, one should know the concepts of **public information** and **public institution**.

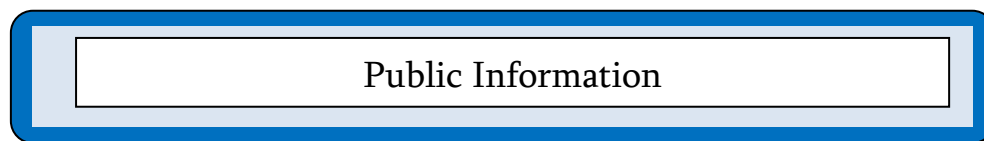
## 2.2. The Concept of Public Information

General Administrative Code of Georgia recognizes the presumption of the publicity of information in public institutions. For defining the concept of public information “negative stipulate” is used, according to which any information that is not personal data, state or commercial secrets is public.

According to the “m” sub-article of the first part of Article 2 of the General Administrative Code of Georgia, public information is - **official document (including drawings, models, plans, schematics, photos, electronic information, video and audio footage), in other words information stored in public institutions, as well as information received, processed, created or sent by the institution or a civil servant, related to official activities, also information published proactively by the institution.**

The above definition comprises the form of public information. As for the criteria for defining its content, the Code does not contain it. This kind of approach by the legislator indicates that the concept of public information does not require a special definition, since any information in public institutions (in the legally defined form) is public if it is not labeled as secret. To determine whether the information is public or not, one should exclude it being a part of the category of classified information.

Based on the legal definition of public information, to define the concept of public information it is necessary to define who the subject is - **public institution**, which is subject to the request for availability of information.



### Official Document Information published proactively

- Any information (Including that expressed on paper)
- Drawing
- Model
- Plan
- Schematic
- Photo
- Electronic information
- Video footage
- Audio footage

- 
- 1) That is stored in a public institution
  - 2) That was received, processed, created or sent by the institution or a civil servant, related to official activities



Information published on the electronic resource (website) of a public institution

**After 1 September, 2013**

## 3. The Concept of Public Institution

Availability of information is related to the process of implementation of public governance. For the implementation process of public authority to be transparent, the received, processed, created or sent information related to official activities should be available to anybody. Openness of information also becomes relevant when the subject does not carry out its government function, but at the same time its activities are funded from the state budget of the budget of the local self-governing unit.

The subject that carries public governance is an administrative body. Administrative bodies are subject to the requests for public information. Official documents (including drawings, models, plans, schematics, photos, electronic information, video and audio footage), in other words information

stored in administrative bodies, as well as information received, processed, created or sent by the institution or a civil servant, related to official activities.

When the subject does not have a governmental function, no matter how high the interest towards the information regarding its activities, it cannot become available to everyone. Interest in control of such subjects by the public becomes legitimate when its activities are being funded from the state budget of the budget of the local self-governing unit.

Taking into account the above-mentioned criteria, a new term “public institution” was defined by the General Administrative Code of Georgia for the purposes of freedom of information. The subject that carries public authority (administrative body) or acts within the frameworks of state or local self-governing units’ funding is a public institution and is subject to the requests for public information.

## **4. Legitimate Restriction of Access to Information**

The right to access information does not apply to any kind of public information. Administrative bodies should carry out their activities in an open and transparent manner, but a certain category of public information is classified because it contains state, professional or commercial secrets or personal data. This kind of information should have the relevant status assigned within the public institution.

### **4.1. Personal Data**

#### **4.1.1. Legislative Base**

The issue of protecting personal data is regulated by the law of Georgia about personal data protection, with entered into force on 1 May, 2012. The law is based on the convention “about the protection of physical entities during the automatic processing of personal data” which was ratified by the Parliament of Georgia on 28 October, 2005, according to the N 2010 – II decree.

#### **What is the purpose of adopting the law?**

The purpose of the law is to guarantee the protection of human rights and liberties, including the inviolability of personal life, during the processing of personal data.

#### **What is personal life, the inviolability of which is protected by the law?**

The principle of inviolability of personal life derives from the general constitutional principle of human freedom, which is an important part of the legislative system of Georgia. The purpose of protecting privacy is granting the subject the freedom to choose whether to make information regarding him/her available for others, which is an important element of defining his private issues.

The institute of personal life reflected in the legislation of Georgia is based on the “Right to Privacy” principle established in the United States of America. Within the frameworks of the above-mentioned principle, two legal positions of the subject are recognized pertaining to processing personal data: the first, “right to be let alone” and the second - “right to share and withhold”. The first principle is based on the assumption that everybody should have the right to be left alone in certain areas of life, while the second implies the free choice of an individual in the matter of sharing or withholding information related to him. Comparative analysis of the American model of personal data is not our goal. However, it should be said that the relevance of the topic in both U.S. and Georgia is caused by the widespread usage of modern information technologies in the governance process.

For defining personal life three areas are generally singled out - intimate, private and public. The intimate area is inviolable, while intervening in the private area is partially acceptable and the public area is completely unprotected. The mentioned classification is problematic, since a clear line cannot always be drawn between these areas.

The dilemma lies in the fact that a precise definition of the private area is impossible. The information itself is an important indicator for the legal evaluation of data processing. The legislation defines personal data as any information that is related to an identified or identifiable individual. A person is identifiable if it is possible to identify him directly or indirectly, specifically, with an identification number or through physical, physiological, psychological, economic, cultural or social signs associated with the person; information that does not satisfy the above criteria is not relevant for the purposes of personal data protection.

The legislator also separates a special category that is defined as the data that is related to the racial or ethnic affiliation, political views, religious or philosophical beliefs, membership of professional organizations, state of health, sexual life or criminal record of the person, as well as biometrical data with which the person can be identified according to the above-mentioned signs; this addition is aimed at adding to the concept of personal data, better drawing the line between private and intimate areas and the exceptional protection of the latter<sup>1</sup>.

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<sup>1</sup> According to Section 2 of Article 6 of the Law about Personal Data Protection, the prohibition does not apply, if:

a) The subject of the data expressed a written consent for the processing of the data of a special category;



In modern public governance biometric data of a person is actively used. According to the Georgian law about personal data protection, this data is defined as any physical, psychological or behavioral characteristic that is unique and constant for the specific individual and through which this person can be identified (fingerprints, iris, retina (eye retina image), face characteristics and DNA);

The protection of personal data (private sphere) does not mean the prohibition of processing this data. In a number of cases an individual is obligated to endure his personal data processing. Especially when public interest demands so or the interests of the one who does the processing are more important than the interest in the protection of personal data. Allowing the processing of personal data does not mean that the one who does it has unlimited rights. In this case the obligation of private sphere protection is still in force. Processing of personal data implies the processing of the right information and the prohibition on processing the wrong information. An individual has the right to demand the processing of the right information regarding him.

#### 4.1.2. Scope of Application of the Law

For the implementation of the law of Georgia about personal data protection the scope of application of the law should be determined. The mentioned law applies to the processing of data via automatic or semi-automatic means on the territory of Georgia, also the processing of data that is part of a file system or is being processed to be included in a file system via non-automatic means.

The law of Georgia about personal data protection regulates the legal relationship between the person who processes the data<sup>2</sup> and the subject of the data<sup>3</sup> that arises regarding the issue of processing personal data.

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- b) The subject of the data made the information public without a clear prohibition from using them;
  - c) Processing the data is necessary for the fulfillment of the work responsibilities or the execution of the right of the entity doing the processing;
  - d) Processing the data is necessary for the protection of the vital interests of the subject of the data or a third party and if the subject of the data does not have a physical or legal possibility to express his consent to the processing of the data;
  - e) Data processing is being done for the protection of public health, for the protection of the health of a person by an employee (worker) of a healthcare institution, as well as if this is necessary for the functioning or management of a healthcare system;
  - f) Data processing is being done by a political, philosophical, religious or commercial union or any other kind of noncommercial organization for the implementation of legitimate activities, In this case data processing may be related only to the members of this organization or the persons with constant relation to the organization.
- <sup>2</sup>For the purposes of the law it is defined as the public institution, individual or legal entity, who, individually or with others, defined the purposes and means for processing personal data and directly or through an authorized person processes the said data.

This law applies to:

- a) The processing of information by the diplomatic missions of Georgia abroad or consular offices;
- b) Regarding the activities of the person who processes data who is not registered on the territory of Georgia, but who uses the technical resources from Georgia, excluding the cases when these technical resources are used only for data transit. In this case the person must appoint/determine a representative registered in Georgia.

The cases related to the use of personal data should be separated, though the law of Georgia about personal data protection does not apply to them:

- a) Processing of personal data by individual for clearly personal reasons, when the processing is not related to his/her entrepreneurial or professional activities;
- b) Processing of data for case proceedings in the court;
- c) Processing of information classifies as state secrets;
- d) Processing of information for the purposes of public and state security (including economical security), defense, operative-investigation activities and criminal investigation. Apart from the mentioned law (except Article 17), it does not apply to the processing of data by media outlets for the purpose of informing the general public, as well as processing of information for artistic or literary purposes.

Articles 19 (file system catalogue) and 20 (the obligation to notify personal data protection inspector) of the law of Georgia about personal data protection does not apply to the processing of personal information by political parties, professional or other unions and religious organizations regarding their members.

### 4.1.3. Data Processing Guidelines

Personal data protection should be based on the principles established by the law of Georgia on personal data protection.<sup>4</sup>These are:

- a) Data should be processed fairly and lawfully, without violating the dignity of the subject;
- b) Data can be processed only for the clearly defined and lawful reasons;
- c) Data can be processed only in the volume that is necessary for the realization of the lawful purpose. The data should be adequate and proportional to the purpose, for which it is being

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<sup>3</sup>For the purposes of the law it is defined as any individual, to whom the data being processed is related.

<sup>4</sup>Article 4 of the Law about Personal Data Protection.

processed;

d) The data should be real and accurate. Inaccurate or false data should be corrected, and the data gathered without legal justification or irrelevant to the purpose must be blocked, deleted or destroyed;

e) The data can be stored only for the time period that is necessary for the realization of the purpose of the data processing. After it is accomplished, the data should be blocked, deleted, destroyed or stored in a form that precludes the identification of its subject, if not otherwise specified by law.

The law of Georgia on personal data protection establishes the criteria of eligibility for personal data processing.<sup>5</sup>These are:

a) Approval of the subject of the data;

b) Data processing is prescribed by law;

c) Data processing is necessary for the entity to carry out its obligations defined by the legislation;

d) Data processing is necessary for the protection of the vital interests of the subject of the data;

e) Data processing is necessary for the protection of legal interests of the entity doing the processing or a third party, except the cases when there is a higher interest in protecting the rights and liberties of the subject of the data;

f) According to the law, the data is public or the subject of the data made it public;

g) Data processing is necessary for the protection of public interests in agreement with the law;

h) Data processing is necessary for the consideration of a statement submitted by the subject of the data (for providing services to him).

The definition of the said list by the Georgian legislators is due to the fact that the issue of the possible restriction of the constitutional rights and liberties of the subject of the data arises in relation to personal data. The right for protection from disclosure of personal data guaranteed by Article 41 comes into question. Personal data processing does not automatically imply the infringement of the said norms. In each specific case the interests for data processing and upholding rights guaranteed by the Constitution should be evaluated, and attention should be paid to the limits of the restriction of constitutional rights established by law (limitation of restrictions).

Protection of the constitutional rights of a person implies the protection of the rights of the deceased. The law of Georgia on personal data protection regulated the issues related to personal data processing after the death of the subject of the data<sup>6</sup>.

### **What does data processing mean for the purposes of this law?**

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<sup>5</sup>Article 5 of the Law about Personal Data Protection.

<sup>6</sup>Article 7 of the Law about Personal Data Protection.

Data processing is any kinds of activities carried out regarding the data through automatic or non-automatic means, specifically collection, recording, taking photographs, audio- or video recording, organizing, storing, changing, restoring, requesting, using or disclosing the data through transferring, spreading or making it available by other means, grouping or combining, blocking, deleting or destroying the data, while automatic processing means processing the data with the use of information technologies.

#### 4.1.4. Entity Processing the Data

##### **Who can process the data for the purposes of the law of Georgia on personal data protection?**

These subjects are: a public institution, an individual or a legal entity that individually or with others defines the goals and means for processing personal data, processes the data directly or through an authorized person;

Data processing is carried out by a public institution within the frameworks of exercising public authority. In contemporary governance, legal entities of private law are often used for carrying out separate tasks. During personal data processing by private subjects within the frameworks of the delegated functions or task execution under a legal act or written consent, the requirements set by the law of Georgia on personal data protection must be observed. The authorized person must process data within the frameworks of a relevant normative act or agreement. Further processing of the data for any other reasons by the authorized person is prohibited. The authorized person is also prohibited from transferring the right to process the data to another entity without the approval of the entity that is processing the data. Before the agreement is made, the risk of misuse of the personal data must be evaluated based on the activities and/or goals of the authorized person.

In case of delegating the authority to an individual, the public institution must be convinces that the person will take organizational and technical precautions necessary for personal data protection. The agreement between the public institution and the authorized person must include the obligation to implement safety measures for the protection of the data. The public institution is obliged to monitor the processing of data by the authorized person.

#### 4.1.5. Specific Cases of Data Processing

##### **a. Processing of Biometric Data by a Public Institution**

Within the frameworks of the implementation of its authority, the public institution processes biometric data of a person<sup>7</sup>. Taking into account the widespread use of the said method in contemporary governance, the law of Georgia on personal data protection establishes the legal scope of its use. The law allows processing biometric data only for the purposes of the protection of safety and property of an individual, as well as for avoiding the disclosure of secret information, if these goals cannot be accomplished by other means of achieving these goals by other means is related to disproportionately large effort. Despite these restrictions, biometric data is processed for the issuance of personal identification documents in accordance with the guidelines established by law or for the identification of a person crossing the border of the country.

The law also allows processing of biometric data of a person if the following clause is taken into account: if it is necessary for carrying out activities, or for the protection of safety and property of an individual, as well as for avoiding the disclosure of secret information, if these goals cannot be accomplished by other means of achieving these goals by other means is related to disproportionately large effort. In this case the legislator introduces an additional mechanism of protection: before using the biometric data, the entity processing it must provide the Personal Data Protection Inspector with detailed information on the processing of biometric data, including information that was provided to the subject of the data, the purpose of processing the data and guarantees of data protection.

#### **b. Video surveillance**

Public administration bodies use a whole range of preventive measures for the implementation of their authority, especially for the protection of public order and safety. Video surveillance<sup>8</sup> is the technical means, through which the above-mentioned goals are accomplished. In this case the public interest in the implementation of such activities and the interest of personal data protection come into conflict. The legislator offers legal criteria for solving the conflict between these two interests.

Street video surveillance is used for crime prevention, as well as the protection of the safety and property of the person, public order and the protection of juveniles from harmful influence. In case of using this measure, public and private institutions are required to place a relevant warning sign in a visible spot. In this case the subject of the data is considered warned about data processing. The surveillance system and video recordings must be recorded from unlawful acquisition and use.

Public and private institutions can choose to implement video surveillance of their own buildings for the purpose of relevant monitoring, if this is necessary for the protection of the safety and property of the person, the protection of juveniles from harmful influence and the protection of secret information.

Through a video surveillance system it is possible to monitor only the outer perimeter and the entrance of the building. Installing video surveillance devices on the workplace is allowed only in the case when this is necessary for the protection of the safety and property of the person, as well as for

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<sup>7</sup>Article 9 of the Law about Personal Data Protection.

<sup>8</sup>Articles 11 and 14 of the Law about Personal Data Protection.

the purposes of secret data protection and if these goals cannot be accomplished by other means. Video surveillance in the changing room or places allocated for hygiene is unacceptable.

All employees of the relevant private or public institution must have been informed in written form about video surveillance and their rights.

The entity processing the data is obliged to create a file system for storing the video recordings. Apart from the recordings (images/sound), the system must contain information about the data, location and time when the information was processed.

Private and public institutions determine the personal identification data of the person for the purpose of recording the times of arrival and departure from the building. The law allows the collection of only the following data: name, number and type of the identification document, address, dates and times of entry and departure, as well as the reasons for entry and exit.

The storage period of the data recorded for this purpose cannot exceed three years, unless the law determines other time frames. After the three years are up, the records must be deleted or destroyed.

The law allows the installation of video surveillance system in residential building only with the written consent of more than half of the residents. Its use is allowed only for the purpose of protection of the safety and property of the person. Only the entrance and common space can be monitored by the surveillance system installed within the building. Monitoring the apartments of the residents is unacceptable, as this is the intimate area that is not subject to restriction.

### **c. Processing data for direct marketing purposes**

For the purpose of extending the offer for products, services, employment or temporal employment with the use of mail, telephone calls, email or other telecommunication means (direct marketing purposes<sup>9</sup>), it is possible to process data acquired from the sources available publicly: name (names), address, telephone number, email, fax number. The said restriction does not apply in case of processing of information to which the subject of the data gave consent. The subject of the data has the right to request from the entity processing the data to stop using it for direct marketing purposes at any time in written form. In case of such a request, the entity processing the data must stop processing data for direct marketing purposes no later than 10 business days after the request was received.

#### **4.1.6. Data Safety**

The law of Georgia about personal data protection establishes a number of obligations of the person who processes data that guarantee the protection of the data from accidental or illegal destruction,

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<sup>9</sup>Article 9 of the Law about Personal Data Protection.

change, disclosure, acquisition, illegal use in any other form and accidental or illegal loss. These obligations imply:

- The obligation of the entity processing the data to guarantee the recording of every electronic or non-electronic activity with regards to the existing data;
- Adequacy of the measures implemented for the safety of the data and the risks related to processing the data;
- The obligation of the person who processes information and any other subjects participating in the process not to exceed their given authority. At the same time, the obligation to protect the secrecy of the data, including after the work is completed.

In case of disclosure of the data despite the protective measures, the entity processing the data and the authorized person are obliged to guarantee the registration of the following information: which data was disclosed, to whom, when and on what legal grounds. This information should be stored with the data regarding the subject during the storage period.

For the purpose of ensuring the protection of the data, the law establishes the obligation of the person processing data to, for every file system<sup>10</sup>, lead a data catalogue<sup>11</sup> and record the following information:

- a) Name of the file system;
- b) Names and addresses of the person processing the data and the authorized person, data storage and/or processing location;
- c) Legal grounds for processing data;
- d) Data subject category;
- e) Data category in the file system;
- f) Purpose of processing information;
- g) Data storage period;
- h) The fact of and grounds for the restriction of the subject's rights;
- i) Receiver of the data stored in a file system and categories of the data;

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<sup>10</sup>File system—a structured set of data, in which it is arranged and available according to specific criteria.

<sup>11</sup>File system catalogue - Detailed description of the structure and content of the file system.

- j) Information about sharing data with other states and international organizations and the legal grounds for sharing;
- k) General description of the procedure established for data protection.

The entity processing data, the number of employees of which exceeds 20, is obligated to notify the personal data protection inspector about this information in written or electronic form before creating a file system or entering data in a new category or making changes in it.

#### 4.1.7. Rights of the Subject of the Data

The law of Georgia about personal data protection establishes the rights of the subject of the data<sup>12</sup>.

**An individual has the right to access personal information related to him that is stored in public institutions and to receive copies of this data without a fee, except the data that can be issues after the payment of a fee, as required by the legislation of Georgia.**

The subject of the data has a right to request information from the entity that is processing data related to him about the process. The entity that is processing information should provide the subject with the following information:

- ს) What data related to him is being processed;
- ბ) The purpose of processing information;
- გ) Legal grounds for processing data;
- დ) How the data was acquired;
- ე) Who was given access to data related to him, the grounds and purpose for disclosing the data. Giving the subject of the data information is not obligatory, if the data is public according to law.

The above-mentioned information should be issued to the subject of the data immediately or within a 10 day period. As for the form of issuing information, it is chosen by the subject himself.

Since the right to process personal information implies the obligation to process the relevant data, in case of a request by the subject of the data the entity processing the information is obliged to correct, update, add, block, delete or destroy the data if it is incomplete, inaccurate, is not up to date or if the data was acquired and processed illegally.

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<sup>12</sup>Chapter 4 of the Law of Georgia about Personal Data Protection.



In the case of the implementation of mentioned measures, the entity processing the data must inform all recipients of the data about the correction, updating, additions, blocking, removal or destruction of the said information, except the cases when informing every recipient is impossible because of their large number and disproportionately large costs of doing so. The personal data protection inspector should be notified about these circumstances.

The rights of the subject of the data can be restricted according to Article 15 (provision of information to the subject of the data), Article 21 (the right of the subject of the data to request information) and Article 22 (the right of the subject of the data to request correction, updating, addition, blocking, removal or destruction of the data), if the realization of these rights might constitute a risk to:

- a) National security of the Country or defense interests;
- b) Public safety interests;
- c) Crime detection, investigation or prevention;
- d) Important financial or economic interests of the Country (including those related to monetary, budgetary and tax issues);
- e) Rights and liberties of the subject of the data and others.

The subject of the data must be notified of the decision of the entity processing the data or the personal data protection inspector in the case of existence of the above-mentioned reasons in such a manner that does not harm the purpose of restricting the right.

The law of Georgia about personal data protection gives the subject of the data the right to revoke his previous consent to data processing without explanation and request the cessation of the processing of information and/or the destruction of the processed data.

The entity processing the data is obliged to cease processing the data and/or destroy the processed data as requested by the subject of the data within 5 days if there are no other grounds for processing the information.

The above-mentioned does not apply to the information regarding the meeting of liabilities by the subject of the data processed with his consent.

The law of Georgia about personal data protection establishes legal mechanisms for protecting the rights of the subject of the data. The subject of the data has a right to address the personal data protection inspector or the court in case of violation of the rights established by the above-mentioned law. When the entity processing the data is a public institution, the complaint can be filed in the institution itself or a higher administrative body.

As a preventive means for protecting the rights, the subject of the data has a right to request from the examining body to block the data until a decision is made. The subject of the data has a right to appeal to court, according to the procedures determined by law, regarding the decision of the higher administrative body or the personal data protection inspector.

In case of controversy regarding the existence of the consent by the subject of the data on the processing of the data, the entity processing the data is obliged to prove the existence of consent.

#### 4.1.8. Personal Data Protection Inspector

For the purpose of protecting personal data the law of Georgia about personal data protection establishes the institute of the personal data protection inspector. The institute serves to control the lawfulness of the processing of personal data. For this purpose, the Inspector has a range of preventive and repressive powers. Specifically, he carries out consultations with public and private institutions regarding personal data protection; examines claims regarding personal data protection; informs the general public about actual pressing issues related to personal data protection; examines the lawfulness of the processing of personal data in public and private institutions; inform as the general public about the status of personal data protection in Georgia.

The effectiveness of the personal data protection inspector is guaranteed by his legal status. The Inspector is independent within the frameworks of his legal authority and is not subject to any other official or body. The Inspector follows the Constitution of Georgia, international agreements, the law of Georgia about personal data protection and his own regulations. Any attempt to influence the Inspector or interfere in his activities is illegal and punished by law.

## 4.2. Commercial Secret

Article 27<sup>2</sup> of the General Administrative Code of Georgia:

Commercial secret – Information about a plan, formula, process or means of commercial value that is used for production, preparation, processing of goods or for offering services, and/or is a novelty or an important result of technical creativity, as well as other information, the disclosure of which might harm the competitiveness of the person.

The legal grounds for considering information a commercial secret are given in Article 27<sup>2</sup> of the General Administrative Code of Georgia:

1. It should be possible to use the information for production, preparation, processing of goods or for offering services, and/or
2. Should be a novelty or an important result of technical creativity, or
3. Disclosure should be harmful for the competitiveness of the person.

There are two ways to consider concrete information a commercial secret:

1. When the person requests that the information be considered a commercial secret and, as a result of administrative proceedings, this request is satisfied;
2. When the law considers the obligation that this information must be made a commercial secret.

In other cases and on other grounds assigning specific information this status is prohibited. That the information is a commercial secret is evident when it contains data about private legal entities and other entrepreneurs.<sup>13</sup>**Information about an administrative body cannot contain a secret.**<sup>14</sup>Therefore, if a public institution refuses to disclose information stating these reasons, this might become a reason for a controversy.

Data that is considered a commercial secret is the property of the entity that carries out commercial activities. Information about the first name and last name does not enter into this category. For example, the name of the director or head of a concrete legal entity cannot be considered a commercial secret.<sup>15</sup>

The request of an individual to consider specific information a commercial secret should be examined by a public institution and a decision should be made within 10 days. If the public institution does not think that the information satisfies any of the above listed criteria, and therefore is not a commercial secret, it adopts an individual administrative-legal act about the openness of the document. The person that made the request to make the information a commercial secret has a right to appeal to a higher administrative body or the court regarding this decision within 15 days. In case the information is considered a commercial secret, any person has the right to file a complaint regarding this decision within the period determined by an administrative-legal act according to the General Administrative Code of Georgia.

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<sup>13</sup>See *Tskepladze N., Adeishvili Z., Frost A., Ramishvili L., Kitoshvili D., Tughushi L., Tsotsoria N., Tetsadze G., Kopaleishvili M.*, Freedom of Information, Guide, Third Edition, 2005, 27.

<sup>14</sup>For example, see the 6 December 2007 N8b-614-584(3-07) verdict of the Supreme Court of Georgia—descriptive part, 26 March 2007 verdict of the Tbilisi Court of Appeals.

<sup>15</sup>Similar reservation is made by the Supreme Court of Georgia, according to which the first and last names of the head of a school dining hall cannot be a commercial secret, since this will not harm the competitiveness of the person. See 16 October 2003 N8b-102-289-3-03 verdict of the Supreme Court of Georgia.

### 4.3. Professional Secret

Article 27<sup>3</sup> of the General Administrative Code of Georgia:

Professional secret is the information that contains personal data of other persons or commercial secret and became known to a person because of execution of professional activities. Information that is not a commercial secret or personal data of other person cannot be considered a professional secret.

***Professional secret is the kind of information that contains personal data of other persons or commercial secret and becomes known to a person because of execution of professional activities. An administrative body cannot have professional secrets.***

Professional secrets are regulated by the law of Georgia “about freedom of speech and expression”. According to the “o” subsection of Article 1 of the said law, the following information is considered a professional secret:

Secrecy of confession, entrusted information regarding the professional activities of a member of the Parliament, a doctor, a journalist, a human rights defender, defender, as well as professional information that was disclosed to a person on the condition of confidentiality, during the execution of professional duties and the disclosure of which might harm the professional reputation of the subject. Information that is not a state secret or personal data of another individual or a commercial secret, as well as information about an administrative body, is not a professional secret.

***For example:*** A journalist received information about criminal activities of a public official from a private source while carrying out his/her professional activities. The journalist has a right not to disclose the source of information, since the information is his/her professional secret.

### 4.4. State Secret

According to the first clause of Article 1 of the law of Georgia about state secrets, a state secret is - “A kind of information that contains data considered state secret in the areas of defense, economy, foreign relations, intelligence, national security and maintenance of order, the disclosure of which might harm the sovereignty, constitutional order, political and economic interests or Georgia or sides participating in international treaties and agreements, which is recognized by this law or international treaty or agreement as state secret and is subject to state protection”. The following issues of defense, economic and foreign relations, intelligence, national security and maintenance of order constitute this kind of data:<sup>16</sup>

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<sup>16</sup>See Tskepladze N., Adeishvili Z., Frost A., Ramishvili L., Kitoshvili D., Tughushi L., Tsotsoria N., Tetsadze G., Kopaleishvili M., Freedom of Information, Guide, Third Edition, 2005, 24.

## Defense:<sup>17</sup>

a) Strategic and operative plans, documents reflecting the preparation and execution of military operations, strategic and operative movements of the armies, issues of their mobilization, alertness and use of mobilization resources;

***For example,** any documentary materials reflecting the preparation and execution of any military operation by the Ministry of Defense of Georgia during the August 2008 war. As you are probably aware, during a war each side has a specific strategy, the disclosure of which might contribute towards the victory of the opponent. Therefore, this kind of information is protected from disclosure by law.*

b) Targeted programs for the development of arms and military equipment, as well as the development of scientific-research and engineering works equipment and defense technologies;

***For example,** if Georgia developed the newest model of defense technologies with the country's resources, the disclosure of information regarding this technology is prohibited by law, since otherwise the innovation that might make the country successful in the implementation of defense mechanisms will no longer be evident.*

c) Data about the regime, structure and composition of especially protected military and civil defense objects;

***For example,** a military object is to be placed at the border of a so called "hot spot". The disclosure of the coordinates, plan and security mode (for example, period of serving on the post) will hinder the realization of the set goals.*

## Economy:<sup>18</sup>

a) Mobilization plans and capacities of agriculture, volume of supply and storage of strategic raw materials for military purposes, also disposition and volumes of state and mobilization reserves;

***For example,** Information about the raw materials stored for emergencies for the army of Georgia by the Ministry of Economy and Sustainable Development of Georgia.*

b) Defense systems and regime of the transport, communications, state infrastructure and other areas and objects, in the interests of guaranteeing their security;

***For example,** the defense system and regime of the broadcasting tower in Tbilisi, for the purpose of its safe functioning, may be classified according to the legislation of Georgia.*

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<sup>17</sup>See Section 1 of Article 7 of the Law of Georgia "about State Secret".

<sup>18</sup>See Section 2 of Article 7 of the Law of Georgia "about State Secret".

c) Information about concrete kinds of precious metals, precious stones and other valuables - the monetary group that is part of the common supply of gold; Information about the operations related to the production, protection and aversion of fabrication, circulation, exchange or removal from circulation of banknotes and securities;

***For example,** following the development of a plan for special activities for the protection of banknotes, it has become possible to tell counterfeits apart. If the above was disclosed, the fabricators would have the possibility to design countermeasures.*

#### **Foreign relations:<sup>19</sup>**

a) Foreign policy and foreign-economic relations of Georgia, the preliminary disclosure of which might bring harm to state interests;

***For example,** membership of the EU is the state interest of Georgia. For this, the country must sign a trade agreement with one of the states. If the relevant state bodies voice the critical importance of the agreement for the membership of EU early, another country that is opposed to the membership of Georgia might use some leverage to hinder the agreement.*

b) Issues of military, scientific-technical and other kinds of collaboration with other states, if the disclosure of the data might harm the interests of Georgia;

***For example,** the Government of Georgia, in partnership with another state, is planning on implementing a special project, in the frameworks of which the cyber security strategy will be developed and consequently implemented. The disclosure of the details of the agreement might jeopardize the successful implementation of the project and harm state interests.*

#### **Intelligence, National Security and Maintenance of Order:<sup>20</sup>**

a) Information about the plans, organization of reconnaissance, counterintelligence and operative-investigation activities; methods, forms, means and results of material-technical provisions, as well as about the funding of specific programs; information about the persons that collaborate in the above areas on a confidential bases or collaborated in the past with relevant bodies of Georgia;

***For example,** the Georgian side is conducting intelligence activities on the occupied territories after the August 2008 war. If the plan and methods of these activities become public, the mentioned activities will become pointless.*

b) Defense regime of the highest-ranking officials, administrative buildings and governmental residences, defined by the law of Georgia “about the special national defense service”;

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<sup>19</sup>See Section 3 of Article 7 of the Law of Georgia “about State Secret”.

<sup>20</sup>See Section 4 of Article 7 of the Law of Georgia “about State Secret”.

***For example,** Information about the defense regime of the President of Georgia, how many times the guard is replaced on the post, the President's motorcade route, etc.*

c) Governmental and special communications system;

***For example,** Information about the technical parameters of the special communications system.*

d) Information about the processing and use of state ciphers, scientific-research activities in the sphere of cryptography;

***For example,** information about the results of the state cryptography studies.*

#### **4.5. Executive privilege**

Article 29 of the General Administrative Code of Georgia - Executive privilege

The identity of the civil servants (except state political officials) that participated in the decision-making process by the officials is protected from disclosure by executive privilege.

A decision is made and the individual administrative-legal act is signed by the authorized official of an administrative body, but another employee who drafts the project of the decision is involved in the process. In the final product - the individual administrative-legal act - the author of the project will not be revealed. In case of a request by the third party (meaning the request for data that can be used for identification) of this kind of information the public institutions is obliged to make it classified. The mentioned restriction serves, first of all, to protect the impartiality principle. For the purpose of avoiding any kind of pressure on the person participating in the decision-making process, his or her identity is not revealed. The above restriction also protects the subject from the expected negative response of the persons unhappy with the decision. An exception is when a political official participated in the decision-making process. One encounters a different approach to this issue in the practice of foreign countries, for example in Germany the decision of the administrative body contains the name of the persons participating in the decision-making process. Direct contact with this person makes the perceptiveness of a positive decision for the citizen and, in case of a dispute, a successful resolution easier.

#### **4.6. Interest of the Implementation of the Executive Branch**

The legislation of Georgia regulates the cases of non-interference in the activities of the executive branch of the Government as a separate issue. The General Administrative Code of Georgia (request for public information) does not apply to the activities of administrative bodies related to:<sup>21</sup>

<sup>21</sup>Part 4 of Article 3 of the General Administrative Code of Georgia.

- a) Legal prosecution of an entity for carrying out a criminal act and the criminal proceedings;

In this case the copy of the court decision that entered into force is not implied. Criminal case proceedings imply concrete issues that may be useful for law enforcement agencies during the investigation.

- b) Operative-investigation activities;
- c) The execution of the decisions made by the court that legally entered into force;

***For example:*** *The disclosure of information regarding the decision of the court before the execution of the said decision may jeopardize the execution of the decision, therefore the law limits the disclosure of information with this kind of content.*

- d) Decisions regarding military issues, also decisions regarding the issues of military discipline, if the information is not related to rights and liberties of the person guaranteed by the Constitution of Georgia;

***For example,*** *according to the first section of Article 100 of the Constitution of Georgia, “the decision regarding the use of armed forces is made by the President of Georgia and submits the decision to the Parliament for approval within 48 hours...” This is the constitutional right of the President of Georgia. Two months after the use of armed forces (after the war is over) if a person requests a copy of the decision, the entity responsible for the disclosure of this document is obliged to satisfy the request.*

- e) Appointment and dismissal of officials by the President of Georgia, as determined by the Constitution of Georgia, as well as the execution of authorities determined by the “a”, “d”, “e”, “g”, “h” and “n” subsections, as well as sections 2, 4 and 5 of Article 73 of the Constitution of Georgia;

Article 73 of the Constitution of Georgia:<sup>22</sup>

1. The President of Georgia:

- a) Signs international agreements and treaties negotiate with foreign states; appoint and dismiss ambassadors and other diplomatic representatives of Georgia by the consent of the Parliament; accredit ambassadors and other diplomatic representatives of foreign states and international organizations;
- d) Accept the resignation of the Government, a member of the Government and other officials as determined by law, shall be entitled to require the Government, a member of the Government to perform their official duties

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<sup>22</sup>Only sections 1 (“a”, “d”, “e”, “g”, “h”, and “n” subsections), 2, 4 and 5 of Article 73 are presented. At the same time, the associated change that will enter into force at the moment of the President’s inauguration as a result of the October 2013 elections was deliberately not presented here.



until the appointment of a new composition of the Government or a new member of the Government;

e) Gives the Government consent to submit the State Budget of Georgia to the Parliament;

g) Declare a martial law in the case of armed attack on Georgia, make peace when appropriate conditions exist and submit the decisions to the Parliament within 48 hours for approval;

h) In the case of war or mass disorder, infringement upon the territorial integrity of the country, military coup, armed insurrection, ecological disasters, epidemics or in other cases, when state bodies are unable to normally exercise their Constitutional powers, shall declare a state of emergency throughout the whole territory of the country or a certain part thereof and submit this decision to the Parliament within 48 hours for approval. In the case of a state of emergency issue the decrees having the force of law, which shall remain in force until the end of the state of emergency, shall take emergency measures. The decrees shall be submitted to the Parliament when it is assembled. Emergency authorities shall apply only to the territory where the state of emergency is declared for the reasons mentioned in the present paragraph.

n) Grant pardon to convicted persons.

2. The President shall schedule the date of elections of the Parliament and representative bodies in accordance with the procedure prescribed by law.

4. The President of Georgia shall be authorized to suspend or abrogate acts of the Government and the bodies of the executive power, if they are in contradiction with the Constitution of Georgia, international treaties and agreements, laws and the normative acts of the President. The President shall be the Higher Commander-in-Chief of the armed forces of Georgia. He/she shall appoint the members of the Council of National Security, appoint and dismiss the head of general staff of the armed forces of Georgia and other commanders; 5. The President shall be authorized to address the people and the Parliament. Once a year he/she shall submit a report to the Parliament on the most important state issues.

***For example:** the President of Georgia is preparing for a speech in the Parliament of Georgia. Until the speech is over, nobody has the right to request the text, which is a public document.*

f) Implementation of international treaties and agreements and foreign policy;

***For example:** Negotiations are being conducted between Georgia and one of the foreign states regarding the cancellation of the visa regime. Considering the fact that this information implies the protection of confidentiality, the disclosure of this information will be limited.*

**Part 5 of Article 3 of the General Administrative Code of Georgia** should be separately mentioned. According to it, Chapter III (freedom of information) of the General Administrative Code of Georgia

“does not apply to the activities of the bodies of the executive branch related to the legal proceedings in international arbitrage, foreign or international courts before a final decision is made or the state participation of Georgia in the proceedings. Before the final decision is made by the court, information is issued in agreement with international treaties and agreements and/or the procedures determined by the courts.

***For example:** a lawsuit has been filed in the European Court of Human Rights against Georgia, and a final decision by the court has not been made yet. A person cannot acquire information regarding the current legal proceedings related to this case.*

#### 4.7. Internal Documentation

One more type of information that can be classified is the so called **internal documentation** of the institution. Article 99 of the General Administrative Code of Georgia establishes the right to acquire the materials of administrative proceedings. According to the first part of the article, an interested party participating in the administrative proceedings has the right to acquire the materials related to the proceedings, **except the documentation directly related to the preparation of an individual administrative-legal act designated as internal documentation.**

***For example.*** A citizen needs concrete internal documentation related to the preparation of an individual administrative-legal act for the purpose of clarifying the legal aspect of his dismissal from a position in one of the public institutions. To acquire the documentation, the citizen has to appeal to the court and base the request on Part 2 of Article 99 of the General Administrative Code of Georgia - if the interest of disclosing the document is higher than the interest of preserving its secrecy, in cases prescribed by law, the interested party can be presented with the materials that contain personal data, state or commercial secrets, according to the decision of the court. In other cases the availability of the documentation (administrative proceedings materials) with similar content is limited by the legislation of Georgia.

### 5. Proactive Disclosure of Public Information

According to the amendments introduced to the General Administrative Code of Georgia in 2012, new terms like “proactive disclosure” and “electronic resources” were established in the legislation of Georgia.

## Article 27- Proactive Disclosure

**The publication of public information with a high degree of public interest on the the relevant electronic resource by the public institution, in agreement with the procedures established by the relevant administrative act under the law.**

It should be noted that the legislators specifically determined (Section 3 of Article 40) that proactive disclosure of public information **does not free** the public institution from the obligation to issue the same public information according to established guidelines in case it is requested. In other words, even if the public institution published any kind of public information on its official electronic resources (website), this action does not free it from the obligation to issue the same document in case of a written or electronic request by an interested party.

According to the amendment (Article 36), in public institutions, along with the person responsible for guaranteeing the availability of public information, **a civil servant responsible for proactive disclosure of information** should be also appointed.

According to Section 2 of Article 28 of the General Administrative Code of Georgia, “a public institution is obliged to guarantee the proactive disclosure of public information according to the rules and terms established by a relevant **normative act under the law**”. And, according to Article 218 of the General Administrative Code of Georgia, relevant bodies (officials) are obliged to guarantee the passing (issuance) of the normative acts under the law provided by the Code before 1 September 2013. The said means that all public institutions should have developed relevant acts under the law by 1 September 2013, according to which the standards and terms of proactive disclosure would be determined.

It should be noted that on 1 September 2013 the 26 August №219 Decree “about electronic requests and proactive disclosure of public information” of the Government of Georgia entered into force, which establishes the standard of proactive disclosure specifically for the **Government and the Ministries, also the public institutions subordinated to them** (LEPLs and other Sub Agencies).

At the same time, the following institutions approved their own normative acts regarding the approval of the guidelines for proactive disclosure of public information and electronic requests for public information:

- **Dusheti Municipal Council** - 12 June 2013 №23 Decree of the Municipal Council;
- **Georgian Central Election Commission** - 16 July 2013 №27 Decree;
- **The President of Georgia** - 2 September 2013 №692 Decree of the President;
- **LEPL Center of Electoral Systems Development, Reforms and Trainings** - 3 September 2013 №36/2013 Decree of the Georgian Central Election Commission;

- **Ministry of Economy and Sustainable Development of Georgia** - 9 September 2013 №1-1/245 Decree of the Minister of Economy and Sustainable Development (about the approval of the standards for electronic request for public information in the Ministry)
- **City Council of Tbilisi** - 17 September 2013 №14-45 Resolution of the City Council

According to the General Administrative Code of Georgia, **other administrative bodies should also pass (issue) similar normative acts under the law**: the Parliament of Georgia; Courts of Georgia; Governments and Supreme Councils of the Autonomous Republics of Adjara and Abkhazia; local self-governing units and self-governing cities; LEPLs that are not subordinated to the ministries of Georgia.

As week already noted, the decree of the Government of Georgia established the standard for proactive disclosure for the Government and Ministries, as well as public institutions subject to them. At the same time, the list of information to be published proactively, **approved by the decree of the Government**, was compiled in such a way as to maximally support the financial transparency of administrative bodies and the availability of other information important to the general public. However, in the conditions of a lack of a unified form, **the risks of implementing mixed practices of transparency and accountability should be necessarily minimized**. Therefore, it is important that the administrative bodies follow the list approved by the Decree of the Government.

Below we will introduce the main principles, on which the said Decree of the Government is based and which should be taken into account for the implementation of unified standards for proactive disclosure:

➤ **Proactive Disclosure of Public Information**

1. An administrative body must develop **a list of information to be disclosed proactively** that will be published on the relevant electronic resource (web-page) and approve it as an appendix.
2. Along with the information listed in the appendix, the administrative body is authorized to additionally proactively publish other information within the frameworks of its activities and competence that is of high public interest.
3. Public information published proactively is open and equally accessible to any entity. Establishing fees or any other kinds of restrictions on the acquisition of proactively published public information is unacceptable, except in specific cases as determined by law.
4. Proactive disclosure of public information does not free the administrative body from the obligation to issue the same or other public information according to the procedures determined by the General Administrative Code of Georgia.

➤ **Person (Persons) Responsible for the Availability of Public Information**

The administrative body should appoint a person (persons) responsible for the electronic issuance and proactive disclosure of public information.

➤ **Public Information Page**

An administrative body is obliged to guarantee the existence of a separate public information web-page on its electronic resource (website). Accordingly, the information determined by the list should be published in the public information section created on the website.

➤ **Terms of Proactive Disclosure**

The obligation of proactive disclosure of information applies to the information listed in the appendix that was created after 1 January 2013.

➤ **List of Information to be Published Proactively**

**1. General information about the administrative body**

- Structure and the description of functions
- Legal acts regulating activities (charter/guidelines, regulations)
- Annual report on activities
- Strategies, concepts and action plans
- Information about the directors, deputy directors, directors of structural and territorial units, Heads of sub-agencies and legal entities of public law: full names, photos, complete biographies
- Address, email accounts and telephone numbers of the administrative institute and its structural/territorial units, telephone number, email address, fax number, hotline of the Public Relations Office

**2. Public Information Page**

- Name, surname, position, email, work phone and fax numbers of the person (persons) responsible for availability of public information
- Legal acts related to the availability of public information
- Forms/samples of administrative complaints and information about the regulations on filing complaints

- The annual report presented to the President and Parliament of Georgia by the institution, as prescribed by article 49 of the General Administrative Code of Georgia
- General statistics on the applications as prescribed by Articles 37 and 40 of the General Administrative Code of Georgia

### **3. Information about the Human Resources of the Public Institution**

- A list of vacant positions in the public institution, competition procedure and results (list of candidates hired), guidelines and procedure for appeals
- Normative acts that define the guidelines for competitions in the administrative body
- The number of employees in the administrative body, broken down by categories, including from the perspective of gender

### **4. Information about State Procurements and Privatization of State Property**

- Annual plan of state procurements
- Information about the state procurements implemented within the frameworks of the annual plan for state procurements, with the indication of the supplier, object of procurement, means of procurement, price of the agreement and transferred funds
- Information about the privatization of state property
- Funds spent on advertisements

### **5. Information about Funding and Expenses**

- Information about the completion of the approved and adjusted budget (cumulative)
- Information about the quarterly amount of issued salaries, allowances and bonuses
- Information about the official and work visit expenses
- A list of vehicles owned by the institution, with the indication of the models of the said vehicles
- Information about fuel expenses
- Information about the expenses related to the maintenance of the vehicles
- A list of real estate owned by the institution

- Information about the telecommunication expenses related to the phone calls (international and local calls)
- Information about the financial aid (grants, credits) issued by the governments of foreign countries, international organizations, governments units of other levels
- Information about the issued grants, including the information about the recipient, of the grant, the purpose, amount of grant and transferred funds
- Information about the funds from the foundations prescribed by the Budget Code of Georgia
- Legal acts regarding the transfer of the funds to the administrative body from the foundations prescribed by the Budget Code of Georgia

## **6. Legal Acts**

- Normative acts directly related to the activities of the administrative body (to be published within 10 days of entry into force)
- Individual legal acts that, according to the evaluation of the administrative body, is of high interest to the general public

## **7. Other Public Information**

- Information about the services
- Information about those fees, tariffs and prices that are determined by and/or paid to the administrative body

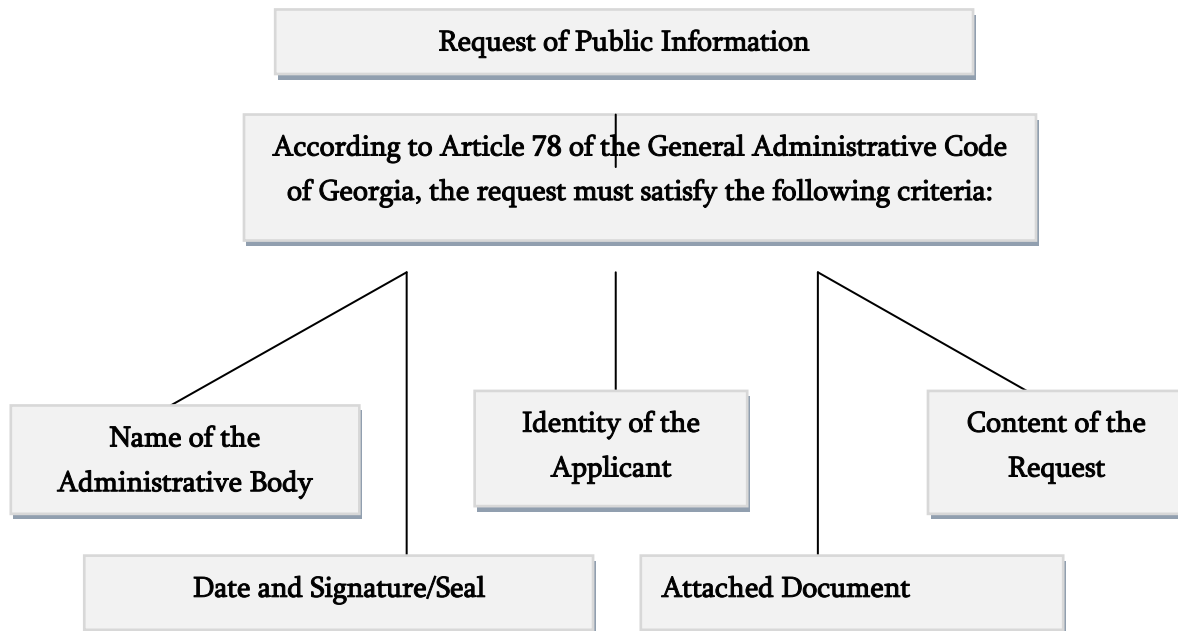
# **6. Requesting Public Information**

The requested of public information is obliged to present the request according to the authority bestowed by the legislation of Georgia.

## **6.1 Submission and Content of the Request**

„To acquire public information, a person must submit a written request“.<sup>23</sup>The legislation of Georgia does not define a specific type of written form. Despite this, to write the request correctly, it is necessary to follow the specific guidelines prescribed by the General Administrative Code of Georgia.<sup>24</sup>The request must be in written form and contain the following:

- a) The name of the administrative body that is being addressed;
- b) Identity and address of the person requesting the information;
- c) The request;
- d) The date of the submission of the request and the signature of the person requesting the information;
- e) A list of documents attached to the request, in case of their existence.



The content of the request does not define the eligibility of submitting the request. It influences the perspective of the request being satisfied. Any legal entity and individual has the right to request **any kind** of public information.

***For example,** the list of the state numbers of the vehicles related to operative-investigation activities is classified and public institutions are prohibited by law from disclosing this information. This does not*

<sup>23</sup>Part 2 of Article 37 of the General Administrative Code of Georgia

<sup>24</sup>See Part 1 of Article 78 of the General Administrative Code of Georgia – Content of the Request



*exclude the right of interested citizens to request the said information.* In this case, the public institutions itself will have the obligation to limit the availability of information, if the request is about official documents that contain personal data or state or commercial secrets.

In 2012 Article 35<sup>1</sup> was added to the General Administrative Code of Georgia, according to which the administrative bodies were given the authority to receive and issue any information and/or document via the unified automatic means if the interested person did not choose another form for receiving information. The administrative bodies were given the possibility to store and issue the documents created or stored within the institutions as an electronic copy. The electronic copy and its imprint were given the same legal power as the original.

Part 3 of Article 37 of the General Administrative Code of Georgia that entered into force on 1 September 2013 is closely related to the above-mentioned article. According to this amendment, public information can be requested electronically, by using the electronic resources of the public institution. At the same time, the standard of requesting public information electronically needs to be approved by the relevant normative acts under the law. The said amendment, similar to the obligation to determine the list of information to be published proactively through a normative act under the law, creates the likelihood of establishing dissimilar standards for requesting public information. Therefore, it is important for the administrative bodies in this case to follow the guidelines established by the Decree of the Government. Below we list the general principles, on which the guidelines of the Government for requesting information electronically were based:

1. It should be possible to request public information electronically, by using the electronic resource (website).
2. The administrative body is obliged to guarantee the registration of public information (requests for public information sent electronically should be registered) and the existence of an automatic confirmation system of the registration (the author of the request should automatically receive the registration number of his/her request).
3. According to Part 1 of Article 40 of the General Administrative Code of Georgia, the countdown shall commence from the day following the confirmation of the electronic request for information by the administrative body, with the indication of the registration number of the request for information.
4. The requirements of the General Administrative Code of Georgia apply to electronic issuance of public information.

## **6.2 Freedom to Choose the Form of Information**

*The person requesting the public information can choose the form in which the said public information will be issued.*<sup>25</sup>Public information can be of different types: written, on magnetic filmstrips, video, etc.<sup>26</sup>

The form in which public information will be issued should not be selected by the public institution. However, this is a frequent occurrence stemming from the existing practices.<sup>27</sup>

### 6.3 The Purpose of Receiving Public Information

*The person requesting public information is not obliged to point out the motive and purpose for requesting the said public information in the request.*<sup>28</sup>Requesting public information can be done for various purposes.

*For example, for a scientific study, statistics, conducting a journalistic investigation or simply for satisfying one's curiosity. For the legal proceedings the obligation of the public institution to issue public information is important, not the basis for expressed desire, regardless of the motive of the request.*

## 7. Release of Public Information

Issuing public information is one of the main elements of freedom of information. One of the primary purposes of the legal norms governing freedom of information is to make the public institutions obliged to issue relevant documentation.<sup>29</sup>

### 7.1 Timeframe

According to Article 40 of the General Administrative Code of Georgia, **public information should be issues either immediately or no later than 10 days after the request was received.**<sup>30</sup>

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<sup>25</sup>Tskepladze N., Turava P., Manual of Administrative Law, Tbilisi, 2005, 115.

<sup>26</sup>See Tskepladze N., Adeishvili Z., Frost A., Ramishvili L., Kitoshvili D., Tughushi L., Tsotsoria N., Tetsadze G., Kopaleishvili M., Freedom of Information, Guide, Third Edition, 2005, 35.

<sup>27</sup>See, for instance, the public information issued by the Ministry of Education and Science of Georgia - <http://www.opendata.ge/#!lang/ge/cat/news/topic/424> - with this reply the Ministry violated the right to choose the form of public information.

<sup>28</sup>Adeishvili Z., Turava P., Izoria L., Vardiasvhili K., Kalandadze N., Kopaleishvili M., Skhirtladze N., Kitoshvili D., Guide to the General Administrative Code, Tbilisi, 2005, 266.

<sup>29</sup>Adeishvili Z., Turava P., Izoria L., Vardiasvhili K., Kalandadze N., Kopaleishvili M., Skhirtladze N., Kitoshvili D., Guide to the General Administrative Code, Tbilisi, 2005, 266.

<sup>30</sup>Article 40 of the General Administrative Code of Georgia - Article 40. Release of Public Information:

***For example,** a person sent a letter on 10 November 2014 to a public institution via mail and requested public information. The said request was registered at the public institution on 14 November. On 15 November the public institution sent a reply that was submitted to the requester on 18 November. In this case, everything was in compliance with the official guidelines.*

When we talk about the term – immediate issuance of public information, we should, first of all, determine what terms are implied in this case. Considering the fact that the law does not define the concept of immediate issuance, a reasonable timeframe should be considered for this period. At the same time, we think that one should agree with the opinion, according to which immediate issuance implies issuing the information on the same or no later than the day after the request was registered.<sup>31</sup>

Cases when the public institution needs 10 days to issue the public information are frequent. According to the law, the public institution is obliged to immediately notify the person who requested the public information about the above.

Requesting the 10 day period is possible only in specific cases prescribed by law. Specifically, if:

- To issue the public information, it is first needed to acquire and process information from its structural sub-units in another settlement or from another public institution;

***For example,** a request was sent to the Ministry of Internal Affairs of Georgia, in which the person asked for the information about one of its structural sub-units in western Georgia. Considering the fact that issuing this information implies gathering and processing it from the said sub-unit, the Ministry is obliged to immediately notify the requester about the necessity to use the 10 day period.*

- Finding and processing unrelated single documents of significant volume;

***For example,** LEPL–National Statistics Office received a request, by which the person requested the description of statistical data of the information regarding concrete facts across Georgia. If the institution has not processed this information beforehand, it can use the 10 day period and notify the requester about this.*

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“A public agency shall release public information immediately, or not later than ten days if responding to a request for public information requires:

- (a) acquisition of information from its subdivision that operates in another area, or from another public agency, or processing of such information,
- (b) acquisition and processing of separate and large documents that are not interrelated, or
- (c) consultation with its subdivision that operates in another area, or with another public agency.

2. If release of public information requires the period of 10 days, the public agency shall immediately inform the applicant thereof upon his request.”

<sup>31</sup>See Tskepladze N., Adeishvili Z., Frost A., Ramishvili L., Kitoshvili D., Tughushi L., Tsotsoria N., Tetsadze G., Kopaleishvili M., *Freedom of Information, Guide, Third Edition, 2005, 38.*

- Consultation with one of its structural sub-units in another settlement or with another public institution.

*For example, a person addressed LEPL Civil Registry Agency and requested the total number of married couples in the region of Guria in 2013. Considering the fact that issuing this information entailed verifying it with the relevant structural sub-unit from the region, the institution could request the 10 day period for issuing the said information.*

**What is the difference between creating and processing public information? Does the creation of public information by itself imply the processing of public information?** Answering these questions is of utmost importance for any person wishing to acquire public information from public institutions.

*For example, a public institution requested the 10 day period to issue the public information because the data is not stored as a single document and needs processing. The results of processing the data will be the creation of a new document, which will be comprised of the processed data. The question is, is the document created as a result of processing data public information?*

According to the “b” sub-section of Article 40 of the General Administrative Code of Georgia, a public institution can also request the 10 day period in the case when ***it is necessary to find and process unrelated separate documents of a significant volume*** to satisfy the request for public information. As we can see, finding and processing documents are clearly separated in this case. We think that processing documents implies precisely processing the data contained within, and not simply gathering this data or binding the documents together. In other words, the public institution has the obligation of utmost importance regulated by law to create a new document when a request for public information is received. Otherwise, the freedom of information chapter of the General Administrative Code of Georgia loses its significance and the obligation of the public institutions becomes merely mechanical copying.

## 7.2 Denying access to public information

***Issuing public information is unacceptable, if it contains secret data.*** However, the refusal to issue public information should be necessarily justified. Otherwise, the reply will be void of legal justification. A public institution is obliged to uphold the specific time period determined by the legislation of Georgia in case of refusal to issue public information.

According to Article 41 of the General Administrative Code of Georgia, ***the requester should be notified about the refusal to issue public information immediately.***<sup>32</sup>The legislators by the worked

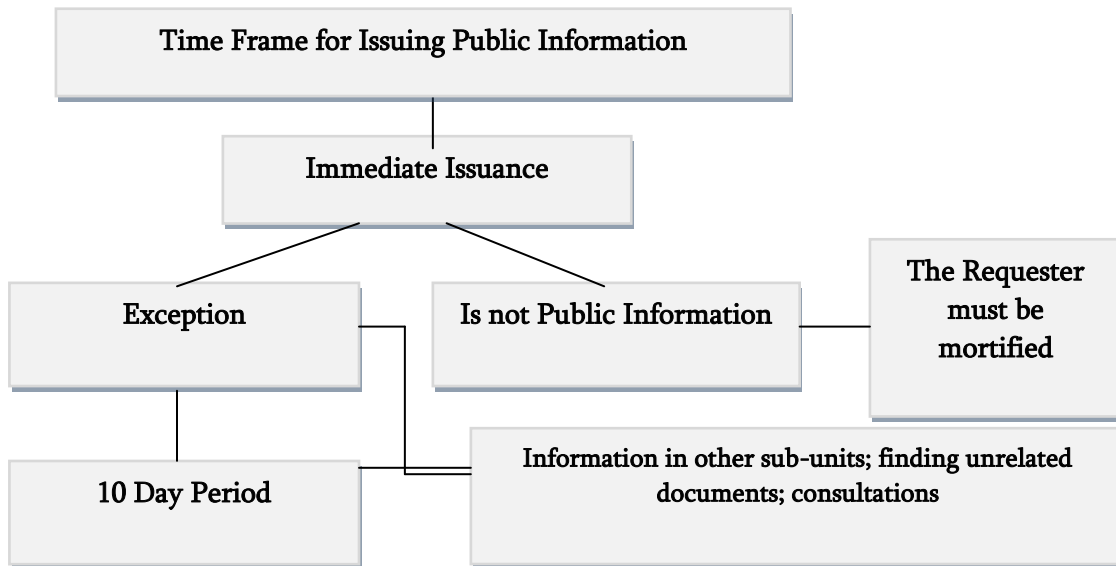
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<sup>32</sup>Article 41 of the General Administrative Code of Georgia–Refusal to Issue Public Information

1. The requester must be notified of refusal of the public institution to issue public information immediately.
2. In case of refusal to issue public information, the public institution must explain to the person in written form his rights and procedure for appeal within 3 days, as well as indicate the structural sub-unit or public institution that participated in the consultation regarding the decision to refuse issuing the public information.

“immediately” mean a reasonable timeframe that must not exceed three business days. This assumption is based on the clause from the second part of the same Article, according to which the public institution must explain the rights and procedure for appeal to the requester within three days after the refusal to issue public information.

*For example, if a person requested public information that contains a state secret from the public institution. Based on the above, the administrative body is required to refuse the request. Apart from thus, the administrative body must explain to the person what opportunities for appealing against this decision exist in this case.*



The legislation of Georgia defines the types of information that cannot be published. At the same time, the legislation of Georgia determined the data of the category that cannot be made secret and that must be issued to any person requesting public information.

Specifically, the public institution does not have the right to make the information secret, if it is related to the following data:<sup>33</sup>

**(a) Information about the environment, also data about the hazards that might threaten the life or health of an individual**

*For example, a person requested information from the Ministry of Environmental Protection regarding the predicted meteorological conditions on the Gudauri-Kobi section. The public institutions are obliged to immediately issue this information. The person that requested the information may choose not to indicate the reason for wanting this information. In this case one should consider that making this type of information secret may pose a threat to the lives of people.*

**(b) Main principles and directions of the public institution**

<sup>33</sup>Article 42 of the General Administrative Code of Georgia.

***For example,** a person requested the document that reflects the main directions and principles of the activities of the Ministry of Defense of Georgia. The public institution is required to immediately issue this information.*

**(c) Description of the structure of the public institution, the guidelines for defining and distributing the functions of the civil servants, as well as for making decisions**

***For example,** a person requested the regulations of the LEPL National Center for Educational Quality Enhancement. The public institution is required to issue the said information.*

**(d) The identities and work addresses of those civil servants, who occupy positions or whose responsibilities include making information secret or communicating with the general public and issuing information to citizens**

***For example,** data about the person responsible for issuing public information or the Minister, their office coordinates.*

**(e) Results of the open vote held in collegiate public institutions for making decisions**

***For example,** Information about the decision made as a result of a vote on a specific issue (that does not imply secret data) in a public institution.*

**(f) All information related to a person elected to an official position**

***For example,** expenses and list of activities of the election staff of the mayor of Tbilisi.*

**(g) Results of the audit reports and revisions about the activities of the public institution, also materials related to the cases in courts, in which the said public institution is one of the sides**

***For example,** if the public institution is one of the official sides in a concrete administrative case, any relevant information about the details of the case (the data about the claimant will be shaded) is required to be issued to an interested person upon request.*

**(h) Name and location of the public information database in the public institution, as well as the identity and office address of the person responsible for the public information database**

***For example,** information about the identity of the person responsible for the public registry in the public institution.*

**(i) Purposes of collections, processing, storing and spreading data by the public institution, areas of use and legal justification**

***For example,** report on the release of public information that reflects the public information issued by a concrete administrative body.*

**(j) Existence or lack of his personal data in the database of the public institution, also the procedures for getting access to the said data, including the procedure, by which the person will be identified if the person (or his representative) submitted a request to access data about himself or to make changes in the said data**

***For example,** a person requested that changes be made to certain information related to him stored in the public institution. He wants to know about the results of the request, and the public institution is obliged to issue said information.*

**(k) Category of the persons who have the right to access the personal data stored in the public information database under the law**

***For example,** positions of the persons that can access the personal data entered into the public registry.*

**(l) Content and sources of the data in the public information database and the category of the persons, about him information is gathered, processed and stored**

***For example,** a circle of individuals, about whom a specific public institution is gathering information. This information might contain a secret, but naming the category of the said persons does not hinder its publication.*

**(m) Information about public officials**

***For example,** information about the official visit expenses of the Chairman of the Parliament of Georgia.*

**(n) All other kinds of information that, in the cases prescribed by law and according to the official guidelines, is not considered state, commercial or personal secret**

Administrative bodies are required to immediately upon request issue any information that does not contain secret data.

### **7.3 Fee for Copying Public Information**

The availability of public information implies the availability of the copies of public information. Setting any kind of fee on the acquisition of public information is unacceptable, except for the fee determined by the law of Georgia “about the fee for copying public information”. The fee for copying

public information is a mandatory payment to the budget of Georgia, paid to the relevant body by the person interested in acquiring public information for making a copy of the said information.

### **What does making a copy of public information imply?**

Making a copy of public information means precisely copying (video or audio recording) information from the original to the carrier of information (paper compact disc, floppy disk, audio- or videotape) through the use of technical means and without administrative proceedings.

### **What is the fee for making a copy of public information?**

The law of Georgia “about the fee for making a copy of public information” determined the amount to be paid for making copies of public information. The fee is:

- a) Copy of the A4 and A5 format paper – one page – 0,05 GEL;
- b) Printing with a laser printer – one page – 0,10 GEL;
- c) Recording information on a compact disc – 1 disc – 2,65 GEL;
- d) Recording information on a floppy disk – 1 floppy disk – 1,3 GEL;
- e) Recoding information on the videotape of the requester– 1 hour – 2,75 GEL;
- f) Recoding information on the audiotape of the requester– 1 hour – 0,50 GEL;

The law of Georgia “about the fee for making a copy of public information” also provides the basis for exception from paying the fee for making copies:

- a) Recording the information to the floppy disk or the compact disk of the requester of information;
- b) Sending the public information via email;
- c) Copying personal data related to specific individuals stored in the public institution.

### **What is the procedure for paying the fee for making copies of public information?**

The law of Georgia “about the fee for making a copy of public information” establishes the procedure for paying the fee, according to which the fee for the copy of public information must be paid at the cash register of the public institution and/or in a banking institution, by cash or not, **following the procedure established by the public institution**. At the same time, the public institution is authorized to determine the minimal amount of public information to be issues without the payment of the fee during the year.



The copy of the requested public information is issued after the interested person presents a receipt confirming the payment of the fee.

## **8. Guaranteeing the Availability of Information**

### **8.1. Presentation of the Report on the Release of Public Information by the Public Institution**

Based on Article 49 of the General Administrative Code of Georgia, public institutions have the obligation to present a report on the release of public information to the President of Georgia and the Parliament of Georgia – how much information was issued over the year to the requesters, how many persons were refused, etc. Specifically, the report is to be presented on 10<sup>th</sup> December annually, and the following data should be reflected in the report:

- a) About the number of requests submitted to the public institution for public information and changes made to public information and the number of the decisions to refuse the request;
- b) The number of decisions to satisfy or refuse the request, the identity of the public institution that made the decisions, also about the decisions of collegiate public institutions to make their sessions closed;
- c) About the processing, storage and transfer of public information databases and personal information by the public institutions;
- d) About the number of violations of this code by civil servants and the disciplinary sanctions against the responsible persons;
- e) About the legislative acts, based on which the public institution made the decision to refuse a request for public information or a collegiate public institution decided to make a meeting closed;
- f) About the appeals against the refusals to issue public information.

### **8.2. Public Registry**

Article 35 of the General Administrative Code of Georgia–Public Registry

A public institution is obliged to enter the public information existing in this institution in the public registry. Note regarding the public information should be entered within 2 days of its receipt, creation, processing or publishing, with the indication of the name, date of receipt, creation,

processing, publishing of the public information, and the indication of the name of the individual or legal entity, civil servant, public institution, from which the request was received and/or to which they said information was sent.

Any type of information stored in a public institution is recorded in the public registry that is, as a rule, run by the chancellery.<sup>34</sup>Its purpose is processing-storing public information.<sup>35</sup>Public registry can be of different types in a public institution.

*For example, a separate journal may be kept for recording financial documentations, or for recording received and sent letters, etc.*

It is clear from existing practices that often the administrative bodies do not understand the concept of public registries.<sup>36</sup>One part considers the public registry to be reports on the release of public information,<sup>37</sup>while another part does not run a public registry at all.<sup>38</sup>

What kind of data should be entered into the public registry? Existing court practice answers this question in the following manner: *“in its database, registry, the administrative body has a right to collect (process) only the data that is necessary for the implementation of its functions prescribed by the relevant normative act, or only when this kind of processing of information is directly considered by the normative act”*<sup>39</sup>—based on this article, the Court considers the information that has not been entered into the public registry so called unprocessed information.<sup>40</sup>

### 8.3. The Person Responsible for Releasing of Public Information

Based on Article 36 of the Administrative Code of Georgia, *a public institution is obliged to appoint a civil servant to the position of a person responsible for releasing public information, whose direct responsibility will be to properly react to the issues related to public information.* At the same time, the contact information of this person should be available to all citizens.<sup>41</sup>The civil servant may combine this position with another one – this is regulated internally by the public institution itself.

<sup>34</sup>See Tskepladze N., Adeishvili Z., Frost A., Ramishvili L., Kitoshvili D., Tughushi L., Tsotsoria N., Tetsadze G., Kopaleishvili M., *Freedom of Information, Guide, Third Edition, 2005, 32.*

<sup>35</sup>Tsatsanashvili M., *Informative Law, Tb., 2004, 65.*

<sup>36</sup>See, for instance, the reply sent from the Office of the Governor of Guria: <http://www.opendata.ge/en#!lang/en/cat/news/topic/470>

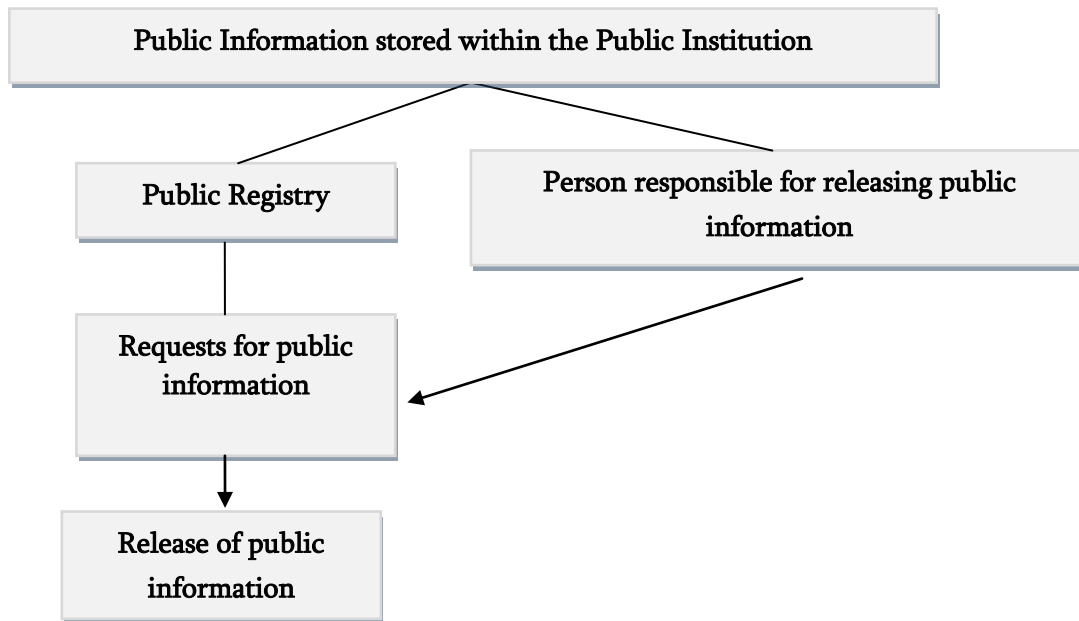
<sup>37</sup>See, for instance, the reply of the Unified National Body of Accreditation – Accreditation Center, which, instead of the public registry, issued the information about the release of public information - [http://www.opendata.ge/en#!lang/en/cat/text\\_info/id/2597](http://www.opendata.ge/en#!lang/en/cat/text_info/id/2597)

<sup>38</sup>See <http://www.opendata.ge/en#!lang/en/cat/news/topic/451>

<sup>39</sup>Article 10 of the Law of Georgia “about the unified national registry of information”

<sup>40</sup> 2011 წლის 31 October 2011 N3/3646-22 decision of the Tbilisi City Court.

<sup>41</sup>See Tskepladze N., Adeishvili Z., Frost A., Ramishvili L., Kitoshvili D., Tughushi L., Tsotsoria N., Tetsadze G., Kopaleishvili M., *Freedom of Information, Guide, Third Edition, 2005, 34.*



## 9. Compensation for Damage

### 9.1 Compensation for Material and Non-Material Damage<sup>42</sup>

Any person who did not receive public information has the right to request compensation for damage. The legislation of Georgia recognizes several types of this kind of possibility. Specifically, it is possible to raise the issue of compensation for damage in the following cases:

a) **Refusal to issue public information, making the session in a collegiate public institution partially or fully closed, also when public information is made secret;**

***For example,** a person requests the public information about budget spending. The public institution classifies this information and considers it to contain state secrets. If the person thinks that, by being denied access to this information, his rights as a Georgian citizen have been violated, he can request a compensation for the damage.*

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<sup>42</sup>Article 47 of the General Administrative Code of Georgia.

b) **Creation and processing of inaccurate information;**

***For example,** inaccurate information regarding a person was entered into the public registry, as a result the person received non-material damage, his honor or business reputation was tarnished. He has a right to submit a specific request for compensation for damage.*

c) **Unlawfully collecting, processing, storing or spreading personal data, also, transferring the said data unlawfully to other persons or public institutions;**

***For example,** the public institution has a dining hall. The persons working in this dining hall are employees hired as a result of an agreement and to whom Article 44 of the General Administrative Code of Georgia does not apply. If the public institution disclosed personal data of these employees without their approval, then the rule of the secrecy of personal data was violated. In this case, if the person thinks that he was harmed by this, he has the right to request compensation.*

d) **Violation of other requirements of Chapter 3 of the General Administrative Code of Georgia by a public institution or civil servants;**

***For example,** the person wishes to acquire concrete public information. The public institution, however, neglects the obligation established by law and issues the information three months late. If the person thinks that, by being late, the institution violated his rights, he is authorized to request compensation.*

It should also be noted that in each of the above examples **the burden of proof regarding the compensation of damage will be on the public institution.**<sup>43</sup>

## 9.2 Compensation of Harm Caused while performing official duties and the Responsibility of the Government

*According to Article 207 of the General Administrative Code of Georgia, if the issue of compensation for specific damage is not defined in this Code, then the specific legal relations are regulated according to the established norms of the Civil Code of Georgia.*<sup>44</sup>The mentioned norm should not be perceived as a possibility for any person to use the norms established by the Civil Code of Georgia in case of refusal to issue public information.

There are material and nonmaterial types of damage.<sup>45</sup> ***As an example** of the case of material damage caused by the refusal to issue public information, we can take the case when the public institution did*

<sup>43</sup>Part 2 of Article 47 of the General Administrative Code of Georgia.

<sup>44</sup>See, for instance, 18<sup>th</sup> April 2006 N-1147-1394-0 resolution of the Supreme Court of Georgia.

<sup>45</sup>Adeishvili Z., Turava P., Izoria L., Vardiasvhili K., Kalandadze N., Kopaleishvili M., Skhirtladze N., Kitoshvili D., Guide to the General Administrative Code, Tbilisi, 2005, 327.

*not provide a person with information about worsening weather. As a result, the person was not able to escape from the natural disaster and save his property. He can request a compensation for material damage, but the request must be based on the norms regulated by administrative law.*

We can discuss ***another example***: *a person received nonmaterial damage because of refusal to release public information. The person thinks that his dignity was violated. He should make a request within the frameworks of the norms of administrative law. Specifically, based on Article 47 of the General ode.<sup>46</sup>Nonmaterial damage can be expressed in the infringement of the dignity or business reputation. Damage can also be done by the person employed in this public institution, and in this case the responsibility is of the public institution the employee of which is the person responsible for issuing public information. The said situation is regulated by Article 208 of the General Administrative Code of Georgia,<sup>47</sup>according to which, on case of the damage caused by a civil servant while executing his authority, the responsibility belongs to the administrative body where this person is employed.*

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<sup>46</sup>Article 18 of the Civil Code of Georgia –PersonalNon-PropertyRights

*1. A person whose right to a name is contested, or whose interests are impaired through unauthorized use of his name, shall be entitled to demand that the wrongdoer cease or refrain from such action.*

*2. A person is entitled to demand in court the retraction of information that defames his honor, dignity, privacy, personal inviolability or business reputation. (24.06.2004 N 222)*

*3. If information defaming the honor, dignity, business reputation or private life of a person has been disseminated in the mass media, then it must be retracted in the same media. If such information is contained in a document issued by an organization, then this document must be corrected and the concerned parties must be informed of the correction.*

*4. A person whose honor and dignity has been defamed by information disseminated in the mass-media shall be entitled to disseminate information in answer to the defamation through the same media of information.*

*5. A person may likewise exercise the rights described in paragraphs (1) and (2) of this Article when his image (photograph, film, video etc.) has been disseminated without his consent. The consent of the person is not required when photo-taking (video recording etc.) is in connection with his public notoriety, the office he holds, the requirements of justice or law enforcement, scientific, educational or cultural purposes, or when the photo-taking (video recording etc.) has occurred in public circumstances, or when the person has received remuneration for posing.*

*6. The protection of the good [i.e. human values such as honor, dignity and privacy] referred to in this article shall be exercised regardless of the culpability of the wrongdoer. And if the violation has been caused by culpable action, a person may claim damages (compensation for harm). Damages may be claimed in the form of the profit that accrued to the wrongdoer. In the case of culpable violation, the injured person may also claim compensation for non-property (moral) damage. Moral damages may be recovered independently from the recovery of property damages.*

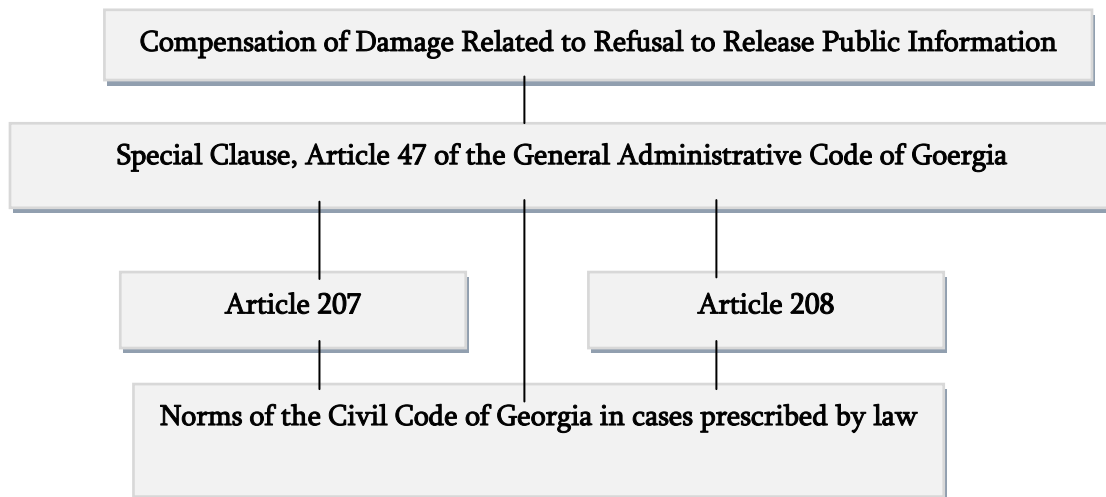
<sup>47</sup>Article 208 of the Administrative Code of Georgia - The special procedures for the liability of a state or local self-government(government) agency:

*1. The State shall bear liability for the damage inflicted by a state administrative agency, its official, or other public servant in the course of the execution of official duties.*

*2. A local self-government (government) agency shall bear liability for the damage inflicted by it, its official, or other employee in the course of the execution of official duties.*

*3. If a person performs any activity upon the delegation of power or assignment by a state or local self-government (government) agency, the liability for the damage inflicted in the course of such activity shall be imposed upon those agencies.*

*For example, the person responsible for ensuring the availability of public information in the Ministry of Agriculture did not issue public information within the time period allocated by the legislation of Georgia. In this case the requester of public information should file a request not about the actions of the concrete employee (material compensation or otherwise), but a request for compensation by the public institution.<sup>48</sup> Regarding the compensation of damage, in this specific case, the reason for this result and the kinds of unlawful activities by the public institution should be indicated.<sup>49</sup>*



## 10. Legal Means of Protecting the Right

In case of the restriction of the availability of public information, the only means to receive the said information is the right to file a complaint guaranteed by the legislation of Georgia. The right of submitting a complaint is divided into two parts by the legislation: *an administrative complaint and submitting a lawsuit in the court.*

### 10.1 Administrative Complaint

“i” subsection of Part 1 of Article 2 of the General Administrative Code of Georgia – Administrative Complaint

Submitting a written request with the purpose of restoring violated rights according to the guidelines established by this Code in the authorized administrative body by an interested person. The request pursues the goal of declaring an administrative-legal act issued in the same or subordinate body void, changing it or the issuance of a new administrative-legal

<sup>48</sup>Implied here is the submission of a lawsuit to the court, not an administrative complaint that can be submitted to a superior official. See, for instance, 17 July 2008 N8b-411-395(3-08) verdict of the Supreme Court of Georgia.

<sup>49</sup>15 February 2012 N38/2198-11 verdict of the Court of Appeals of Tbilisi.

act or the implementation or restriction of any kind of activities by the administrative body that do not imply issuing an individual administrative-legal act;

An administrative complaint is a kind of precondition for submitting a lawsuit in the court.<sup>50</sup>The time frame to submit a complaint is one month.<sup>51</sup>An administrative complaint is filed by the person in case if he considers his rights violated. The administrative complaint is considered according to simple administrative proceedings, with the use of some provisions of formal proceedings.<sup>52</sup>

An administrative complaint does not have a form determined by law. The legislation determined only the requisites that it must contain.<sup>53</sup>

### 10.1.1 Submitting an Administrative Complaint

An administrative complaint should be submitted by an authorized person, who can be:

- An individual whose rights have been violated;
- Representative of a legal entity;
- Representative of a public institution, if the institution considers its rights to have been violated;
- Representative of an individual based on the relevant document confirming the authority.

An administrative complaint can be filed In two cases: a) if there is a superior official in the administrative body that issues the administrative act and b) if there is a superior administrative body to which the body that issues the administrative act is subject to (if the act was issued by the head official).

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<sup>50</sup>*Kharshiladze I.*, Administrative complaint as a prerequisite for submitting a lawsuit, magazine “Magazine of Law” N1 2011, 182.

<sup>51</sup>Article 180 of the General Administrative Code of Georgia.

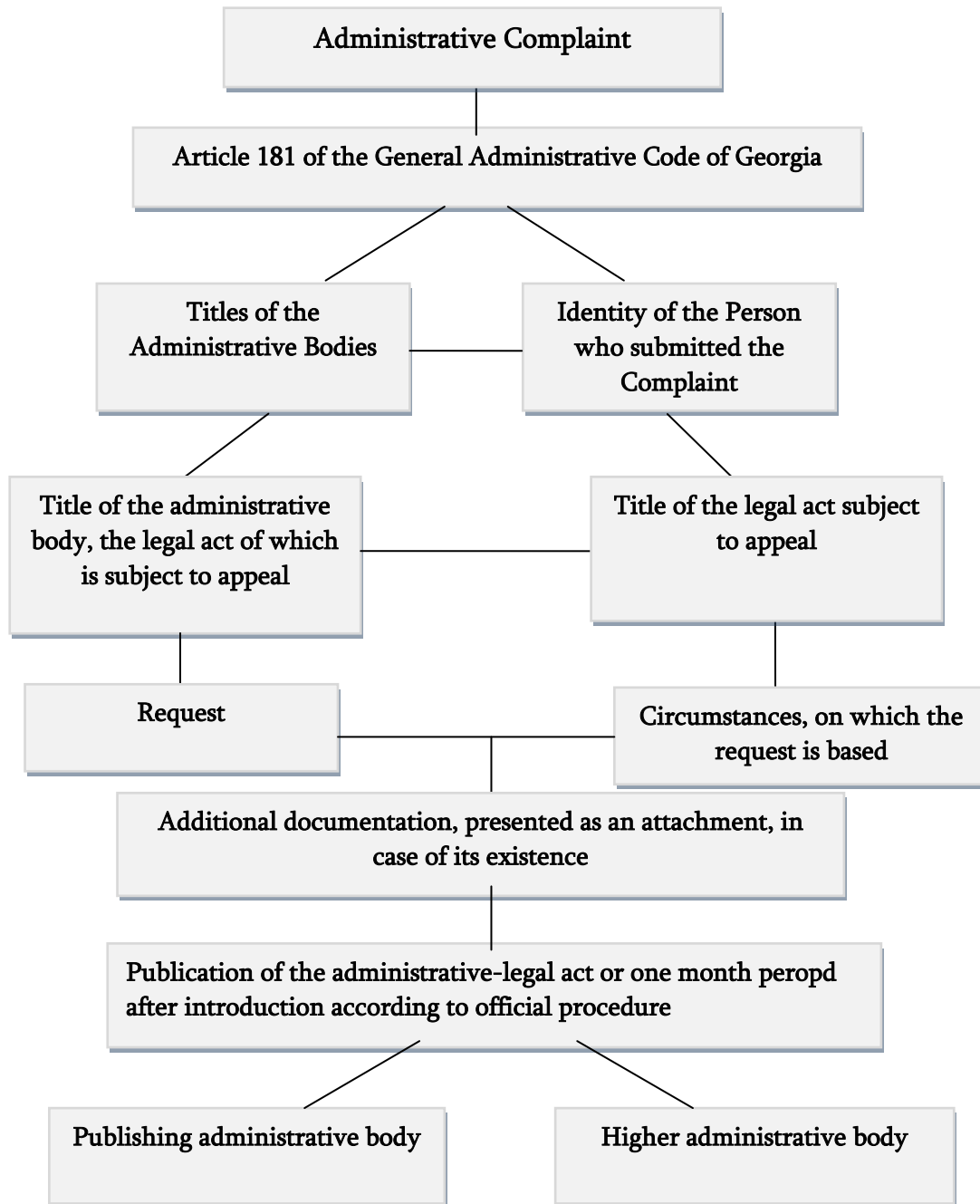
<sup>52</sup>*Adeishvili Z., Turava P., Izoria L., Vardiasvhili K., Kalandadze N., Kopaleishvili M., Skhirtladze N., Kitoshvili D.*, *Guide to the General Administrative Code, Tbilisi, 2005, 314.*

<sup>53</sup>Article 181 of the General Administrative Code of Georgia - The content of an administrative complaint

1. An administrative complaint shall include the following information:

- a) The title of the administrative agency where the complaint is filed;
- b) The identity and address of the complainant;
- c) The title of the administrative agency whose administrative decree or action is subject to complaint;
- d) The title of the administrative decree subject to complaint;
- e) Claim;
- f) The grounds for the claim;
- g) The list of attached documents, if any.

2. If the complainant was provided with the respective administrative decree, a copy of the decree shall be attached to the administrative complaint



### 10.1.2 Sending the Statement (Administrative Complaint) to the Relevant Administrative Body

Nobody is insured from making a mistake or, for example, indicating the wrong recipient. In this regard, the legislation of Georgia makes the bureaucratic procedures simpler for every individual, when the public institution gives him the responsibility to send a statement to the recipient.



***For example:** a person submitted an administrative complaint to the Ministry of Internal Affairs instead of the Ministry of Environmental Protection by mistake. According to the General Administrative Code of Georgia, in case of the submission of an administrative complaint to unauthorized administrative body, the public institution is required to forward the statement (administrative complaint) to the authorized administrative body.<sup>54</sup>*

### 10.1.3 Abandonment of an Administrative Complaint<sup>55</sup>

The person who submitted the administrative complaint has the right to abandon the complaint. The person is not required to provide an explanation for the abandonment.

## 10.2 Lawsuit in the Court

Addressing the court is a right guaranteed by the Constitution of Georgia.<sup>56</sup>To use the said right, the person needs to know what is the category of the dispute: administrative, civil or criminal. The relevant request must be submitted based on the above.

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<sup>54</sup>According to Article 185 of the General Administrative Code of Georgia, unless otherwise prescribed by the Chapter 13, the provisions under Chapter 6 of this Code apply to the administrative proceeding related to an administrative complaint, while Article 80 of Chapter VI says the following- Referring an application to an applicable administrative body. See:

1. If the issuance of the administrative decree stipulated in the application falls within the jurisdiction of another administrative agency, an administrative agency shall refer the application and all attached documents to the applicable administrative agency within five days.
2. Unless otherwise prescribed by law, referring an application to the applicable state agency shall not be accompanied by the expression of any opinion regarding the matters set forth in the application.
3. The applicant shall be informed in writing about the reference of the application and attached documents to the applicable administrative agency with an appropriate justification within two days.
4. If the matter set forth in the application falls within the jurisdiction of a court, or if the applicable administrative agency cannot be determined, the administrative agency shall return the application with an appropriate justification to the applicant within five days after its submission.
5. The statutory term for submitting an application may not elapse even if a person filed an application in an inapplicable administrative agency.

<sup>55</sup>Article 191 of the General Administrative Code - The abandonment of an administrative complaint:

1. The person who filed an administrative complaint may abandon the complaint before the administrative agency renders a decision.
2. The abandonment of an administrative complaint shall be announced in writing. During an oral hearing an interested party may abandon a complaint orally as well.
3. The abandonment of an administrative complaint may not suspend its review if the suspension may undermine state or public interests or inflict substantial harm.

<sup>56</sup>Article 42 of the Constitution of Georgia:

## 10.2.1 Lawsuit Regarding Taking Action

Article 24 of the Administrative Procedure Code of Georgia–Lawsuit Regarding Taking Action:

1. A lawsuit can be initiated with the request for taking specific action or for refraining from taking actions that do not imply the issuance of an administrative-legal act.
2. A lawsuit is possible if the implementation of activities or refraining from taking action by the administrative body violates the lawful rights or interests of the appellant directly and individually.

When a person submits a lawsuit to the court, he must identify all of his demands fully. Specifically, he must point out the factual circumstances and legal basis that enable him to think that his rights were violated. For the lawsuit regarding the actions of an administrative body to be allowed, the appellant must necessarily be harmed directly and individually.<sup>57</sup>

*For example, the person did not receive public information within the time period prescribed by law and he submitted an administrative complaint, to which the administrative body still has not reacted. If he submits a lawsuit to the court, he must explain the manner in which his rights were violated.*

According to Article 24 of the General Administrative Code of Georgia, an administrative complaint is permissible if the request of the appellant does not imply issuance of an individual administrative-legal act by the administrative body.<sup>58</sup>

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1. Everyone has the right to apply to a court for the protection of his/her rights and freedoms.
  2. Everyone shall be tried only by a court under jurisdiction of which his/her case is.
  3. The right to defence shall be guaranteed.
  4. No one shall be convicted twice for the same crime.
  5. No one shall be held responsible on account of an action, which did not constitute a criminal offence at the time it was committed. The law that neither mitigate nor abrogate responsibility shall have noretroactive force.
  6. The accused shall have the right to request summoning and interrogation of his/her witnesses under the same conditions as witnesses of the prosecution.
  7. Evidence obtained in contravention of law shall have no legal force.
  8. No one shall be obliged to testify against himself/herself or those relatives whose circle shall be determined by law
  9. Everyone having sustained illegally a damage by the state, self-government bodies and officials shall be guaranteed to receive complete compensation from state funds through the court proceedings.

<sup>57</sup>Loria V., Tskepladze N., Giorgadze G., Kopaleishvili M., Kharshiladze I., Chqareuli T., Loria K., Loria A., Salkhinashvili M., Commentary of the Administrative Procedure Code of Georgia, Tbilisi, 2004, 182.

<sup>58</sup>See the above.

## 10.2.2 Abandonment of the Lawsuit

According to the legislation of Georgia, the appellant has the right to cancel the submitted lawsuit (**Disposition principle**).<sup>59</sup>In this case, he must indicate the title of the concrete suit.

### Practical Recommendations for Civil Servants

International practice demonstrated that, along with the legislative guarantees of freedom of information, it is important that the public institutions themselves establish practices that support maximum availability of public information stored within these institutions to interested persons.

Implementation of the best practices in Georgia oftentimes requires legislative changes, but taking into account some of the recommendations offered below, the public institutions will significantly improve existing practices in the sphere of freedom of information and will bring them closer to international standards.

#### **Management of information stored at the public institution**

Despite the fact that the legislation has relatively little regulation regarding existing records and documents in the public institution, these public institutions have the opportunity to remedy this by adopting inner procedures. The administrative bodies must maximally use the advantages offered by electronic management systems and actively implement automatic mechanisms of the flow of documents in their daily activities, which will significantly reduce the costs of managing document, save the time of employees of the public institution and improve the quality of information issued as a result of the request of interested persons.

#### **Practices of reception and review of requests and issuance of information**

As a result of the amendments made in the General Administrative Code of Georgia in May 2012, it became possible to use electronic exchange resources to submit statements and requests to an administrative body. The said amendment requires the creation of a system for the reception of requests in an electronic form and guaranteeing its effective functioning. Accordingly, public institutions must use appropriate resources for the creation of the necessary practical basis for the realization of the novelty introduced by law.

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<sup>59</sup>Part 2 of Article 3 of the Civil Procedure Code of Georgia.

While reviewing the request, the public institutions should maximally ensure the reception of information as soon as reasonably possible. Determining an internal procedure of reviewing requests would be especially effective for this purpose. This way, a special regime of proceedings regarding submitted requests will be established, the role of the person responsible for issuing information will be defined, who, based on consultations with the relevant structural units, would ensure the release of information in the time frame prescribed by law.

Implementing a system of consultations with the persons requesting information is important while issuing information. Oftentimes, such communication facilitates the definition of the volume of requested information, as well as the desired form of received information. In the ideal case, the author of the request must be notified about the identity and contact information of the civil servant responsible for reviewing the request.

### **Accountability and the person responsible for issuing information**

The General Administrative Code of Georgia determines the obligation of the public institutions to prepare annual reports regarding the fulfillment of the requirements of the freedom of information chapter of the Code. The law also determines the list of data that must be contained in this report.

An effective way to fulfill this obligation would be for the public institution to determine a standard form of the report, the development of which is possible both at the level of the individual public institution, or in coordination with other public institutions. With this initiative, the quality of the report presented by the public institution will be significantly improved and, at the same time, a useful guide for the person responsible for preparing the report will be created. Since the preparation of the report mostly required participation from different structural units of the public institution, a unified form will simplify the process and make it uniform.

The information presented in the report must be effectively used by the public institution itself. Regular analysis of the information and trends presented in the report will help in the identification of the existing problems and elimination of the deficiencies in the practices of the public institution.

The person responsible for issuing public information must have a special role during the process of the fulfillment of the obligations prescribed by the freedom of information chapter by the public institution. The General Administrative Code of Georgia does not give any guidelines regarding the functions of such an official, which gives the public institutions an opportunity to establish desired guidelines. The position of the person responsible for issuing information must imply the possibility to make independent decisions and his role should not be limited to reviewing received requests. He must determine the policy of the public institution in the sphere of freedom of information, establish internal procedures and give recommendations for the measures necessary for the improvement of the practices of the public institution.

One should also consider the fact that, following the amendments of May 2012, responsibilities related to proactive disclosure of public information were added to the responsibilities of the person responsible for issuing information, which should be taken into account by the public institution while defining the authority of the said official.

Appropriate attention must be given to the awareness of the employees of the institution regarding the legislative regulations and internal policy of the institution in the sphere of freedom of information. Procedural documents related to processing, issuing and publishing information must be given to every structural unit. Raising the awareness of the employees via trainings is also important.

Public institutions must establish the practice of disciplinary liabilities for the officials who violate the norms regulating freedom of information.

### **Proactive disclosure of public information**

Proactive disclosure of public information will significantly reduce the spending of resources necessary for reviewing requests and collecting information for the public institutions. This is why it is important that the information be available before a request is submitted to the public institution. Especially since proactive disclosure is now a responsibility of the public institutions, as determined by the legislation.

One of the most convenient means of achieving this goal is the websites of public institutions. It is important for the websites to be constantly updated and the most important documents related to the activities of the institution to be published there. The regulations, structure, budget, information regarding the procurements, contact information of public officials, their salaries and other data that, according to law, is not subject to being classified must be published on the website.

To determine the information that is of interest to the general public, public institutions must analyze the requests submitted by people seeking information. Proactive publication of the information requested most often on the website will reduce the number of requests submitted to the public institution. Adding a search function and the possibility to sign up for email updates will significantly improve its effectiveness. Along with the websites, public institutions should also use the increasing potential of the social media.

At the same time, administrative bodies must take into account the interests of the persons with no internet, and therefore must make this information available in the building of the institution, in conspicuous places, if it is reasonably possible to do so. Alternative methods of proactive publication can be (official and unofficial) print media and TV or radio broadcasters.

While using any means of publishing information, the public institutions must pay attention to the rights of the persons of different national identification to receive information in the language that they can understand.