

Justice Initiative  
Access to Information  
Monitoring Tool:  
Report from a  
Five-Country Pilot Study

September 2004

OPEN SOCIETY  
**JUSTICE INITIATIVE**

The Open Society Justice Initiative, an operational program of the Open Society Institute, pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in five priority areas: national criminal justice, international justice, freedom of information and expression, equality and citizenship, and anticorruption. Its offices are in Abuja, Budapest, and New York.

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## PREFACE

New access to information laws in many countries provide a strong foundation for transparent public institutions, but cannot ensure open government absent active follow-up. This was the conclusion of a pilot study monitoring freedom of information carried out by the Open Society Justice Initiative in 2003 with partners in five countries.

In just over a decade, more than 45 countries worldwide have adopted freedom of information laws. This study shows that, even once a law is adopted, effective implementation remains a major challenge.

Conducted in Armenia, Bulgaria, Macedonia, Peru and South Africa, the survey marks one of the most comprehensive efforts yet to test the limits of government transparency. It involved the submission of 100 information requests to 18 different public institutions by a range of actors in each country.

On average, only 35 percent of requests for information were fulfilled. Many requests not explicitly rejected were simply ignored—in total, 36 percent of requests submitted resulted in tacit or “mute” refusals.

Interviews with government officials revealed a number of common obstacles in enforcing FOI laws. These include a lack of political will at senior levels to encourage transparency, inadequate information management, insufficient training of public officials, and an excess of bureaucratic obstacles to timely information release.

In some countries it proved near impossible to submit requests for information orally or without filling out an official form. Persons belonging to vulnerable or excluded groups, such as disabled individuals or ethnic minorities, were less likely to receive positive reactions than journalists or NGOs submitting the same requests.

A surprise result was that short timeframes for official responses, far from posing an obstacle to information release as some feared, appear to improve the chances of positive reactions. Peru, the country with the highest rating of the five, also permits the least time to officials to respond: seven working days.

The following organizations partnered with the Justice Initiative to carry out the survey: the Access to Information Program (AIP, Bulgaria), the Freedom of Information Center (Armenia), Instituto Prensa y Sociedad (IPYS, Press and Society Institute, Peru), Open Democracy Advice Centre (ODAC, South Africa), and Pro Media (Macedonia). The pilot project was developed and implemented in collaboration with Thomas Carson, Ph.D., who directs the TC Group Research Consultancy, based in Budapest, Hungary.

For more on the Access to Information Monitoring Tool, visit the Justice Initiative website: [www.justiceinitiative.org](http://www.justiceinitiative.org).

## INTRODUCTION

The right of access to information held by public bodies has become a benchmark of democratic development. In total, 59 countries around the world now have laws establishing mechanisms for the public to request and receive government-held information. Much of this legislation results from recent transparency initiatives in transitional democracies: 45 Freedom of Information (FOI) laws, or their equivalent, have been adopted in the past 12 years. Central and Eastern Europe lead the way in enshrining the right to access information in law, followed by a number of Latin American countries. Governments in Asia and Africa are also becoming increasingly swept up in the global freedom of information movement.

The impetus for governments and legislatures to adopt FOI laws is driven by a variety of factors, ranging from successful civil society campaigns, to pressure from intergovernmental organizations and multilateral donor conditionality, which increasingly places a premium on transparency in anticorruption initiatives. Governments attempting to win the trust of their citizens embrace public participation predicated on increased openness. These developments provide significant opportunities for all those working to promote open and accountable government.

The proliferation of FOI laws is not, however, without its dangers: states eager to tender their democratic credentials to the international community may adopt substandard laws. Even where laws are excellent on paper, they may not be well implemented in practice. With these concerns in mind, the Open Society Justice Initiative developed the Access to Information Monitoring Tool, with the objective of assessing not only whether national laws meet international standards on paper, but also whether they are implemented in conformity with these standards, or even with their own provisions. Furthermore, to aid civil society groups in promoting reforms appropriate to genuinely open government, a diagnostic tool is needed to identify failures in transparency and facilitate constructive recommendations. Even in countries still lacking FOI laws, indicators of levels of transparency are valuable in demonstrating the need for them.

The Justice Initiative Access to Information Monitoring Tool offers a methodological foundation for monitoring compliance with access to information norms, and a database to facilitate data storage and analysis. Its development followed a review of previous monitoring work in a number of countries, and research by the Justice Initiative and its civil society partners into the practical issues that arise when FOI laws are implemented in transitional democracies. It was constructed under the leadership of a consultant expert in statistical research methodologies and with the aid of software designers.

The monitoring tool was piloted in 2003 in Armenia, Bulgaria, Macedonia, Peru and South Africa by the Justice Initiative together with its civil society partners in those countries. The five countries were selected to represent a spectrum of legislative development and implementation: at the time of carrying out the monitoring in mid-2003,

Macedonia had just begun drafting FOI legislation; Armenia was in the process of adopting an FOI law; and Peru was in the early phase of implementing legislation adopted in 2002. Both South Africa and Bulgaria had FOI laws in place since 2000—the South African law is stronger on paper, but systematic monitoring can help discover which of the two works better in practice. Together, the five countries encompassed a range of cultural and political environments in which to test the Monitoring Tool.

In each country, civil society organizations committed to freedom of information worked together with the Justice Initiative to carry out the pilot project. The partner organizations are:

- Access to Information Program (AIP), Bulgaria
- Freedom of Information Center, Armenia
- Instituto Prensa y Sociedad (IPYS, Press and Society Institute), Peru
- Open Democracy Advice Centre (ODAC), South Africa
- Pro Media, Macedonia

In developing the Access to Information Monitoring Tool, the Justice Initiative's goal has been to create a versatile and effective instrument to enable analysis of a range of access to information indicators, such as response times to requests for information, fees charged for documents, or the existence of discriminatory practices in the provision of information. The intention is to facilitate comparisons between different public bodies within any given country, and to permit comparative analysis of levels of transparency and the effectiveness of FOI laws across countries. The tool aims to be flexible enough for use in a variety of monitoring contexts, ranging from large multicountry studies to assessment of one or two institutions within any one country. The Access to Information Monitoring Tool aspires to provide more comprehensive information on FOI implementation in practice than any other assessment tool currently in use.

Following the 2003 pilot project, a second more extensive follow-up project was carried out in 16 countries in 2004. The methodology was improved and expanded, incorporating lessons learned in the course of the pilot project. A larger number of requests were filed, an increased range of outcomes was recorded, and the timeliness of each step in the requesting process was monitored more closely. Results of the 2004 monitoring exercise will be published soon.

## **INTERNATIONAL LAW AND STANDARDS ON ACCESS TO INFORMATION**

There is no fixed international standard governing the right of access to information held by public bodies—nor indeed is there even clear consensus that such a right exists under international treaty law, which establishes only a general right to freedom of information. On the other hand, a number of countries enshrine the right of access to government-held information in their constitutions, and the fact that an increasing number of countries

have passed FOI laws itself provides a basis for defining comparative standards. Further guidance is provided by the Council of Europe's Recommendation 2002(2) on the Right of Access to Official Documents. The Justice Initiative has drawn on all these sources in identifying FOI standards for its Monitoring Tool.

The set of standards applied in the pilot project are detailed below, and are referenced throughout the body of the report. The primary principles against which government transparency was tested can be summarized as follows:

1. **Principle of Openness.** All information held by public bodies shall be publicly available unless subject to a legitimate exemption, as clearly defined in law, and subject to tests of democratic necessity and the priority of the public interest. For the present study, information was requested which ought not to be subject to any exemptions—the intention was not to test the application of restrictions, but rather to verify whether incontestably public information was actually accessible.
2. **All bodies performing public functions should be obliged to respond to information requests.** All government bodies, including the legislative and judicial branches, should be under a duty to provide information to the public, as should all bodies performing public functions. The test for whether a body performs a public function should rest on the nature of its operations and/or its receipt of public funds. Bodies such as privatized telecommunications companies or private universities would fall under this definition. Partners conducting the pilot project did not, however, carry out monitoring of other private bodies; although in a handful of countries, including South Africa, FOI laws explicitly cover private bodies.
3. **Anyone may request information without having to specify grounds.** All persons, whether or not they are citizens of a given country or resident there, should be able to file information requests and should not have to provide grounds or reasons for their request: the right of access to information is a fundamental human right which can be exercised by all, regardless of frontiers. In some countries it is possible for an applicant to present an anonymous request for information, which obviates any need to demonstrate citizenship or residence.
4. **There shall be no discrimination in the provision of information.** Information requests shall be treated equally without discrimination with regard to the requestor. To test this, in each country a number of the information requestors were distinguishable by their occupation or their belonging to a marginal or vulnerable group. These included journalists, NGO representatives, non-affiliated persons (i.e. ordinary citizens), and representatives of excluded groups (such as handicapped or elderly individuals, or persons from ethnic or linguistic minorities).
5. **Information shall be provided in a timely fashion.** The Justice Initiative surveyed 44 FOI laws from around the world, and found that the average timeframe for providing information was 17 working days, with some countries' laws permitting extensions for complex requests. Where timeframes were not established by national law, the project allocated an appropriate period. In Macedonia, for example, which lacked an FOI law, a time frame of 20 working

days was used, slightly higher than the international average but similar to those in neighboring countries' laws.

6. **Requests can be made either orally or in writing.** Comparative and international standards are not definitive on whether the right of access to information (itself an evolving right) includes the right to make oral requests for information. The Council of Europe Recommendation requires that “Formalities for requests should be kept to a minimum” (Principle V.2). An explanatory memorandum notes that although some states require requests to be written, others accept oral requests as well. At the Justice Initiative, we believe it to be imperative that requests can be filed orally:
  - Access to information is a fundamental right so obstacles to its exercise should be eliminated wherever possible.
  - The right of access to information must not be a right exclusive to an educated elite. Not all people are good at filling in forms or writing letters—not only illiterate people, but others too can find the need to write formal letters a dissuasive challenge.
  - Oral requests promote proximity between requestor and requestee, especially important at the local level, where they encourage more effective provision of information.
  - Oral requests are more economic to administer. In particular, routine inquiries can be processed quickly and flexibly.
  - The bureaucratic need to track requests, often invoked to defend a restriction on oral requests, is not insurmountable: public officials can log oral requests in writing. This might be unreasonable only in the case of long and complex requests.

The possibility of filing oral requests is particularly important in less developed countries where literacy may be low, postal services poor, and e-mail not widely available.

7. **Access shall be to information rather than to documents.** Recent (“second generation”) access to information laws generally refer to *information* rather than *documents*. This is an important distinction, given inadequate levels of information management in many countries, as it permits requestors to seek information about the activities of a public body without having to name or reference the exact documents. (Experienced requestors will usually overcome this difficulty by asking for “all documents containing the following information...”) The right to request information also permits requests for kinds of data—for example, statistics on institutional activities—that a public body *should* maintain even if it does not in practice. Of the countries surveyed here, the Bulgarian and Peruvian FOI laws and the relevant provisions in Armenian and Macedonian law all refer to “information.” The South African law speaks of access to “records.”
8. **Information shall be provided in the format specified by the requestor wherever possible.** It is important that information be provided in a format convenient for the requestor, provided that the authority holds or can easily



- produce the information in this format. If a public body holds information in both printed and electronic format, and the requestor would like to receive it electronically, this shall be done. If, on the other hand, the information is held electronically and the requestor would prefer to receive it in hard copy, then the public body should provide the information in print. Given low levels of Internet penetration in many countries, it is not sufficient to refer requestors to a website unless this is acceptable to the requestor.
9. **Requests filed with an inappropriate institution shall be transferred or referred to the correct body, wherever this is known.** It is often difficult for requestors to identify exactly which public body holds certain information. For example, information may be requested from a local government council when the appropriate institution is in fact a central government ministry. In such cases, the body receiving the information request should be obliged to transfer the request, or at a minimum refer the requestor, to the correct body, to the extent that the likely repository of the information can be identified.
  10. **The cost of access to information to the requestor should be limited to the supply costs and should in no instance be so high as to prove an obstacle to access.** Comparative standards and the Council of Europe's Recommendation indicate that the cost to the requestor of receiving information should be no more than the cost of actual provision of a copy of the information, such as photocopying or postal charges. This principle is based on the presumption that public funds (from taxpayers) have already covered the cost of collecting or producing and of managing and storing the information, which should then be available to the public. No charges may be made that might prove an obstacle to access or discourage requestors from exercising their right to seek information. In many countries, the first 10 or 20 pages of information are supplied free of charge, as a matter of either law or practice. In other countries, institutions opt not to collect small amounts of money from requestors as the administrative costs of doing so can be higher than the amounts recuperated.
  11. **Refusals to provide information must be grounded in law and must be made within the timeframes specified by law.** If an information request is to be refused, then the refusal should detail the grounds for not disclosing the information, as established by law. The refusal should be made in writing within the timeframes specified by law (where specific timeframes for refusals are given) or, at the latest, within the timeframe for providing information. For the purposes of this monitoring exercise, failures by authorities to respond within the timeframes established by law were classified as "mute refusals."
  12. **If exemptions apply, then there shall be partial access to relevant documents.** If part of a document containing requested information is subject to an exemption from disclosure, then that part of the document shall be severed (blacked-out) and the remainder provided to the requestor. Partial access allows the authorities to protect legitimate interests (national security, privacy, commercial confidentiality) while at the same time maximizing public access to information.
  13. **There shall be a duty to assist requestors.** FOI laws often provide for a duty to assist requestors, in effect legislating the spirit of the law. The principle of a "duty to assist" can play a key role in the period immediately following the adoption of

- an FOI law, when members of the public may not know how to formulate requests or indeed may request information without knowing they are exercising a right guaranteed by law. It should not be necessary for the requestor to cite the exact law or the relevant provisions of the law in order for the information request to be processed.
14. **An office or officer shall be designated to handle requests for information.** It has become standard practice under FOI laws for public institutions to appoint one or more public officials to handle information requests. In some smaller institutions, the FOI officer might also have other duties. In larger bodies, a department might be dedicated to promoting transparency and providing information. It is important that this function is not confused with the often more political post of spokesperson for the institution. Where the two roles are combined, the official in question should be able to make a clear distinction between the respective duties and loyalties—to the institution as spokesperson; to the public as information officer.
  15. **Every public body should publish certain routine information on a regular basis even absent any information requests.** Many FOI laws require that bodies covered by the law publish information such as an annual report and accounts, and make them easily available to the public even in the absence of any information requests. FOI laws also often require that guidance on filing requests and/or a list of information held be made available.

There are other standard principles that should be incorporated into FOI laws, such as the right to appeal refusals to provide information and the nature and role of oversight bodies such as ombudspersons or FOI Commissions. These aspects of compliance with the right of access to information can be tested using the Justice Initiative Monitoring Tool—indeed, they are specifically catered for—but in the present monitoring exercise they were not examined.

Not all the laws tested within the present exercise meet the standards defined above. For example, in Bulgaria the privatized telecommunications company clearly falls outside the scope of the access to information law, and in South Africa written applications are the only means of access for anyone who cannot demonstrate illiteracy or a disability.

## **THE ACCESS TO INFORMATION MONITORING TOOL**

The Monitoring Tool has three elements: a legal template, a monitoring methodology, and a database for capturing results.

The **legal template** is a checklist based on the Justice Initiative's review of international and national standards on the right of access to information. The template provides a framework for comparative analysis of elements such as the scope of the law, timeframes for delivering information, exemptions, costs, and, if desired, appeals processes. This

template can be used to analyze national laws, whether specifically concerned with freedom of information or, as in the administrative codes of some countries, providing for a right of access to certain kinds information. The template establishes the starting point for filing information requests.

The **monitoring methodology** draws on monitoring experience in the areas of freedom of information and other human rights, and includes expertise from other fields such as opinion polling and media content surveys.

The filing of requests is constructed in such a way that a number of variables can be tested to see which is most significant in determining how requests are handled and answered. These variables include:

- who files the request;
- whether the request is submitted in writing or orally;
- which institution receives the request.

A specially constructed **relational database** allows for tracking of the key stages of a public information request from filing to receiving of information to refusals and appeals. Project partners were able to input information into the database online throughout the course of the project, allowing for the results to be analyzed centrally. This shared database facilitates comparing data within and between countries.

### **The Monitoring Process**

Applying the Access to Information Monitoring Tool involves four phases. First, a review of national legislation (including FOI and related laws) identifies the basic regulations that govern access to information in a particular country. This provides a standard by which to evaluate that country's progress toward implementing its own laws. Next, the actual process of requesting information begins and is tracked as various requestors file requests with different institutions. The third phase consists of interviews with representatives of bodies to which information requests were made, in order to identify the context in which public institutions (and officials) work. The aim is to get a picture of both the practice and spirit of openness in each body monitored. Finally, the data is analyzed and prepared for presentation.

#### ***i) Legal analysis***

Legal analysis in each country assesses the national law in comparison with international standards. This is an essential part of the monitoring process, as the scope of FOI laws varies from country to country and the analysis helps to define exactly what to test in a given locality. Elements of the analysis include: which bodies are covered by the FOI laws, whether oral requests are permitted, and the timeframes within which public bodies must respond to information requests. These elements make an important contribution to the structure of the monitoring project.

For example, in the Justice Initiative 2003 monitoring project, the timeframes for responding to requests in each country were examined in order to establish a schedule for the project as a whole. Timeframes ranged from seven working days in Peru, with a possible five-day extension, to 30 calendar days with a possible 30-day extension in South Africa. In the two countries lacking full FOI laws, Armenia and Macedonia, other provisions were analyzed and tested, including constitutional and administrative provisions requiring the government to provide information to the public.

It is also necessary to assess specific aspects of the law that might pose difficulties for the methodology. For example, in South Africa, the law specifies that only written—not oral—requests be filed, except in cases of illiteracy or disability. Hence not all requests filed as part of the project were likely to be well received. At the same time, South African law places a duty on public officials to assist requestors. The filing of oral requests—including by illiterate persons—tested whether those making them would be helped to file written requests, and permitted a comparison between the treatment of those who genuinely could not file written requests and others who attempted to file orally.

#### ***ii) Requests and outcomes***

The monitoring process proper begins with the submission of requests for information. In each pilot country, a total of 100 (96 in South Africa) requests were filed. The requests were submitted to 18 different institutions in each country, by a total of 10 individuals. Institutions included those of the executive (ministries), the judiciary, and regional and local administrative bodies. Requestors included NGOs, journalists, non-affiliated persons and members of excluded groups, all of whom filed similar requests over a comparable period of time. Requests were made in both oral and written form, with written requests delivered by hand in most cases, but sometimes mailed or faxed. Information requested was limited to that which public bodies do, or should, hold.

In order to facilitate comparisons between countries, a number of requests were standardized for the pilot phase. This meant that in each country, similar information was requested from analogous bodies. These questions were decided upon in consultation with the partners from all the countries involved in the pilot project. In addition, specific requests of particular importance to each country were selected. Wherever possible, the selection process involved consultation with the actual requestors themselves so that the requests would have relevance to the requestors and meet their real information needs—for example local NGOs and journalists were consulted so that requests filed would be for information which could be used in their work.

Examples of standardized requests include:

*Environmental:* Requests for information about the methods used by ministries of the environment to collect data on polluters and levels of pollution.

*Anticorruption:* Requests for data relating to alleged corruption or wrongdoing by judges.

*Internal government regulations:* Requests to ministries of defense about internal regulations governing transparency, with particular reference to exemptions from these regulations.

*Homelessness:* Requests to local authorities on the number of homeless children in specific municipalities.

*Other human rights issues:* Requests relating to human rights other than FOI, including for information on the trafficking of women and about public health policies.

*Country-specific requests:* These included questions on political party financing, funding for agriculture, the privatization of electrical companies, and the allocation of pension funds.

The outcomes received in response to requests were classified as follows:

1. **“Unable-to-submit”:** An “unable-to-submit” outcome describes cases where it is not physically possible to file the request. For example, some requestors could not get into the relevant institution, because the guard did not admit them. Or, once inside, requestors could not speak to the relevant person, because they were, for instance, absent, always “at lunch” or “coming in tomorrow.”
2. **Oral refusal:** An oral refusal is when a representative of the authority states verbally that s/he refuses to provide the information, whether or not grounds are given. This category includes a response to oral or hand-delivered requests such as “I am sorry Madam, but we cannot provide that information as it is classified.” Oral refusals can also be received by telephone, whether a requestor calls to verify if a written request has been received, or a phone call is made at the initiative of the authority.
3. **Written refusal:** A written refusal is a refusal to provide the information made in any written form. The written refusal may come in the form of a letter, email or fax or a document sent or handed to the requestor. As part of the project, the grounds for refusal stated in these written documents were recorded.
4. **Mute refusal:** This category indicates no response at all from the authorities, or at best, vague answers to follow-up. There is no formal refusal, but no information is provided. This outcome was recorded after all the legal timeframes for answering the requests had expired, often with a generous margin given the authorities to respond.
5. **Fulfilled request:** Access is granted and the information provided, in written or oral form, to a written or oral request. The information answers the question and is relatively complete. For the 2003 pilot project, authorities were given a wide margin of discretion, and even rather incomplete information was included in this category.

Following the submission of the 100 requests in each country, one further request was filed with each institution asking about its internal mechanisms for promoting transparency and how it complies with any relevant legal provisions proactively to publish information. The institution was asked whether it had appointed an FOI officer or a similar person designated with responsibility for providing information to the public.

The “promotion requests” also asked whether the institution’s annual report and budget are available to the public, in addition to information about data held and guidelines on filing a request. If the answer was in the affirmative, or if the information was available on the institution’s website, then this was recorded.

### ***iii) Interviews with public bodies***

The third phase of monitoring, before the analysis of the results, is an interview with each body monitored. The aim of the interview is to gain a deeper understanding of the process by which requests for information are handled, and the FOI (or other applicable) law implemented. The interviews give the institutions a chance to explain how they handle requests for information in general, and to respond to the project findings, particularly in problematic cases, such as low response rates from the institution or refusals to provide information.

During the 2003 pilot, interviews were carried out by the lead NGO in each country and aimed to identify needs, such as for additional training or internal guides for personnel on implementing FOI laws. Interviewers sought a frank discussion with the responsible staff, to listen to their concerns and understand the logistical challenges they face. As a result, the recommendations in this report are intended to be as constructive as possible, to assist the authorities in the promotion of greater transparency.

Not all institutions granted interviews, however, which in some cases made it difficult to evaluate exactly why information requests had not been fulfilled. In many, although not all, cases, a correlation can be found between bodies which had been poor at answering requests and those which failed to answer or refused requests for interviews.

### ***iv) Data Analysis***

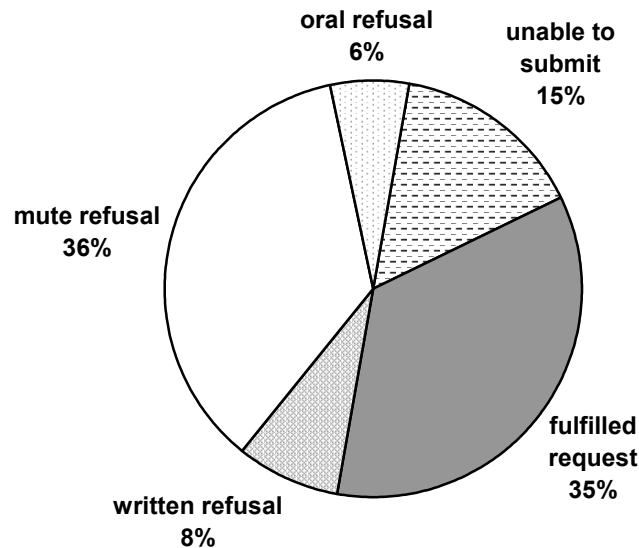
This report provides one example of how monitoring results can be evaluated and presented. The pilot project had the dual objectives of testing transparency in the pilot countries, and of developing and refining the monitoring methodology. Given that the database software was still under development in 2003, some of the data analysis had to be performed manually. (The software tested in 2004 includes a greater capacity for automatic statistical generation.) In addition, for the same reason, the monitoring methodology was not always applied uniformly in every country. For example, some of the requestors were more persistent than others in trying to submit their requests. These differences and caveats have been noted and taken into account when performing the analysis of the findings. In analysing the outcomes of the monitoring, we have considered the statistical variations of the findings and how these have been accounted for in the interpretation of the results.

## **RESULTS FROM A FIVE COUNTRY PILOT STUDY**

All five monitored countries—Armenia, Bulgaria, Macedonia, Peru and South Africa—demonstrate a strong foundation for transparency in their public bodies, providing a

possible basis for functioning access to information regimes, but still falling far short of the necessary levels of transparency to conclude that open government has been established. A summary of the main findings of the 2003 pilot monitoring exercise follows, together with a list of recommendations.

**Figure 1: Outcomes of Monitoring—All Countries**

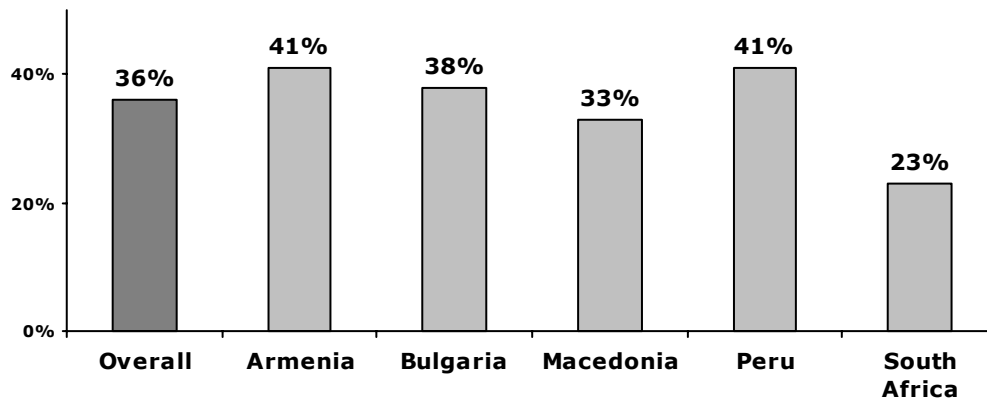


**(i) Right to information respected for fewer than half of all requests**

Only one third (35 percent) of submitted requests resulted in provision of the information sought. Two thirds (65 percent) did not result in the release of any information at all. If, allowing public authorities the benefit of the doubt, it is assumed that all articulated refusals, both *written refusals* (8 percent of all requests) and *oral refusals* (6 percent), were based on legitimate grounds for withholding information, the total number of outcomes broadly in compliance with international and comparative standards still, at 49 percent, falls short of a majority. In other words, even in the best case scenario, the right of access to information was respected for only half of the requests submitted.

The five monitored countries are all introducing new standards of government transparency while undergoing democratic transition. In this context, both outcomes—compliance with international FOI standards in almost 50 percent of cases, and provision of information in response to 35 percent of requests, can be seen as a solid basis for building greater openness. Yet neither result could be interpreted as signaling an acceptable level of transparency. The glass can be viewed as half full or half empty: the right to information was violated in at least 50 percent of filed requests.

**Figure 2: Fulfilled Requests Country-by-Country**



***(ii) Transparency can exist in the absence of an FOI law but is patchy***

The two monitored countries lacking specific FOI laws performed relatively well in responding to requests for information. In Armenia, where general legislation includes some provisions for citizen access to government records, information was provided in response to 41 percent of requests, above the five-country average of 35 percent. In Macedonia 33 percent of requests were fulfilled. This finding underlines the argument, often used by FOI activists, that introduction of an access to information law need not be seen as a threat by public authorities, as they are already practicing a certain amount of openness.

At the same time, responses in both countries varied dramatically between those institutions which answered 100 percent of requests and those which answered none at all. Hence, Armenia and Macedonia exhibited patchy transparency compared with countries that have passed comprehensive FOI laws—where response rates were more even across the monitored institutions. In Bulgaria, in particular, most institutions responded to at least some requests, as did central government institutions in Peru.

The introduction of an FOI law can build upon existing levels of transparency and guarantee requestors a more consistent response to requests submitted to different public bodies. It should be noted that, since this exercise was conducted, Armenia has introduced an FOI law and in Macedonia the government has developed a draft with input from civil society.

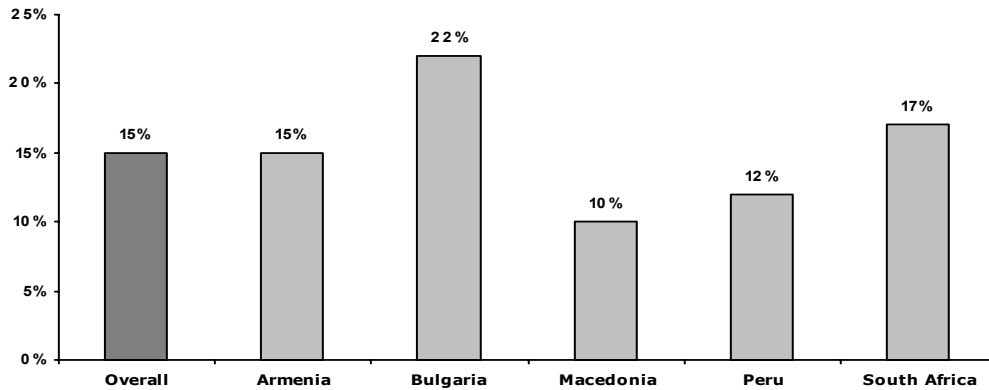
***(iii) An FOI law can help access to information but risks creating bureaucratic hurdles***

The results from Bulgaria and South Africa, where FOI laws have been in force since 2000, demonstrate the challenges of introducing a new FOI regime. In Bulgaria, only 38 percent of requests, or just over one in three, were fulfilled. This low figure is accounted for by a very high level of “unable-to-submit” outcomes for oral requests, which seems to stem from a formalist approach to implementing the (relatively new) law, requiring that requests be submitted in writing, even though the law permits oral requests. Figure 3



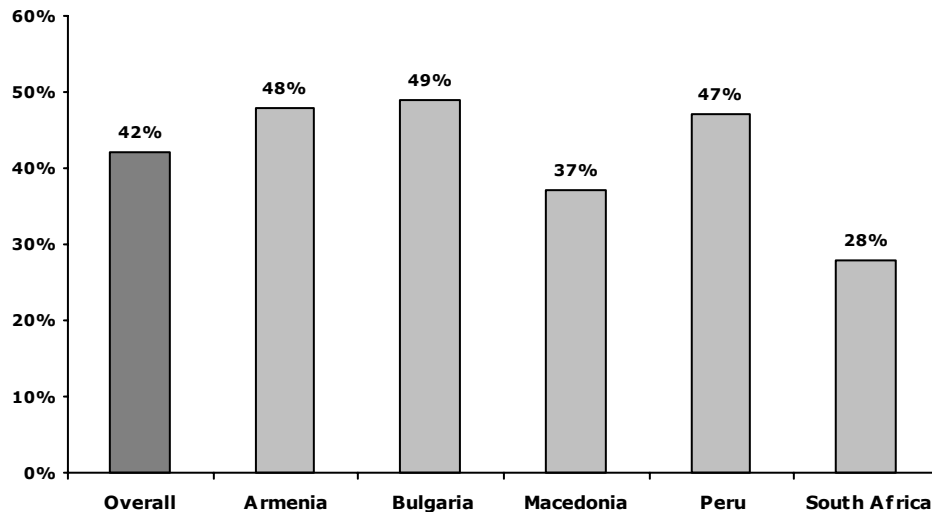
shows the level of *unable-to-submit* outcomes for all requests in each of the five countries monitored.

**Figure 3: Unable to Submit as a Percentage of All Requests**



Once the “unable-to-submit” results are discounted, the response rate to successfully submitted requests in Bulgaria was 49 percent, the highest response rate for submitted requests in any of the monitored countries [See figure 4 below]. In addition, the level of “mute refusals” was lower than in any other country, which shows that once requests pass the submission hurdle, a serious attempt is being made to implement the law and provide information. In addition, the results from Bulgaria presented a fairly consistent response rate among different institutions, with most central and local government bodies answering up to 50 percent of requests.

**Figure 4: Fulfilled Requests for Submitted Requests (i.e. excluding Unable-to-Submit outcomes)**



The follow-up interviews confirmed that many institutions were ostensibly committed to implementing the law, including by introducing computer systems to track requests. However, a number of challenges are apparent, including poor internal information management, lack of clear internal decision-making procedures, lack of awareness of and commitment to providing information at higher levels of government, lack of training, and misconceptions about the law and about who is entitled to what kind of information, as well as an enduring reflex toward secrecy in some institutions.

Similarly, the findings from South Africa—where only 28 percent of submitted requests were fulfilled and levels of mute refusals were high at 52 percent—including from the interview phase, confirm that the introduction of an FOI law often entails the necessity of establishing internal mechanisms for handling and processing results, and that these can lead to slower responsiveness from authorities. In South Africa, interviewed public officials noted the challenges of complying with all the procedures of the law, and in particular ensuring careful application of the exemptions.

Training is clearly a key factor in limiting the delays associated with new bureaucratic duties. In countries with FOI laws in place, institutions where officials had been trained were generally better at responding to requests. In interviews, a number of bodies expressed concern that they had not received sufficient guidance in implementing FOI laws, and even where internal systems had been set up, public officials in some cases still did not fully understand certain provisions of the FOI law. Obstacles like these may have contributed significantly to the relatively high levels of mute refusals in all five countries, even where political will to encourage open government exists.

***(iv) Shorter timeframes might encourage release of information***

Counter to some expectations, the pilot project did not find that shorter legal timeframes for fulfilling requests negatively impact the overall provision of information. Indeed, Peru, the country with the shortest timeframes of the five, exhibited the highest response rate.

Globally, timeframes range from almost immediate, i.e. on the spot or within 24 hours (in Norway and Sweden), to 30 days (Canada, India, Ireland, South Africa). The determination of timeframes must balance the public's right to receive information as rapidly as possible with the everyday demands on public bodies. In the case of complex requests, many countries' FOI laws allow authorities to request an extension. Very little use of extensions was made in the monitored countries other than in Peru, where the timeframe remains shortest even *after* the permissible extension—from seven to twelve working days—is invoked.

Many governments—particularly in newer democracies—argue that short timeframes are over-burdensome for under-resourced public bodies. However, the pilot results appear to support the counterargument—that shorter timeframes prioritize the right of access to information over the other duties and tasks of public officials.

These findings indicate that factors other than timeframes are critical in ensuring the effective implementation of an FOI law. Furthermore, as the great majority of responses in all countries were received within the timeframes established by law, we can conclude that most public authorities should be able to respond to the majority of requests, particularly routine requests, within the timeframes established by law.

***(v) Requestors can experience significant difficulty submitting requests—oral requests are a particular problem***

Requestors in all countries experienced significant difficulty in submitting requests. In 15 percent of cases it was not possible to submit requests at all, and in many other cases requestors had to be very persistent. The vast majority (91 percent) of “unable-to-submit” results were in response to oral requests. It was particularly difficult to submit requests in Bulgaria, where the introduction of the formalities associated with the new law have created a bureaucratic reluctance to accept oral requests (22 percent could not be submitted). The South African law does not allow submission of oral requests except in the case of illiterate or disabled requestors, but even these had difficulty submitting oral requests (70 percent of all oral requests submitted by the excluded group requestors in South Africa resulted in an “unable-to-submit” outcome).

In general, it was more difficult to submit requests to central government than local government bodies. The judicial branch was particularly reluctant to accept oral requests (the Supreme Courts did not accept 60 percent or almost two thirds of oral requests).

Requestors also experienced difficulty when hand-delivering written requests, and in some cases, notably in Bulgaria and Peru, guards outside government buildings did not admit requestors. In addition, in a number of cases, requestors were unable to locate an officer responsible for handling FOI requests once inside a government building.

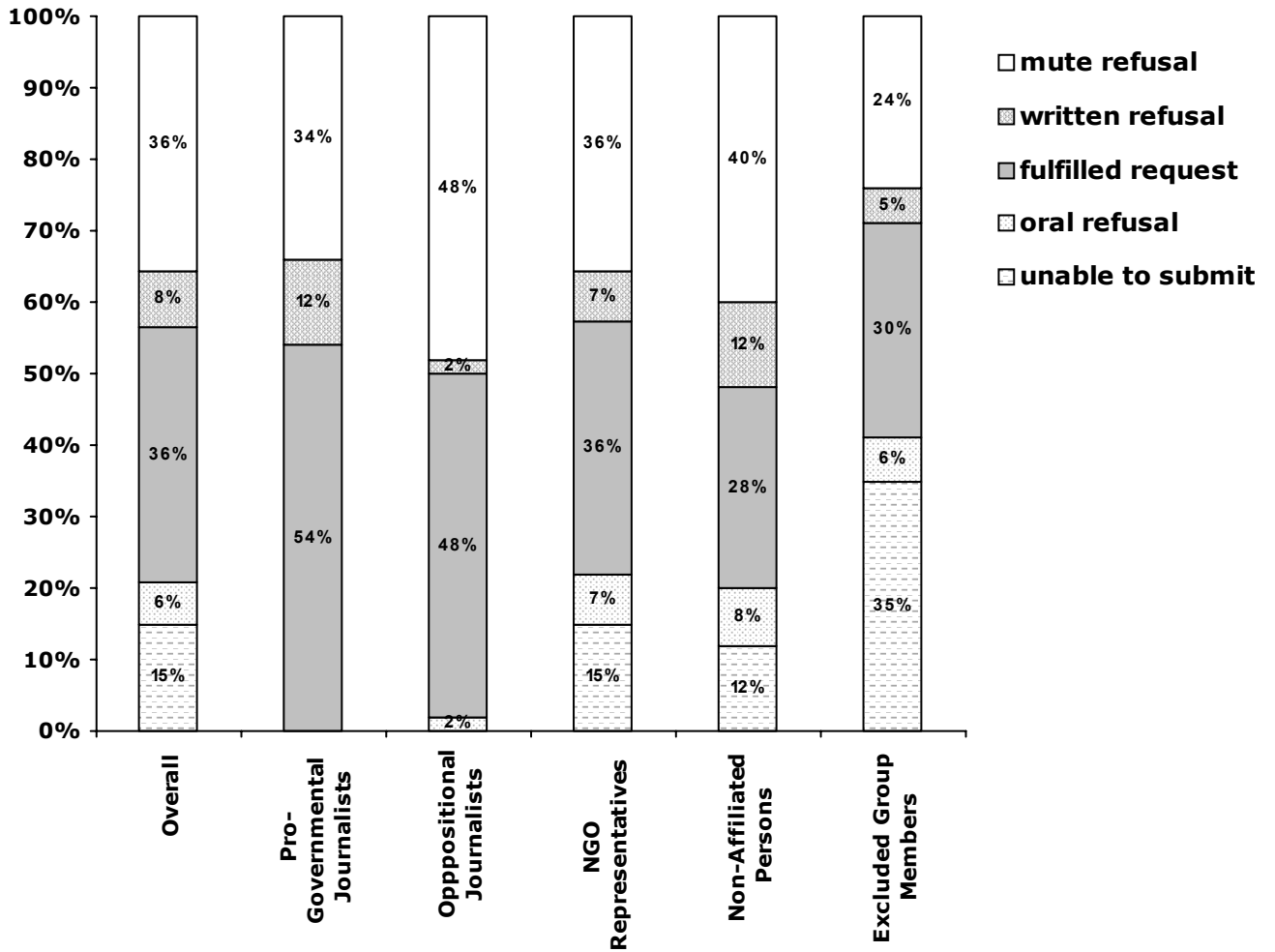
Often, in follow-up interviews, information officers appeared to be completely unaware that requestors were experiencing difficulty in entering buildings, in submitting requests, or in reaching the officers themselves. In a few cases, requests that had been sent by mail or successfully delivered in person to the public body did not reach the person charged with making the decision to release information.

***(vi) Not all requestors are treated equally***

The pilot project found disparities in the treatment of different types of requestor, indicating that government institutions sometimes discriminate in the provision of information. Journalists generally found it easier to obtain information than NGO requestors, who in turn received more information than non-affiliated and representatives of vulnerable or excluded groups, such as racial or ethnic minorities. This pattern was replicated in every country monitored.

Discrimination took place at both stages of the requesting process: during the submission of requests and their processing. Excluded group members in particular had difficulty submitting requests. At the other extreme, journalists generally received more and fuller information at the processing stage than other requestors.

**Figure 5: Outcomes by Requestor**



This finding was reinforced by the attitudes expressed by public officials in interviews, who often exhibited a bias towards requestors affiliated with institutions (media in particular and also civil society) over members of the general public. Sometimes this was expressed as a belief that the media had a greater right to information. Sometimes authorities considered it necessary for requestors to justify their requests—resulting in a disproportionate number of non-affiliated requestors, in particular, questioned as to why they were seeking information.

In countries currently moving away from a culture of secrecy, in which information was traditionally provided only to the media in a controlled fashion, or to an elite of civil society groups, academics and others perceived as having a “legitimate interest,” special efforts need to be made to clarify that the right of access to information applies for all members of the public.

***(vii) Transparent institutions share certain features***

Analysis of the results regarding the different institutions monitored shows two main factors affecting the readiness of a given body to respond to requests. These are political will, on the one hand, and information management, on the other. Where the political will to favor transparency coincides with good information management techniques, government bodies are more likely to respond positively to information requests.

The project found that the bodies which answered all or most requests share a number of common features, including the following:

- A commitment to transparency exists at all levels of the institution.
- Internal information management systems ensure that staff members are well-prepared for handling requests.
- Sufficient human resources are allocated to processing information requests.
- Staff members are trained on the relevant laws and on dealing courteously with the public.
- Clear lines of decision-making exist such that responses can be approved within the timeframes stipulated by law.
- Committed and trained officials oversee information requests and ensure they are answered.
- There is a proactive approach to transparency, with information made available in reports and on websites.

## **RECOMMENDATIONS**

***Political will and awareness of the right to know***

In all five monitored countries, public authorities should take the following steps to promote respect of the right of access to information:

- Send a signal from the highest level of government that the political will exists to provide the public with access to information, and that the starting point is a presumption of openness.
- Promote widespread awareness of the right of access to information among the administration and all bodies obliged under FOI laws.
- Ensure that all officers responsible for handling FOI requests are trained in both the letter and spirit of the relevant laws.
- Ensure that officials understand that the right of members of the public to request information (including detailed and statistical information) does not require justification.
- Promote recognition of the public's right to hold government accountable through use of FOI legislation, as a powerful tool for public participation in government and decision-making.

- Ensure that all levels of government have sufficient resources (human and financial) to implement access to information provisions, to manage information efficiently, to process requests and to meet duties to publish information proactively.

### ***Information management, decision making, and training***

The government and public bodies obliged under FOI laws should:

- Institute simple but effective internal systems for processing information requests in order to facilitate the provision of responses within the legal timeframes.
- Note that developing request forms can be helpful but care should be taken not to create bureaucratic obstacles or to make the request system inaccessible to less literate members of society.
- Ensure that internal information management systems permit FOI officers and other officials to locate information easily.
- Note that posting information on a website can help promote transparency, including by aiding internal transparency and signaling to the public a readiness to provide information. However, public bodies should remain ready to respond to requests for information whether or not contained on a website.
- Be clear about who in any given institution is responsible for decision-making on information requests. Where possible, this should be at the level of the information officer, at least unless the request is particularly complex or exemptions need be applied.
- Establish that all officials are empowered to provide at least routine information.
- Train all staff in the information systems in place and ensure that they know to refer requestors to the appropriate information officers.

### ***Public awareness raising and use of the law***

- Both government and civil society groups should engage in public education campaigns to encourage exercise of the right of access to information provisions by members of the public.
- Civil society groups focused on the right to know have an important role to play in assisting other sectors of civil society and the wider public in formulating and filing requests, as well as in challenging refusals to provide information.
- Civil society groups can also, as has been done in many countries, work with government on the implementation of FOI laws, including through training officials. By providing feedback on the obstacles encountered by users, NGOs can contribute to refining internal information management systems.