

# FREEDOM OF INFORMATION GUIDE



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The guide, in the form of questions and answers, explains the provisions of Chapter 3 – “Freedom of Information” – of the General Administrative Code of Georgia. It is intended for journalists, NGO community, public servants, judges and general public.

**AUTHORS:**

**Zurab Adeishvili** – Legal Issues, the Legality and Administrative Reforms Committee of the Parliament of Georgia

**Amanda Frost** – Attorney at Law, Public Citizen Litigation Group

**Levan Ramishvili** – Director, Liberty Institute

**Natia Tskepladze** – the Chair of the Administrative Law and Tax-related Cases Appellate Chamber of Tbilisi District Court

**Dimitry Kitoshvili** – Attorney at Law

**Lasha Tugushi** – Editor-in-Chief, “Rezonansy” newspaper

**Nona Tsotsoria** – Legal adviser of IRIS/Georgia

**Gia Getsadze** – Senior legal adviser of IRIS/Georgia

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## INTRODUCTION

### 1. What is a freedom of information?

Information is the power, and the democracy is the people's power. Hence, in a free society the governmental information must belong to people. While the tyrannies feed on ignorance, the informed citizens constitute the underplaying foundation of a free society.

The more people know about the government, the better the country is governed, because transparency of the government is a critical precondition for effective fight against corruption and for accountability of the government before the people.

### 2. Who is the guarantor of the freedom of information?

We are, people. The rights are protected only as much as the citizens, rather than public servants, take care of them. No matter how ample the level of public consciousness of the governmental employees may be, the government cannot by itself become transparent unless there is a social order for transparency and readiness of the citizens to protect their rights.

By law, it is we who are the main actors and who have all lawful means to protect our rights. In order to obtain the necessary information, or to attend a session of a governmental agency, each of us has the right to apply to any hierarchical level of government and, if no desired answer is given within the predetermined period of time, to file a lawsuit directly with a court.

It should be also mentioned that by law, in order to ease filing process, a citizen is not required to pay any fees until the court proceedings are completed. In addition, in some cases the filing party is completely released from payment of the state fees.

### 3. Who is bound to provide us with information?

Requirements of the freedom of information extend to, but are not limited to, all state and self-government agencies and agencies. The same requirements apply to those who were entrusted by the state to exercise certain powers or who are financed, in full or in part, from the state or local budgets.

By law, all such persons, agencies, organizations and agencies are grouped in one category and named as public agencies, and the information kept in a public agency, as well as the information received, processed, created or communicated by the agency or its employee and related to their official duties, is deemed to be the public information.

The requirement of publicity of sessions must be observed by all such sessions where more than one person meet in order to make decision or to prepare a decision on behalf of a public agency.

### 4. Whether or not should the business and private life of a citizen be transparent?

The idea of equality, along with the freedom, is the pillar of democracy and of the constitutional system of our state. In the name of equality, let us consider the righteousness of the following conjecture: as long as the government bears the responsibility of being transparent, it would be unfair for a business or a private citizen to be under different conditions; and vice versa, if personal and commercial secrets should be protected, why should the government be deprived of the right to keep its documents in secrecy?

These deductions are fundamentally wrong. First of all, only comparable values can be equal or unequal. The government, business and a private citizen are incomparable and cannot be weighed up on the same level.

Provision of information is the prerequisite of accountability. Transparency of the government is prescribed in Article 5 of the Constitution, according to which the source of all state power in Georgia are the people, who exercise their power through direct democracy or through their representatives. Consequently, openness and transparency of the government is necessary to ensure its accountability before the people.

Abandoning these principles would mean that we acknowledge independence of the government from people and non-intervention of the society in the governmental affairs. In that case we should acknowledge that a state is a self-contained and self-sufficient entity, which has its own purposes and objectives different from those of the society and the citizens. In that case we should concede that the public servants should serve their own private interests rather than those of the society.

##### **5. How absolute is a personal and commercial secret?**

According to the same philosophy that calls for the transparency of government, a private person has the right to personal and commercial secret. The authorities ought to be accountable before the people, but by no means should the citizens or business be accountable before the government.

Unless the right to personal privacy is protected, the government will be able to control the citizens and their private lives. Then it is of no significance who exactly plays the role of all-seeing eye of Big Brother: the police, community, church or some other social agency.

Any totalitarian regime begins just by this – encroachment on the right to personal autonomy. The right to privacy is the underlying foundation of a civil society. Besides, we should distinguish that the leaders' accountability before the society is not a totalitarian approach; it is simply the best protection mechanism from the rise of a tyranny.

It would be unacceptable if the public figures decided to use misinterpreted principle of inviolability of personal life for concealing their private lives from the society. On the one hand, the public figures must be under permanent close watch of the society, so as to enable the citizens to competently discuss their leaders. On the other hand, since the public figures are in the focus of attention of the public, they always have appropriate rostrum for answering any questions, criticism, or sometimes rumors and unfounded allegations from the society. Therefore, the leaders always have the possibility to be heard by the greatest arbiter – the people. There is no better protection than that chance.

The similar problems arise regarding commercial secrets. Abandoning the principle of commercial secret would enable total governmental control of the business. In that case the motto of transparency may create prolific ground for corruption. Possession of a competitive

advantage on the market enables an entrepreneur to gain a foothold under the market economy setting, that is, to satisfy the consumers' demand faster, cheaper and with higher quality than others. So, abolition of a commercial secret would completely eradicate the spirit of private entrepreneurship.

Besides, commercial secrets by no means signify absolute concealment of the business affairs from the society. Transparency of business is allowable and necessary within the limits required to enable informed choice by the consumers and safety of health and environment.

By law, the consumers have the right to receive goods and services safe for the health and environment. Hence, the state should ensure the right of each member of the society to know what is the impact of this member's, as the consumer's, choice on her or her relations' life and health and on the safety of environment.

In accordance with the securities legislation, the corporations are bound to publish key information so as to enable the society – the consumer of the stock market – to make an informed choice.

#### **6. Is a request for governmental information or for access to a session interfering in other people's affairs?**

**T**here is nothing uncomfortable about requesting a document or access to a session, just like there is nothing uncomfortable about using our voting rights for the replacement of unwanted officials through elections.

The government and, consequently, the governmental information belong to people rather than to the officials of various rankings. A citizen who is requesting from an official some information or access to a session is not interfering in anyone's business, he is merely exercising his constitutional right.

After all, the Latin word *respublica* means “an affair of the public” in Georgian. Therefore, the citizen's affairs and the official's affairs do not exist separately. Any official's business is the business of each of us.

Democracy implies citizens' participation in the decision-making process. We have this right to participate not only once in four years, during the elections, but also every day. Ensuring the government's accountability before the society could be impossible if the citizens do not have the comprehensive information about the activities of the officials.

You may have to deal with elected officials only occasionally during your life, but you will interact with regular officials regularly. Therefore, the rights related to the accountability of public administration, i.e. regular officials are not less important than the right to elect the Parliament, the President or a local council.

#### **7. Is it acceptable to have dilettante citizens intervene in state affairs?**

**W**e pay taxes and with this money we hire the government, in order to ensure common welfare and safety. No one may deprive us of the right to question the authorities and demand the detailed account on how the officials perform the duties prescribed for them by us through the laws. The society has the full right to know how the authorities spend the society's money and how efficient is this spending.

Some officials, quite sincerely, may consider the inquisitiveness of a citizen as a challenge thrown at them and think that the specialists should better contemplate the fate of the country, so that the weighed and well thought-out decisions are made. In the opinion of these officials, dilettantes interfering in the state governance affairs may bring about only excessive emotions and undesirable hullabaloo.

This is a fundamentally wrong viewpoint, however. Of course, no one is going to doubt significance of the experts' competence and professional experience. The question is, who is the greatest expert of the state affairs? What else is the state if not the people in that state? Who else, if not us, the people, knows better what the true interests of the public are?!

The officials, on the contrary, should themselves be interested in explaining the meaning of the official policies to the citizens, so as to make them interested in the state affairs and to stimulate inert observers to change their attitude and actively participate in social life.

Decent public criticism of the authorities may only benefit the state. On the one hand, the officials are given a chance to rectify the situation, and on the other hand, the pronounced criticism relieves social dissatisfaction.

## **8. Are we prepared for democracy?**

**N**o matter how challenging democracy may be, the Georgian state has no other alternative, it can be either democratic or nonexistent. We do not have enough time to wait until we are properly ready and only then gradually, step-by-step, set up the democratic governance.

Just as swimming can be learned only by getting into water, learning democracy is possible only by democratic experience. Patterns of other non-democratic state are not quite useful for us. First of all, we should take into account the Georgia's reality and so make our choice.

However strong the nostalgia for the iron hand may be in the certain groups of population, establishment of an authoritarian regime without an appropriate basis is impossible. All non-democratic regimes are based on certain resources: minerals; organization, be it military, party-based or religious; powerful ideology; support from the external powers... Without such resources, unconditional compliance with the orders given from the center cannot be ensured on the whole territory of a country. When there are no authoritarian resources within a country, then the interested external forces may import them by direct intervention or by providing assistance to certain groupings within the country.

Within Georgia, as well as outside its borders, there is no social, political, economic or even a force-based agency that would be interested in setting up an authoritarian regime in the country. Such an interest, to begin with, would mean readiness to bear systematic expenses needed for viable authoritarian governance.

The only player interested in establishing public order in Georgia is the Georgian society, i.e. we, people, the essential guarantees of whose safety and well-being ought to be ensured by the state. No one else, without our participation, will be able to build the new Georgian state, for a simple reason – no one else needs it.

## **9. What is the role of the freedom of information in the formation of a new Georgian state?**

Normal functioning of the state agencies in today's Georgia is put in danger not so much by their impending paralysis in the case of transparency and ensuing crowding effect, but rather by the opposite phenomenon – almost absolute civil nihilism and political indifference of the society.

Estrangement of the people from the state is the result of long historical tradition. For almost 600 years we have not lived in an independent and united state, for the last 200 years the Georgian statehood was broken up, and during the most recent 70 years we were under the grip of totalitarian system. Even the statehood restored in 1990 was deemed illegitimate by the significant part of the society, because of the civil war of the first half of the decade.

The Constitution of 1995 brought some legitimacy to the Georgian state. Nevertheless, rampant corruption and lawlessness in the governmental agencies still prevent the citizens from regarding the Georgian state as their own country and deeming the state affairs as the personal affair of each member of the society. It looks like state officials and regular citizens live and work in different countries.

From the society's viewpoint, the authorities and their servants look as some closed caste. People respond to any act of a governmental official with mistrust and cynicism. Searching for personal interests behind words and actions of the state officials is becoming similar to collective paranoia.

Alienation of the people from the government erodes political agencies and is extremely dangerous for young Georgian state. Even in the cases when the officials act in the people's interests, the official policies are absolutely incomprehensible – and sometimes, completely unacceptable – for a large part of the society.

All the abovementioned has one principal reason: in today's Georgia the citizens, typically, do not understand their state. In the situation where they are not adequately informed about the authorities, the citizens still follow old conventions and assumptions. So the significance of availability of governmental information should definitely be obvious.

To gain the trust of its citizens, the new Georgian state must grow to be “more catholic than the Pope” with respect to its democratic features. In order to overcome the tradition of estrangement of people from government, we should engage citizens in the state-level decision making to a greater extent than that accepted in the most democratic countries of the world.

Only transparency of the government may restore people's trust in the state agencies. Only under conditions of wide-ranging transparency will the society's suspicions and the stereotype of officials' dishonesty disappear. Only under conditions of the freedom of information is possible to realize the ideal of democracy – people's power, by people and for people.

Without support and understanding from the citizens, the Georgian state may not be realized. The most illuminating example for this reasoning is the present situation in tax system. The mass evasion of taxes has been predetermined not only by the ineffective tax administration, but also, and perhaps to a greater extent, by the deficit of legitimacy of the state agencies. The Georgian state will not be able to overcome the crisis unless people begin paying taxes. And the citizens will not pay taxes until they know for what purposes their money is spent – for the society's well-being or for personal gain of some official.

A state agency serves the public interest only when and only to such degree as it is open and, therefore – understandable for the citizens. Prestige of the state and legitimacy of its policies depends upon the degree of transparency of the decision-making process.

Winners and losers have always existed and will exist in the future as well, even in democracies, but if before making a decision all viewpoints are heard and, as much as possible, taken into account, then the final decision will be more acceptable, or at least understandable, for the prospective losers.

However reasonable an official policy may be, it can bring more harm than benefit unless all interested parties participate in its design. Disregarding this aspect will always cause political conflicts and polarization of the society.

#### **10. Against what historical background was the freedom of information enacted?**

**A**dequate implementation of any law requires knowledge of the principles that the legislators followed when establishing the legal norms. Only the text of laws and codes is not sufficient for comprehending the essence of the law.

In what circumstances did the state acknowledge its obligation to freely provide governmental information to the citizens and to ensure their access to the official sessions? What discussions preceded enactment of the freedom of information chapter within the Administrative Code?

In 1995, after the democratic Constitution was enacted, an extensive discussion began on the legislation that would ensure the right to freely receive and distribute the information. Many lawyers, journalists, human rights activists, Georgian and foreign experts participated in intense disputes during the following four years.

The key point of these discussions was a single issue: should the press obey the rules prescribed by the state, or the government must obey the laws prescribed by people? Should a law set the limits of obtaining and distributing the information by the press, or the government must be bound by the law to open official documents and sessions? Should the journalists have some special rights regarding receipt and distribution of the information, or should all citizens be equal before the law?

In June 1999 the Parliament, on one of the last sessions and just few months before the elections, passed the General Administrative Code that contained chapter 3 on the freedom of information. It was resolved that establishment of democracy in Georgia needs the freedom of information rather than a law on the press.

#### **11. What constitutional guarantees protect the freedom of information?**

**T**he first and foremost guarantee of the freedom of information is the Constitution of Georgia and the laws adopted on the grounds of the Constitution: Chapter Three of the General Administrative Code – freedom of information, the Law on the State Secret, and some other laws regulating ecology and health care issues.

In accordance with Article 24 of the Constitution, any individual has the right to receive and distribute information freely. Since one of the principal sources of information of interest for the modern society is government, Article 41(1) of the Constitution acknowledges the right of each citizen of Georgia to examine, according to the rules prescribed by law, the information related to him/her and kept in a state agency, as well as official documents kept in the agency unless they contain the state, professional or commercial secret.

While the first part of Article 41 of the Constitution establishes the principle of open government, the second part of this Article defines that the information contained in the official

records that is related to health and finances of a citizen or to other personal issues may not be disclosed to anyone without prior consent of this citizen, except in the cases prescribed by law. This norm is a natural corollary of the principle recognized under Article 20 of the Constitution that protects inviolability of private life of each individual.

In accordance with Article 37 of the Constitution, an individual has the right to receive complete, objective and timely information with respect to his working and living environment and conditions.

## **12. Which laws regulate the rights to obtain official documents and to attend the sessions?**

**A**fter the Constitution, the principal legislative act that regulates the rights of a citizen to attend sessions of a public agency, freely access the official documents and the documents related to him/her and kept by the authorities, is Chapter Three of the General Administrative Code – freedom of information.

Although some other laws also govern the issues related to transparency of government, the freedom of information chapter of the Code should be regarded as the most significant and effective law in this area. For this reason, major part of this guide is dedicated to this legislative act and its application.

Obviously, the broader the scope of a law's application, the wider the range of interpretations. The situation is complicated by the fact that apart from the freedom of information chapter, a number of other normative acts also operate in this area. A citizen does not really need to know these other acts when filing an application, but they are necessary for an official in order to provide lawful and justified answer.

Transparency of government is a vital necessity for the society, but this interest may, in exceptional cases, get into conflict with another, not less important social interest – efficient and effective operation of the government and protection of personal, commercial and state secrets.

Such conflicts occur in any free society. The laws should somehow balance all legitimate social interests and should not allow erosion of the freedom of information by misusing the specific exceptions of the general rule of openness.

Based on the Constitutional norm, the Freedom of Information Chapter, along with the transparency of government issues, also regulates the issues of confidentiality with respect to personal records contained in official documents. In addition, an individual's right to examine the information related to him/her and contained in governmental documents may be limited by the reason that such information is associated with state, personal, commercial or professional secret.

The right to know what the government knows about you is the fundamental principle of the freedom of information. The governmental documents may contain incorrect data, and on the grounds of such wrong data the citizen may sustain some damages. The government may have such information about us that it has no lawful right to know, and, consequently, there may be a danger of misusing such information for illegal purposes.

We have the right to request rectification of incorrect data and elimination of illegally obtained information. This right may be protected by appealing to a court. The government is bound to compensate to the citizen the damages caused by the government's negligence, mistake or illegal action.

Freedom of information issues, apart from the General Administrative Code, are regulated by some other legislative acts as well. Therefore, all public servants who have to review and resolve the freedom of information issues ought to know these acts properly.

### **13. How to obtain the governmental information or attend a session?**

**E**veryone has the right to examine any governmental document and to attend any session held in any state agency. However, the law may define specific exceptions.

In order to exercise our right, it is not required to prove to the respective governmental agency that our request is legal or that our interest is valid. All our requests are deemed legal and valid until the respective state agency proves otherwise.

If a state agency denies our request for obtaining of some information or for access to some session, then the legality and validity of such refusal must also be justified.

In order to obtain a governmental document, or when filing an application for attending a session, we need neither any assistance from a lawyer nor profound knowledge of the laws. In contrast, the state official who will be assigned to review our application may have to learn the effective legislation.

To the citizen the law gives only rights and does not impose any obligations, while the state official is held liable for both wrongly concealing and incorrectly disclosing of the information. Therefore, the officials should act very carefully and make only well-grounded decisions.

### **14. What are the practical procedures of the freedom of information legislation?**

**T**he legislation that ensures availability of governmental information and publicity of sessions defines very simple procedures of realization of these rights by the citizens.

Nonetheless, we should be ready for the cases where theory does not conform to practice. Not all agencies and officials are the same. Some of them are determined to be open and cooperative, while the others are extremely skilled in concealing the information.

In addition, we should anticipate that nowadays, when everything changes, the authorities also change. Old officials resign and other people fill their positions. New people bring to their jobs new approaches and policies. All this, ultimately, facilitates establishment of new practices and better satisfaction of requirements of society and time.

### **15. If our request has been denied, should we trust the official?**

**N**o, you should not. Unfortunately, for a long time we have lived in the state where every word of a governmental official was an only law and justice. Today the society has to cope with this historical tradition, but overcoming it will not happen quickly and easily.

Under the shadow of past lawlessness, we often dither to doubt the legality of solemn statements of the officials and to assess with criticism the fairness of governmental decisions.

We should always remember that in a legal state, which we all are trying to build, only a court is competent to make final decisions and to resolve whether or not something is legal in some situation.

In addition, we should know that when applying to a court, our chances of getting the desired information greatly increase. This happens not because the judges are better individuals than other state employees, but simply because a judge, unlike some regular official, is independent in making her decisions and obeys the law rather than superior officials. Besides, courts do not have any direct, agency-related interest in concealing the information. Therefore, unless the state agency provides well-substantiated reasons to back its position and justifies why some information should be classified as secret, the judge is likely to resolve the case in our favor and give order to the respective official to open the closed information or session.

**16. Are the authorities always trying to mislead us with respect to the freedom of information issues?**

Often, but not every time because the officials are predominantly and permanently bad or because good people cannot advance their careers in the government. It happens merely because such is a human nature. Imagine yourself in the official's shoes. If you were an official, would you be pleased if someone were nosing into your affairs? Don't you yourself try to get rid of annoying, curious people?

The officials who make decisions regarding the freedom of information issues are mere mortals, so nothing human is alien for them. And the human beings often make mistakes, have various weaknesses and, usually, rarely are risk-takers.

The official, who has been working on the issue interesting for us for years, and knows it in details, may at the same time be unfamiliar with the legislation governing the freedom of information. In addition, there is a gray area of uncertainty between definitely open and definitely closed information. In order to play safe and avoid trouble, the official may choose to put a 'closed' label on the information from the gray area. Perhaps he lacks experience or knowledge of laws, or maybe the official is trying to cover up his mistake or even offense.

**17. How useful is for us the public information?**

Availability of the information about their government to the citizens is significant for several reasons.

The first reason – through this information the citizens become aware of the activities of their government, which increases the probability of their active involvement in the governance of the country.

The second reason is that availability of the information holds back corruption and incompetence, because the government officials know – their actions will be publicly discussed. This knowledge gives them a good incentive to perform their duties better. When the legislation prescribes publicity of the government, then each governmental official thinks along these lines: "I may read tomorrow on the first page of a newspaper whatever I say or do today". Public control improves the quality of the work of governmental officials.

The third reason is that availability of the information enables citizens to make decisions themselves and not to wait until the government does so instead of them. For example, if the citizens are concerned about the safety of nuclear power stations, they can request the respective information from the government and then decide themselves, whether or not to demand closing down of such stations. The information provides to the citizens straightforward possibility to ensure protection of their health and safety themselves and not to hand over these issues to the government.

And fourth reason – the publicity increases the level of awareness of the society about the activities of the government and, also, enables the government to respond to the criticism, thereby justifying its actions. The individuals possessing the information about the government are able to comprehend the past and better learn the lessons from the past; for these individuals it becomes easier to resolve the problems related to the government’s activities and to prepare for the future.

According to the widespread stereotype, the principal users of public information are the journalists. However, the first impression is not always the right one. The press, through journalistic tricks, manages to obtain the needed information much faster than defined by the legislation on the freedom of information.

The freedom of information, most of all, is necessary for us, regular citizens, i.e. for the people who cannot obtain the information from unofficial sources or informal channels.

Forbidden fruit tastes sweet, but beware: the facts contained in top-secret materials may be truthful, or they may not. The official documents do not always justify our hopes. Oftentimes, the most interesting part of the information may be classified as secret and published with deletions.

The sole fact that a document was classified does not guarantee that the information it contains will turn out to be correct, or even interesting. Oftentimes the information possessed by the state is wrong. Quite frequently the officials give preference to such information that names others as the main culprits of some trouble, but through which they personally or their agency may look positively from the viewpoint of their superiors or the society.

Of course, half-truth is not the truth, but better to have at least some part of the information than no information at all. Regardless of this and some other flaws, an official document is a good starting point to obtain comments and additional clarifications from the official source. Even deficient information may happen to be the key that will lead to other documents.

## **Public Information and Request for the Information**

### **1. What is the public information?**

**T**he General Administrative Code gives exact definition of the term *Public Information*. According to Article 2(1-*l*) of the Code, public information is an official document (including drawing, model, plan, scheme, photograph, electronically stored information, video and audio recording), i.e. the information kept in a public agency, as well as the information received, processed, created or communicated by a public agency or its employee and related to their official duties, is deemed to be the public information. That is, any information is deemed to be public if it is kept in a public agency, not necessarily on the paper. Besides, public information may not always be open.

### **2. How open is public information for me and what kinds of public information can I rightfully request?**

**P**ublic information may be either open or closed. Any information, that is not classified as secret according to the rules prescribed by law, is open. By law, the information is closed if it contains state, commercial or personal secret. In addition, the information protected by executive privilege is also closed and not available for disclosure. In conclusion, major

part of public information is open and available to everyone.

### **3. What kind of information may constitute a state secret?**

**T**he law “On the State Secret” regulates classifying of the public information as secret. In accordance with this law, only the following information may be classified as a state secret:

1. In the defense sphere:

- a) The information that contains strategic and operational plans, documents on preparation and execution of military operations, issues related to strategic and operational relocation, mobilization and alertness of armed forces and use of mobilization resources;
- b) Earmarked programs for the development of armament and defense technology, as well as scientific-technical and engineering works for the development of armament and defense technology;
- c) The information on the regime of operation, structure and complement of highly classified military and civil defense objects.

2. In the economic sphere:

- a) The information about the mobilization plans and capacities of the national economy, reserves and supply volumes of strategic materials and raw materials, as well as about the layout and volume of the state and mobilization resources;
- b) The information about the operational regime and security systems of transport, communications and other infrastructure objects of the country, in order to ensure their safety;
- c) The information about the specific types of the state monetary reserves included in the common gold reserve – precious metals, precious stones and other values, the operations related to production, safekeeping, guarding, circulation, exchange or removal from circulation of the banknotes and securities, as well as about the operations related to prevention of counterfeiting.

3. In the external affairs:

- a) The information on the foreign policy and external economic relations of Georgia, disclosure of which may harm the state interests;
- b) The information on the issues of military, scientific-technical and other types of cooperation with foreign states, disclosure of which may harm the interests of Georgia.

4. In the spheres of intelligence service, state security and law enforcement:

- a) The information on the plans, organization, material-technical supplies, forms, methods and results of the intelligence, counter-intelligence and dispatch-investigation operations, as well as on the financing of specific programs related thereto; the information on the persons who secretly cooperate or previously cooperated with the respective agencies of Georgia operating in these areas;

- b) The information on security systems and regime of guarding of the top officials, administrative buildings and governmental residences of Georgia defined by the law of Georgia “On the Special Service of State Guarding”;
- c) The information on the governmental and special systems of communication;
- d) The information on the development and use of the state encoding, scientific-research works in cryptography.

Decree #42 of the President of Georgia of 1997 prescribes the procedures for classifying of the information as a state secret and its protection, as well as the list of documents deemed to be the state secrets and the list of those officials who are authorized to classify the specific information as a state secret.

**4. What kind of information may constitute a commercial secret? Who is the subject of a commercial secret? In what cases is it possible to obtain the information related to a commercial secret?**

Information classified as a commercial secret is the information about a plan, formula, process or method having some commercial value or any other information that is used for production, preparation or processing of goods or for rendering services, and/or that represents innovation or significant achievement of technical creative work, or other information disclosure of which may diminish competitiveness of a person. Furthermore, commercial secret is a secret of legal persons of private law and other entrepreneurial entities and constitutes their property. In the cases prescribed by law, such information may happen to be in the possession of a public agency. The public agency is obligated not to disclose such information to third persons. In effect, the only way to obtain a commercial secret is the prior consent of the person who owns it. In such cases the consent, notarized or authenticated by an administrative agency, must be filed with the public agency along with the application for the information. In some cases prescribed by law the information classified as a commercial secret may be open – such as the information with respect to health and environmental protection issues.

**5. What kind of information may constitute a personal secret? Who is the subject of a personal secret? In what cases is it possible to obtain the information related to a personal secret?**

Information classified as a personal secret is the information that contains personal data of a natural person. This person, about whom such information exists in a public agency, makes the decision on classifying the personal data as her personal secret. By law, the personal data is the information that enables identification, i.e. recognition of a person. Typically, personal secret consists of the information about the health status and finances of a person, as well as other private issues. The agency is obligated not to disclose the information classified as a personal secret (personal data), except in the cases prescribed by law – after the justified court decision – or except when the person gives consent thereto. To obtain the information classified as a personal secret, one will need the prior consent of the person whose personal secret is requested. In such cases the consent, notarized or authenticated by an administrative agency, must be filed with the public agency along with the application for the information. However, we should remember that rules of protection of personal secrets described above do not apply to the officials and the candidates nominated for official positions that are defined under the law “On the Conflicts of Interest and Corruption in the Public Service”. The personal data of these persons is the open information and ought to be disclosed by the public agency without consent of the respective person.

**6. What is a professional secret? May a public agency refuse to disclose the public information on the grounds that it contains a professional secret?**

**A**ccording to law, the information that constitutes a personal or commercial secret of another person and that was made known to a person in connection with the latter's professional duties, is deemed to be the professional secret. Information that is not a personal or commercial secret of another person may not be the professional secret.

Hence, only those individuals may possess professional secrets exercise of whose professional duties is impossible without the knowledge of others' personal or commercial secrets (e.g. medical doctor, attorney). Consequently, the information of our interest and related to a professional secret will be kept in a public agency as the classified personal or commercial secret, provided that the respective agency has a legitimate cause to collect such information. In this case the rules prescribed in Chapter 3 of the General Administrative Code will naturally apply to a request for such information.

As we have learned, only the following four types of information may be closed in public agencies: state secret, commercial secret, personal secret and the information protected by the executive privilege. Therefore, a public agency may not possess any information classified as a professional secret.

**7. What is an executive privilege?**

**T**he term *Executive Privilege* denotes the authorization of an administrative agency not to disclose the identities of other public officials who may have participated in the preparation of decisions made by the officials of this agency. This protection is not applicable only to the state-political officials. The essence of the above provision is to facilitate comprehensive and all-inclusive review of the issues before the respective decision is made, which, among other factors, includes submission of various and diverse viewpoints. Such viewpoints may not have been put forward if the respective public servant had not had the guarantee that his identity would not be disclosed in connection with the respective issue.

**8. Is there any information that cannot be classified as secret and, respectively, ought to be disclosed by a public agency?**

**Y**es, such is the information on the condition of the environment, as well as on the potential danger to the life and/or health of a person. In addition, the information about the structure and officials holding positions in administrative agencies, process of decision-making, election of elective officials in these agencies, as well as the information about the collection, processing and release of information and financial activities of the public agencies may not be classified as secret.

It is important to note that the requirement of openness of the information about the life and health and environmental conditions is the interpretation of a Constitutional provision. Article 37 of the Constitution states that everyone has the right to receive complete, objective and timely information with respect to her working and living environment and conditions. During the recent decades the society has been deprived of the information about those potential dangers that the environment posed to the life and health of individuals. Even at the time of ecological disaster or release of harmful substances in the air the society was left uninformed. Even the notorious Chernobyl tragedy was made known to the society through the foreign mass media. Presently, such concealment of information is unconstitutional and will cause the liability prescribed by law. Any danger to the life and health of citizens must be completely made known

to the society. Besides, Georgia has joined the international Orhus Convention that grants to the society unlimited rights in the protection of environment and receipt of the information on environmental conditions.

**9. What is the Public Register and should it contain the secret information?**

**A** ccording to law, all public information existing in a public agency is recorded in the Public Register. Therefore, the Public register ought to contain both open and closed public information. At present there are cases when some public servants think that only the open information should be recorded in the Public Register, which is fundamentally wrong assumption.

**10. To which specific official should a citizen apply when requesting public information from a public agency?**

**I**n the past it was often the case when relations of an administrative agency with various persons was the sole prerogative of the head officials of the agency. Any letter or application should have been addressed to the head of the agency or his deputies and, respectively, all replies of the administrative agency to the citizens were signed by these officials. The said procedure complicates the process of review of applications and decision-making and puts an excessive burden on the head officials. This is particularly true in the case of review of applications and decision-making with respect to the release of public information: under the conditions of normal functioning of a civil society, this process is so frequent and laborious work, and so often requires making prompt decisions, that if the top officials were to perform this obligation too, then they may have been left with no time to perform their principal duties. For that reason, Article 36 of the General Administrative Code defines that a public agency is bound to designate a public servant who will be responsible for ensuring the availability of public information. This provision means that in all administrative agencies an internal order ought to define identity of the person who will be assigned to perform the function of release of the public information and who will bear responsibility. The identity, work address, telephone number and other contact information of such a person must be put in the place of public agency that is available for everyone. Taking into account the significance, size and functions of a public agency, these functions may be performed by the official whose principal duties include resolution of some other issues. The public agency may assign one official who will perform this single task or it may create a subdivision headed by this person that will work on collection, processing and release of information. Typically, in the agencies of lower level, where are only few employees and, respectively, the volume of information is relatively small, the said functions are combined with other principal duties of an official. In the public agencies of higher ranking an official is specifically appointed to perform these duties. And in the ministries and state departments it is desirable to have a special subdivision working on the said issues.

**11. Does the properly authorized official have the right to deny the request for information from a person on the grounds that this person is not a citizen of Georgia, is a minor, belongs to some ethnic group, etc.?**

**T**he law does not provide for any such limitations. Everyone has the equal right to request public information, regardless of his/her age, citizenship, gender, race, ethnic or religious association, etc.

**12. In what form may I receive public information from a public agency?**

If a public agency keeps the information in various forms (e.g. on paper, magnetic tape, video image, etc.), then the agency/respective public servant is bound to provide the information to the citizen in the form requested by the latter. The citizen is also entitled to examine the information in the original. If there is a danger of damaging the original, the public agency is obligated either to provide the document for examination under appropriate supervision or to submit the properly authenticated copy.

**13. Is a public agency bound to release copies of the public information if requested?**

Yes, a public agency is obligated to release public information, except when this information contains state, personal or commercial secret or it is protected by the executive privilege. The citizens have the right to examine the public information in the original, as well as the right to receive the copies of the information. According to law, the public agency is obligated to ensure availability of copies of public information, which means that in the case of request the agency ought to make copies of public information. The associated expenses are borne by the one who requests the copy. However, in the case when a person requests from the agency her own personal data, the copies of this information are given to her for free.

**14. Does a public agency have the right to establish a fee for release of public information?**

No, it doesn't. In accordance with Article 38 of the general Administrative Code, release of public information is free and may not be subject to any fees, except for the compensation for expenses needed for making a copy. In the latter case, the paid sum must correspond to the cost price of the copy-making.

**15. What kind of answer may a public agency give to the application for release of public information?**

Most of the time a public agency releases the requested information or refuses to release it. However, there are some other possible replies as well. For example:

- the public agency states that it does not possess the requested information;
- the public agency states that the requested information cannot be found (that is, the agency acknowledges either the existence of the requested information at the agency or its obligation to possess such information, but declares that because of obsolescence, lack of registering procedure or other reasons it is unable to retrieve the document);
- The agency declares that the requested document is destroyed (indeed, in the cases prescribed by law, or in the cases when keeping of a document is no longer obligatory, the administrative agency may destroy it).

In the cases above, as well as in the case of refusal to release the information, the response of the public agency may be appealed to a court. The filed appeal may request both the disclosure of the information and the compensation for material and moral damages sustained.

**16. Is a public agency entitled to deny the request of a person for release of public information on the grounds that the person's application is incomplete, incorrect or that it is unclear what information is being requested?**

When requesting information, it is often impossible to know all the details about the information. Therefore, processing and systematization procedures of the information kept in a public agency should necessarily enable rapid retrieval of the requested information according to several criteria. The public agency should do its best in order to retrieve and release timely the open public information requested. If the filed application makes impossible to identify the requested information, the applicant should be given the explanation – why the public information could not be released – and asked to specify the request in more details.

**17. What are the time periods fixed by law for release or refusal to release public information by a public agency?**

In accordance with Article 40 of the General Administrative Code, a public agency is obligated to release public information without delay. *Without delay* means that the issue is to be resolved immediately upon filing of application and its registration by the agency, on the same day. The law defines several exceptions to this rule:

Information may be released within 10-day period if replying to the request for public information requires:

- retrieval of the information from the agency's structural subdivision situated in another locality and its subsequent processing;
- retrieval and processing of several documents of significant volume and not associated with each other;
- advice from the agency's structural subdivision situated in another locality or from another public agency.

In such cases the applicant is immediately informed that the agency needs 10-day period from the release of the information.

In accordance with Article 41 of the Code, the public agency is obligated to notify the applicant of its refusal to release the information without delay. The abovementioned time periods do not apply to a case within Article 41<sup>1</sup>, which defines special time periods for release or non-release of information for the second part of Article 27<sup>2</sup>. Let us consider this case in more details. Part 2 of Article 27<sup>2</sup> defines the procedure of classifying the information as a commercial secret. For such a case the Code allows for the possibility of dispute between the public agency and the provider of the information on the question of secrecy and the possibility of appealing the decision made on the dispute. That is, the provider of information may deem that the information constitutes his commercial secret, but the public agency may consider it to be open on the grounds of some law, and, simultaneously, a third person may request the information. In this case, according to Article 41<sup>1</sup>, the information will be released or not released only after expiration of the periods of time defined under Part 2 of Article 27<sup>2</sup>. Obviously, the time periods for appeal will be calculated only if either party takes an appeal from the decision of the public agency on the openness of the information.

**18. Is the retrieval and processing of several documents of significant volume (and not associated with each other) in fact the creation of a new document by the public agency?**

No. When there is a request for information, a public agency is in no case obligated to create a new document. The abovementioned provision means only retrieval, classification and systematization of several requested documents.

**19. Does a public agency have the right to omit a reference to the grounds on which it has made the decision to release or not to release public information?**

**N**o. The public agency, in particular, the respective official, is bound to notify the applicant about the decision made, the grounds thereof and the normative act according to which the decision was made.

**20. What are the obligations of the public agency in the case of its refusal to release the information?**

**I**n the case of refusal to release the information, the public agency is obligated, within 3 days from making the decision, to communicate to the applicant, in writing, the applicant's rights and the procedure of appeal, as well as the names of those structural subdivisions or public agencies with which the agency consulted when making the decision on non-release of the information.

**21. Does the law provide for some mechanism through which the secret information kept in a public agency is protected from disclosure by the agency's public employees?**

**Y**es. Article 11 of the General Administrative Code defines obligation of the public servants participating in administrative proceedings not to disclose and not to use for the purposes other than their official duties the secret information received or created during the administrative proceedings. The liability for such disclosure or misuse will arise according to the rules prescribed by law. Obviously, this case does not mean the obligation of a public servant to release the information in accordance with Chapter 3 of the Code.

**22. I am doing some journalistic investigation. I am told that the information I requested cannot be found. What should I do?**

**F**irst of all, try to ascertain the agency from which the public information should be obtained. After that you should request the information directly from that agency. If the public servant responsible for public information refuses your request, or says that your information is lost or cannot be found for some mysterious reason, do not give up, ask for the refusal in writing. Next, make your request for a second time; now apply directly to the head of the agency. Besides, you have the right to examine the Public Register. In accordance with Article 35 of the General Administrative Code of Georgia, a public agency is obligated to enter the public information kept in this agency into the Public Register. Simultaneously, you may try to find the analogous information in another public agency or archive. You should try to use all possibilities. With all this going on, if from the first agency you still receive a negative answer that the document(s) cannot be found, then you have the right to appeal to a court.

**23. I am a journalist. Whenever I requested public information on my behalf, they always "delicately" said no. I was told that I should put the same request on the newspaper's letterhead. So, it turns out that a journalist and a newspaper have the different rights?**

**T**he newspaper and the journalist, as well as any other individual, have the same rights with respect to freedom of information. None of the laws effective in Georgia deems a newspaper as having more privileges in getting some information than a journalist or any other person. Each legal term used in the General Administrative Code of Georgia, when defining the subjects requesting the information, puts all of them on the same level.

For example,

a) According to Article 37, “anyone has the right to request public information, regardless of the physical form and conditions of storage of the information...”

b) According to Article 42, everyone has the right to know: 1) the information about protection of environment, 2) the main principles and directions of a public agency’s activities...

Besides, the law prescribes common grounds for natural and legal persons in the cases of refusal from releasing the information.

Consequently, the “delicate no” you received is not based on legal grounds.

**24. I am willing to make copy of the historical photograph kept in archive. The direction of the archive refuses my request on the grounds that the photograph is very old, damaged and may not be touched. What should I do if I extremely need the photo?**

**I**n accordance with Article 37 of the Code, if there is a danger of damaging the original, the public agency is obligated either to provide the document for examination under appropriate supervision or to submit the properly authenticated copy. That is, the public agency itself is bound to make a certified copy of the historical photograph and to hand it over to you.

**25. I wanted to obtain public information, and applied to one of the ministries. They told me that I could see the document and, if desired, to make an extract from it, but they could not allow making copy of the document. Is this answer legal?**

**T**he answer is illegal. You have the right to see, make excerpts and make copy of the public information. These issues are directly regulated by Article 37 of the Code – “any person has the right to select the form of receipt of the information...” i.e. if the public information you requested is open, then it is at your discretion to select the form of receiving the public information, not the ministry’s.

**26. My request for public information was refused for unspecified reason. Before that, my application was accepted and recorded in the register. What should I do to determine the reason for the refusal?**

**P**ublic agency, in the cases prescribed by law, has the right to refuse your request for public information. However, it has no right to offer unjustified refusal. The public agency is obligated to notify the applicant about the decision made, the grounds thereof and the respective normative act. When refusing a request for information, the public agency is bound to issue an administrative act, and the administrative act obviously needs justification.

In addition, according to Article 41, in the case of refusal from releasing public information, the public agency is obligated, within 3 days from making the decision, to communicate to the applicant, in writing, the applicant’s rights and the procedure of appeal, as well as the names of those structural subdivisions or public agencies with which the agency consulted when making the decision on non-release of the information. You should request that the refusal be given to you in writing by the respective agency.

**27. I promptly need a copy of one of the resolutions of the local council. Applied to the press-center of the council. Over the phone, the press representative agreed to receive me at the appointment in two days. I waited all day long in vain. Another employee advised me to file an application, and so I did. As we agreed, I returned to their office in 3 days. The one who accepted my application turned out to be on vacation, and my request could not be located. What should I do?**

**U**nless you find your request recorded in the register, you can do nothing, you will have to file the application again. Take into account your mistake and have your application officially registered in the agency's secretariat and obtain the entries confirming the registration. In addition, you should determine which public servant is responsible for availability of public information, through whom you should obtain the requested information.

**28. One of the telephone companies installed a transmitter in my neighborhood. I have doubts that its emission is harmful for my health. I applied to the company for the information, but they did not show me the documents, on the grounds that this information happens to be their commercial secret. What should I do?**

**N**aturally, you cannot obtain this information from the company, because it is not a public agency. In this case you should apply to the respective controlling public agency, or to that public agency which participated in issuance of the state permit to the company for the said operations. The respective public agency will surely have to release such information, because according to Article 37 of the Constitution the information with respect to environmental conditions must be available without any limitations.

**29. I applied to the rayon administration with the request to obtain the curriculum vitae of my rayon's governor. My request was refused. I was told that in order to obtain the information, the governor himself should give the consent. Did the administration give the right answer?**

**T**he administration is wrong. When obtaining personal information, consent is required if the subject is not an official. If the personal data of an official is requested, then according to Article 44 of the Administrative Code the information is open. As for the governor, according to the Article 2 of the law "On the Conflicts of Interest and Corruption in the Public Service", the position of rayon's governor is deemed to be the official position. Therefore, you should have been given the information without his consent.

## **Publicity of Sessions**

**1. What is a corporate public agency?**

**I**n accordance with Article 27 of the Administrative Code, public agency is an administrative agency or a legal person of private law financed from the state or local budgets, within the limits of such financing. According to the same Article, all those public agencies, whose governing or deliberative agency consists of more than one person and in which the decisions are collectively prepared or made by more than one person, are deemed to be the corporate public agencies.

According to the General Administrative Code, an agency that performs public-law functions is an administrative agency. Performance of public-law functions means exercise of governmental functions, i.e. such activities that do not require consent of the other party and that are upheld

by the state enforcement mechanism. Performance of a function of an administrative agency may be entrusted to a private (natural or legal) person as well. This principle is mainly used in such cases when exercise of some activities requires special (e.g. technical, scientific, etc.) knowledge and the activities may be performed by a private person with the higher quality and smaller expenses. For example, the state may transfer the right of compulsory technical inspection of motor vehicles to a private company, which has both the appropriate technical knowledge and the respective facilities. Thus, all the abovementioned agencies and persons will be deemed to be the corporate public agencies if they are governed and the decisions on their behalf are made by collectively, by two or more persons. Such an agency may be a deliberative agency, or it may be an independent agency. For example, in Georgia the following are such agencies:

- The government of Georgia;
- Deliberative agencies of the ministers – panels;
- The national regulatory commission of energy sector of Georgia;
- The regulatory commission of communications of Georgia;
- The central electoral commission of Georgia;
- The national security council of Georgia, etc.

Of course, this is not a complete list. It represents only a small part of corporate public agencies. Complete listing of such agencies is in fact even impossible, because this notion encompasses various ad hoc panels and commissions as well. Thus, in the definition of a corporate public agency the following 3 factors are critical:

1. Whether or not this agency is an administrative agency defined under Article 2 of the General Administrative Code of Georgia;
2. In the case of legal person of private law – whether or not it is financed from the state or local budget funds;
3. Whether or not two or more persons review the cases and make or prepare decisions in this agency.

## **2. How a corporate public agency is holding its sessions?**

**I**n accordance with Articles 32 and 28 of the General Administrative Code of Georgia, each corporate public agency is obligated to hold its sessions openly and publicly, except in the cases when the session considers the information containing state, commercial or personal secret.

The abovementioned means that, aside from exceptional cases, a session is open and available to anyone willing to attend, and the publicity means that the proceedings, minutes and other resolutions adopted at such sessions will be made public. A corporate public agency is bound to facilitate realization of the principles of openness and publicity of sessions. Some corporate public agencies, the specific character of whose activities is the review and resolution of the issues related to defense and security of the country and the fight against crime, do not have the right to classify all their activities as secret and, in our case, to declare their meetings automatically closed without a legitimate reason or, all the more, without instruction. The public agencies should necessarily take into consideration that the grounds for closing a session are the same for all corporate public agencies and are limited only to the cases defined by law.

## **3. Is it obligatory, under the General Administrative Code, that a corporate public agency published in advance or otherwise made public the information about a forthcoming session?**

**Y**es. In accordance with Article 34 of the General Administrative Code, a corporate public agency is obligated to announce publicly a forthcoming session at least one week in advance before the session begins. The public announcement ought to include the following information: the place at which the session is to be held, time of its holding and agenda of the session. In addition, it should be announced whether the session will be open or closed. Besides, it is preferred to indicate the name, position and telephone number of the public servant who may be contacted by the citizens with respect the specific session. The public announcement, typically, means that the said information ought to be publicized through the media of information or put at such a place where everyone will be able to observe it freely. Normally, such place is a stand, bulletin board, etc. Also, in some cases prescribed by law, the administrative agency ought to notify the interested persons of the forthcoming session through postal service or telephone.

Corporate public agency may change the time, place and agenda of the session or decide to close it only in the case of extreme necessity. Extreme necessity means existence of the following two conditions: 1) there is a danger of violation of the legislation, and 2) functioning of the public agency in a democratic society is put in danger. In such cases the public agency is bound to announce immediately any changes related to the publicity of the sessions.

**4. If a person gets to attend a session of a corporate public agency, does she have the right to participate in the proceedings of the session?**

**N**o. The law entitles the citizens only to attend the sessions. However, some public agencies may provide for statements of the representatives of society at the session, but this may be done only with a prior agreement and by observing the established procedures.

**5. Does the superior or any other administrative agency have the right to close a session of the corporate public agency?**

**N**o. In accordance with the General Administrative Code, the authority to close a session is solely within the scope of that corporate agency whose session is to be closed.

**6. What procedures must be observed when closing a session of a corporate public agency?**

**C**orporate public agency ought to make decision on closing of a session by vote. The decision on closing is made by the same majority of the votes that is generally required for making decisions by the agency. The voting must necessarily be nominal, and the minutes of the session ought to indicate the identities of those who voted for and against the decision.

**7. Is the information on closing of a session public?**

**Y**es, such information is public. In accordance with Article 34 of the General administrative Code of Georgia, a corporate public agency is obligated to enter into the public Register the results of nominal voting with respect to decision on closing a session and the minutes of the respective session. When entering the minutes of the session into the Register, the corporate public agency ought to adhere to the rules defined in Article 33 – regarding the publication of information excluding the secret part of the information. Obviously, in the case of respective request, the public agency ought to release the copies of the session's minutes excluding the secret information.

**8. May a part of the session of the corporate public agency be closed?**

**Y**es. In such cases the legal mechanisms regulating holding of the sessions by a corporate public agency described above will apply ordinarily.

**9. Is it allowed to close the whole series of the sessions?**

**Y**es, but only in the case if it is known in advance that several sessions will be devoted to one and the same issue, or when it is obvious that one session will not be enough for review of some particular issue and the deliberation will continue for several sessions. However, a corporate public agency may not simply close all sessions to be held in the next month, for example.

**10. Are all official meetings of the governing or deliberative agencies of the corporate public agency deemed to be "the sessions" of the agency?**

**N**o. The session is only that official meeting of the members of the agency which is aimed at making or preparing the decisions on behalf of the public agency. A meeting of the corporate agency that is formally official but is not aimed at making or preparing decision will not be deemed to be a session. Likewise, of course, unofficial and personal meetings of the members of the corporate public agency may not be regarded as the sessions.

**11. Is there any special fee established for obtaining the minutes of the session of the corporate public agency and other respective documents?**

**N**o, there is no fee established for such situations. As in the case of obtaining any other public information, the recipient should pay only for the cost of copy-making.

**12. Does a citizen have the right to apply to a court if a corporate public agency illegally closed its session?**

**Y**es. The law entitles any person to take an appeal from any decision of the corporate public agency made in violation of the requirements of the law on the openness of the sessions, by filing an appeal with a court within one month after the session was held. If the court finds that the session of the agency was held without observing Article 34 of the code or it was closed without legal grounds, then the decisions made at this session will be declared null and void.

**13. City council of my hometown planned to consider the issue interesting for my newspaper. However I tried, I could not find out exactly when, on what day was it to be considered at the session? Therefore, I was unable to attend. Does any law bind the council with the obligation to make the session agenda known to us in advance?**

**Y**es it does! Article 34 of the General Administrative Code makes it clear that a corporate public agency is obligated to announce publicly a forthcoming session, the place at which it is to be held, time of its holding and agenda of the session at least one week in advance before the session begins, and in the case of the respective decision – to announce that the session will be closed.

However, there are exceptions when in the case of extreme necessity the corporate public agency has the right to hold the session without one-week advance notice. If such a decision is

made, the public agency is obligated to announce immediately the place, time and agenda of the session, and in the case of the respective decision – to announce that the session will be closed. Thus the city council is bound to announce holding of a session one week in advance, except in the case of extreme necessity.

**14. The council was going to consider the issues related to housing construction. The session was closed. How legal is such a decision?**

The council, as a corporate public agency, has the right to close its session only in the particular cases defined in Article 28. According to this Article, the session may be closed if it considers the information containing state, commercial or personal secret. If you think that the session was closed illegally, you have the right to appeal the legality of the agency's decision by filing the respective petition with a court and to demand not only annulment or alteration of the decision, but also the compensation for property and non-property damages your sustained.

**15. When I went to attend the session of the council arranged to begin at 12:00 hours, I was 10 minutes late. They did not let me in. I was told that the review of the issues on the agenda had not started yet, while the number of council members present in the hall was enough for quorum. Did they have the right not to let me in the hall when the time officially fixed for the session already came?**

No, they had no such right. In accordance with Article 34, any changes in the place, time and agenda of the session or a decision of its closing must be announced immediately. Therefore, if the council had not made the decision to close or postpone the session, then their conduct was illegal. You have the full right to use the legal mechanisms prescribed by law (appeal, claim for damages).

## **Supervision and Control related to Freedom of Information**

**1. Does the law bind a public agency with the obligation to submit to some agency the report on its activities related to freedom of information?**

Yes, in accordance with Article 49 of the general Administrative Code of Georgia all public agencies are bound to submit to the President and the parliament of Georgia reports on their activities related to Chapter 3 of the General Administrative Code of Georgia by December 10 of each year.

**2. What information must be included in the annual report submitted to the Parliament and the President?**

The requirements with which the report must comply are defined in Article 49 of the General Administrative Code. These requirements are uniform for all public agencies. According to the law, the report ought to contain the following information:

- The number of requests for release of public information and for rectification of public information received by the public agency;
- The number of decisions made to satisfy or to refuse the requests;
- The identity of the official who has made positive or negative decisions with respect to the requests;

- The information about the decisions of the corporate public agency on the closing of its sessions, the number of such decisions;
- The information on public databases and on the collection, processing, keeping and transferring to other persons of the personal data by the agency;
- The number of violations of the law related to the openness of public information by the public servants and the information on imposing of the disciplinary fines upon the responsible persons;
- The information on the legislative acts on which the public agency based its decisions when refusing to release the public information or when closing session of the corporate public agency;
- The information on the appeals taken from the decisions refusing to release the public information;
- The information on the expenses related to the appeals taken from the decisions refusing to release the public information or the decisions on closing the session of the corporate public agency, including the funds received by the party as a result of favorable judgments.

## **Freedom of Information and the Judiciary**

### **1. In what cases may a person apply to a court when the provisions of Chapter 3 on the freedom of information of the General Administrative Code of Georgia are violated?**

A person has the right to petition a court for annulment or alteration of the public servant's decision in the following cases prescribed by law, when:

- a) The request for public information is refused;
- b) Session of a corporate public agency is closed, in full or in part;
- c) Public information is classified as secret;
- d) Incorrect public information is created or processed;
- e) Personal data are illegally collected, processed, kept or released;
- f) Personal data is illegally handed over to another person or other public agency;
- g) Public agency or public servant has violated other requirements of Chapter 3 of the General Administrative Code of Georgia.

### **2. In what cases is the person released from paying fees for the lawsuit filed with respect to freedom of information issues?**

According to the general rule, a natural person is released from paying state fees in the courts of first instance (rayon and city courts). There are only two exceptions to this rule: a) if the person did not use the possibility of administrative appeal, that is, the respective act was not appealed to the superior agency or official of the agency that issued the act; and 2) if the person knew of the circumstances that obviously indicated groundlessness of the lawsuit.

Legal persons are not released from paying state fees in the courts of first instance.

Both legal and natural persons are bound to pay state fees in the appellate and cassation courts.

### **3. Is the case delayed until the fee is paid?**

In the cases when the person is bound to pay state fee, non-payment of the fee will not impede review and resolution of the case, but this does not mean eventual release from payment of the fee. If the dispute is not resolved in favor of the person, then he will be bound to pay the state fee by the final decision of the court.

**4. May a judge consider an administrative case if in the past she participated in the administrative proceedings related to the same case?**

No, she can't. The judge may not participate in the review of the case for a second time, if in the past she participated in the administrative proceedings related to the same case (e.g. she was herself the head of the public agency that refused the person's request for some information). In this case, if the judge participates in the review of the case, the party has the full right to demand disqualification of the judge. This prohibition of the procedural legislation is based on the right of the party to have the case reviewed and resolved by an impartial court. A judge participating in the review of a case may not be personally interested in the outcome of the case. Any association of the judge reviewing the case with the case must be excluded. If in the past the judge even once participated in the administrative proceedings related to the case she is going to review, then the possibility of her participation in the court review of the same case will be excluded.

**5. May a court, in the review of administrative cases, by its own initiative solicit additional information and not to rely only on the information presented by the parties?**

Yes, the court may rightfully decide to solicit the additional information by its own initiative. If the court decides to exercise this authority, then the agency will be bound to submit to the court the documents and information necessary for the review and resolution of the case. This additional opportunity of the court is precisely that essential difference that exists between the administrative and civil proceedings. This peculiarity proceeds from the nature of the interaction between the participants of administrative proceedings – the state agencies on one side and regular citizens on the other. Typically, the ability of a regular citizen to obtain necessary documents and submit to the court the evidence favorable to him is by far more limited than that of the state agencies. The court ought to overcome inequality of the parties by this additional procedural opportunity.

**6. May a third person participating in the administrative proceedings examine the acts of the court issued on the case and obtain the copies of other materials of the case? May a person who has no relation to the case to examine the materials of the case?**

Yes, the persons participating in the administrative proceedings (including the third persons) may examine the acts of the court issued on the case, as well as the materials presented to the court, in the secretariat of the court. In addition, they are entitled to obtain the copies of the acts of the court and other materials of the administrative case through the secretariat of the court, by paying to compensate the costs necessary for making the copies of the documents. The law disallows any other fees for giving out the copies.

The court has no right to obstruct, on any grounds, the request of the persons participating in the proceedings for the acts of the court and the materials, and the secretariat of the court is bound to provide appropriate conditions for realization of the request of these persons.

The acts of the court issued on the case, as well as the materials submitted to the court are deemed to be the public information. Consequently, they are open and available to everyone (and not only to the parties), unless they contain state, commercial or personal secret.

**7. In what circumstances will the court consider a lawsuit when the public agency refuses to release the information?**

When accepting a lawsuit for proceedings, the court is first to check its allowability. According to the effective procedural legislation, a lawsuit is allowable if the plaintiff indicates in his lawsuit the specific circumstances and evidence that the refusal of the authorized administrative agency to release the information caused the loss to his personal legal rights or interest or illegally limited his rights; i.e. the refusal to release the information should be directly and individually related to the plaintiff – implying that a person’s lawsuit intended to protect the rights of another person will not be allowed.

**8. May or not an incompetent court consider a lawsuit on the administrative case?**

Incompetent court may not consider the lawsuit. In such a case the court issues the order by which it sends the lawsuit to the competent (of the proper jurisdiction) court. The plaintiff must be notified of the order. The said obligation of the court ensures the right of the plaintiff to receive information on the proceedings of her lawsuit, including the right to know which court will consider the lawsuit. In contrast to civil proceedings, in administrative proceedings a dispute between the courts about the jurisdiction is possible, and the dispute is resolved by the superior court.

The lawsuit must be filed with the court that is competent to review and resolve the administrative case, i.e. the lawsuit is filed with that rayon (city) court jurisdiction of which extends over the territory where the administrative agency being sued is located. In some cases the lawsuit may be filed directly with the district courts or the supreme courts of Adjara and Abkhazia.

**9. What are the time periods defined by the procedural legislation for review of administrative cases in court? Is it possible to have the accelerated trial?**

The time periods for review of administrative cases are defined in accordance with civil procedural legislation, according to which the period for a case review is 2 months, and for the cases of extraordinary complexity – 5 months. The court may hold accelerated review of the case only at the request of the party, on which the court issues an order. The decision to hold accelerated trial is the right of the court, not the obligation. In each specific case the decision will depend on the specific circumstances of administrative case. Besides, the court is guided by the criterion – whether or not it is possible to reduce the time periods for certain procedural actions and still have the comprehensive investigation of the circumstances of the case followed by the lawful decision.

**10. Is an appeal or cassation lawsuit allowable in administrative proceedings, regardless of the price of the lawsuit?**

Yes, an appeal or cassation lawsuit is allowable in administrative proceedings, regardless of the price of the lawsuit, i.e. in contrast to civil law proceedings, where appeal or cassation lawsuit is allowable if the value of the subject-matter of the case exceeds, respectively, 500 or 100 lari, this rule does not operate in administrative proceedings, so

any decision of the court of first instance may be appealed according to appellate or cassation rules.

**11. Is it allowed to appeal to a court the decision of a public agency not to classify the information as a commercial secret? If so, what are the time periods for the appeal?**

The General Administrative Code of Georgia provides for the cases when a public agency refuses to classify the submitted information as a commercial secret. The public agency may refuse to classify the information as a commercial secret only if there is a law that explicitly ascertains the openness of such information. In this case the public agency makes the decision on the openness of the information, of which it immediately notifies the respective person.

The person who is the owner of this information is entitled to take appeal from the agency's decision on the openness of the information within 15 days, either to a court or to the superior administrative agency, i.e. the person has the right to choose where to appeal.

The person must immediately notify the public agency of the appeal.

If the decision of the public agency is not appealed within 15 days, then the information becomes open and, consequently, available.

**12. Does an interested party participating in the administrative proceedings have the right to examine the materials of the proceedings? Which materials are restricted from the examination?**

Yes, an interested party participating in the administrative proceedings has the right to examine the materials of the proceedings. The interested party will examine the materials in that administrative agency which carries out the administrative proceedings.

In the exceptional cases the law also provides for the possibility of examination of the materials of administrative proceedings in another administrative agency or in a consulate of Georgia in a foreign country, on the grounds of the written request of the party to that effect.

It should be noted that in the cases prescribed by law, if the interest of a person in the examination of documents from the materials of administrative proceedings exceeds the interest of keeping the secret, then the interested party receives for examination those materials of the case that contain state, commercial or personal secret. In such cases a justified court decision is a necessary precondition.

When making such a decision, the court ought to assess and determine the preference and significance to be given to the person's interest in the examination of the document as opposed to the interest of keeping the secret.

The copies of the materials of the case that contain state, commercial or personal secret may be given to the interested party participating in the administrative proceedings on the grounds of a court decision, only in the cases prescribed by law.

**13. In what cases has a court the authority to declassify the secret personal data by its decision?**

**T**he court has the authority to declassify the secret personal data only in the case if it is impossible to find the truth in the case based on other evidence and all other possibilities to receive this information from other sources are exhausted.

**14. Does the court have the right to solicit and review the public information classified as secret?**

**Y**es, on the grounds of the party's petition, the court has the authority to solicit and review the public information classified as secret, in order to examine the legitimacy of its classification, in full or in part, as secret.

The court may hold the review of the case at a closed session.

**15. Does an interested party have the right to request the copies of the materials of the administrative proceedings? What are the associated fees?**

**Y**es, an interested party participating in the administrative proceedings has the right to request the copies of the documents and other materials of the proceedings.

The law forbids laying any fees or creating any obstacles in receiving the copies of the documents or other materials, except for the necessary payment for the cost of copy-making or postal expenses.

**16. Is it allowed to appeal the refusal of an independent agency to release the information to a higher echelon agency through an administrative lawsuit?**

**N**o, filing an administrative lawsuit on the refusal of an independent agency to release the information with a higher echelon agency is not allowed. The law provides for the possibility to appeal the decision of such agencies only to a court.

**17. According to which procedure may the action of an administrative agency be appealed? What are the associated time periods?**

**A**ccording to the General Administrative Code of Georgia an interested party has the right to appeal action or inaction of an administrative agency in the same manner as in the case of taking an appeal from any administrative-judicial act. This means that action or inaction of the administrative agency may be appealed to a superior official, superior administrative agency or a court within one month from the day on which the person learned of such action or inaction.

**18. In the administrative proceedings, when hearing the oral depositions, in what circumstances should a party be heard without the presence of the other party?**

**T**he party in the administrative proceedings may be heard without the presence of the other party if there is a danger of disclosure of the information containing state, commercial or personal secret and if it is impossible to determine the essential circumstances of the case otherwise. The administrative agency will make a justified decision to that effect at the request of the interested party.

**19. Who is to determine the amount of the damages caused by disclosure or loss of the information containing a state secret? Who is to determine the amount of**

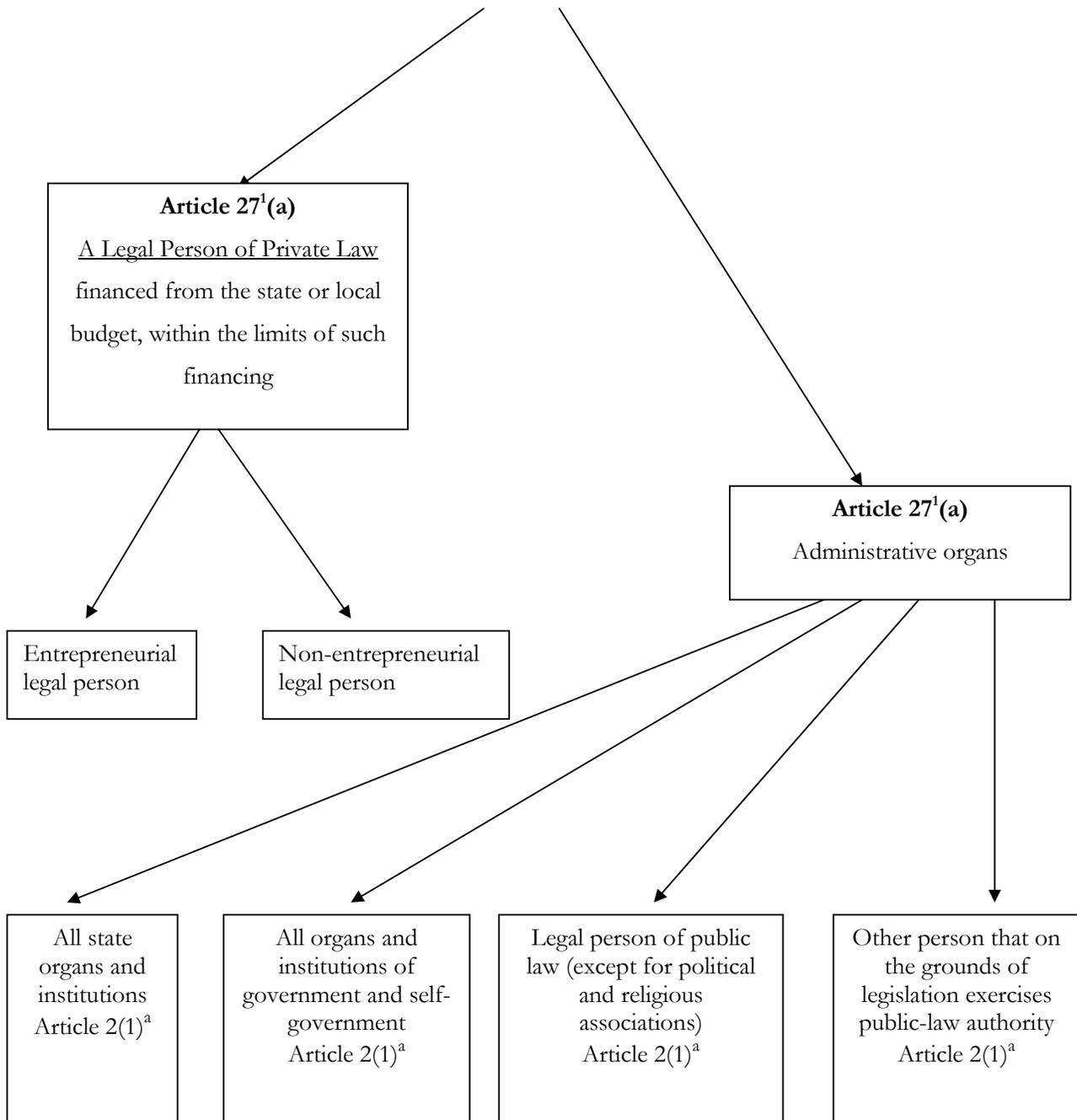
**the damages inflicted on the owner of the information containing the state secret by disclosure of this information?**

**T**he amount of the damages caused by disclosure or loss of the information containing a state secret, as well as the amount of damages inflicted on the owner of this information by its disclosure, will be determined by a court.

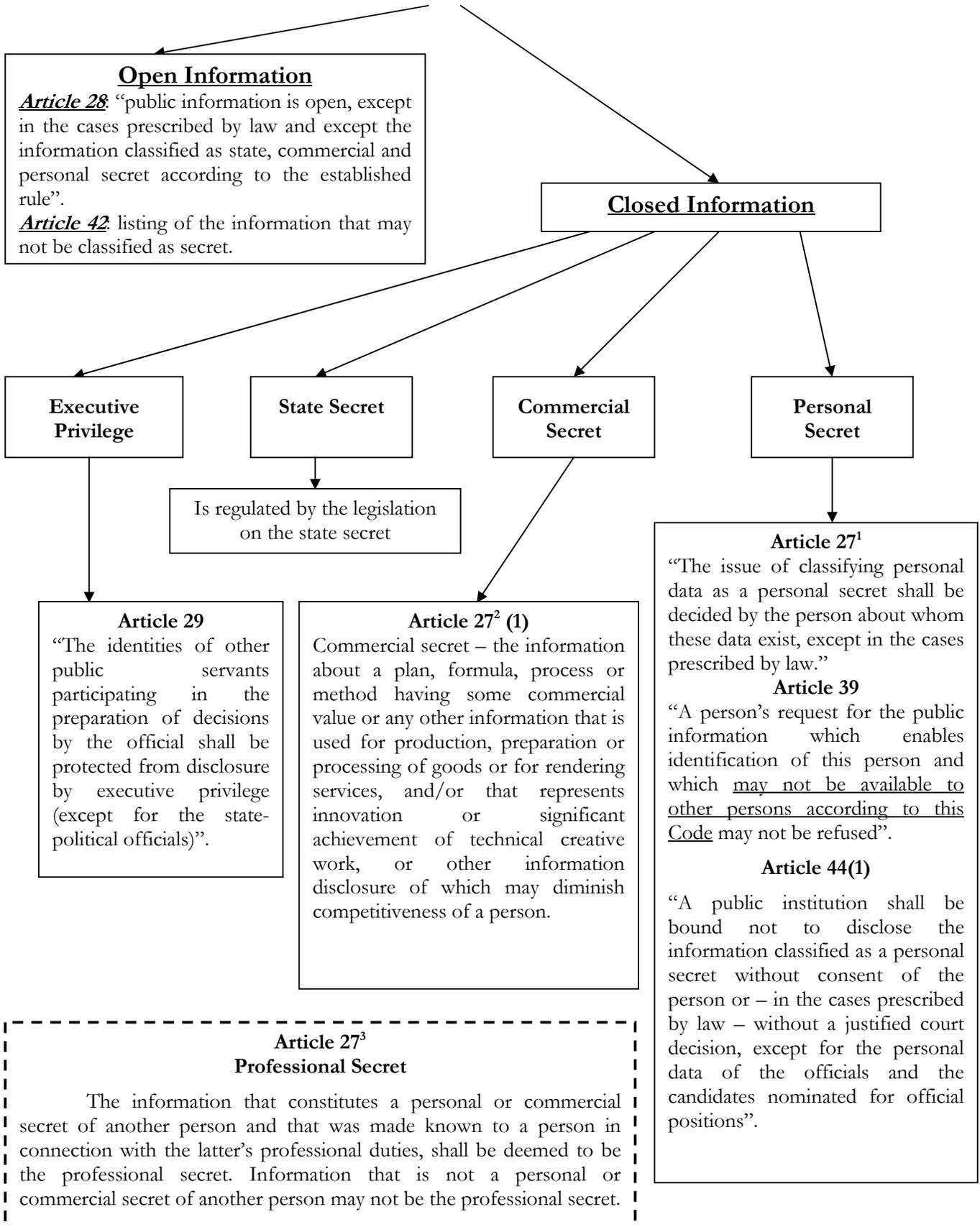
**20. If the owner of the information classified as a state secret refuses to enter into a contract on the protection of the state secret or breaches the concluded contract, what measures may a court take by its decision?**

**I**f the owner of the information classified, in full or in part, as a state secret refuses to enter into a contract on the protection of the state secret or breaches the concluded contract, then this information or the documentation containing it may be confiscated and transferred into the state ownership by the decision of a court. Assessment of the damages in this case is within the competence of the court.

# Public Agency



# Public Information



# Request for Public Information

## Article 37

1. Anyone has the right to request public information, regardless of the physical form and conditions of storage of the information, and to choose the form of receipt of the information, if it exists in various forms, as well as the right to examine the information in the original. If there is a danger of damaging the original, the public agency shall be bound either to provide the document for examination under appropriate supervision or to submit the properly authenticated copy.

2. In order to receive the public information, the person files a written application. A reason and purpose of the request for the information need not be included in the application. When filing an application requesting personal data or commercial secret of another person, the applicant, except in the cases prescribed by law, shall submit the respective person's consent that is to be either notarized or authenticated by an administrative agency. + Article 38



## Release of Public Information

### Article 40.

1. Public agency shall be bound to release the public information immediately, or not later than 10 days if the reply to the request for the public information requires:

- a) retrieval of the information from the agency's structural subdivision situated in another locality and its subsequent processing;
- b) retrieval and processing of several documents of significant volume and not associated with each other;
- c) advice from the agency's structural subdivision situated in another locality or from another public agency.

2. If 10-day period is required for release of the requested public information, then the public agency shall be bound to so inform the applicant immediately upon filing of the request.

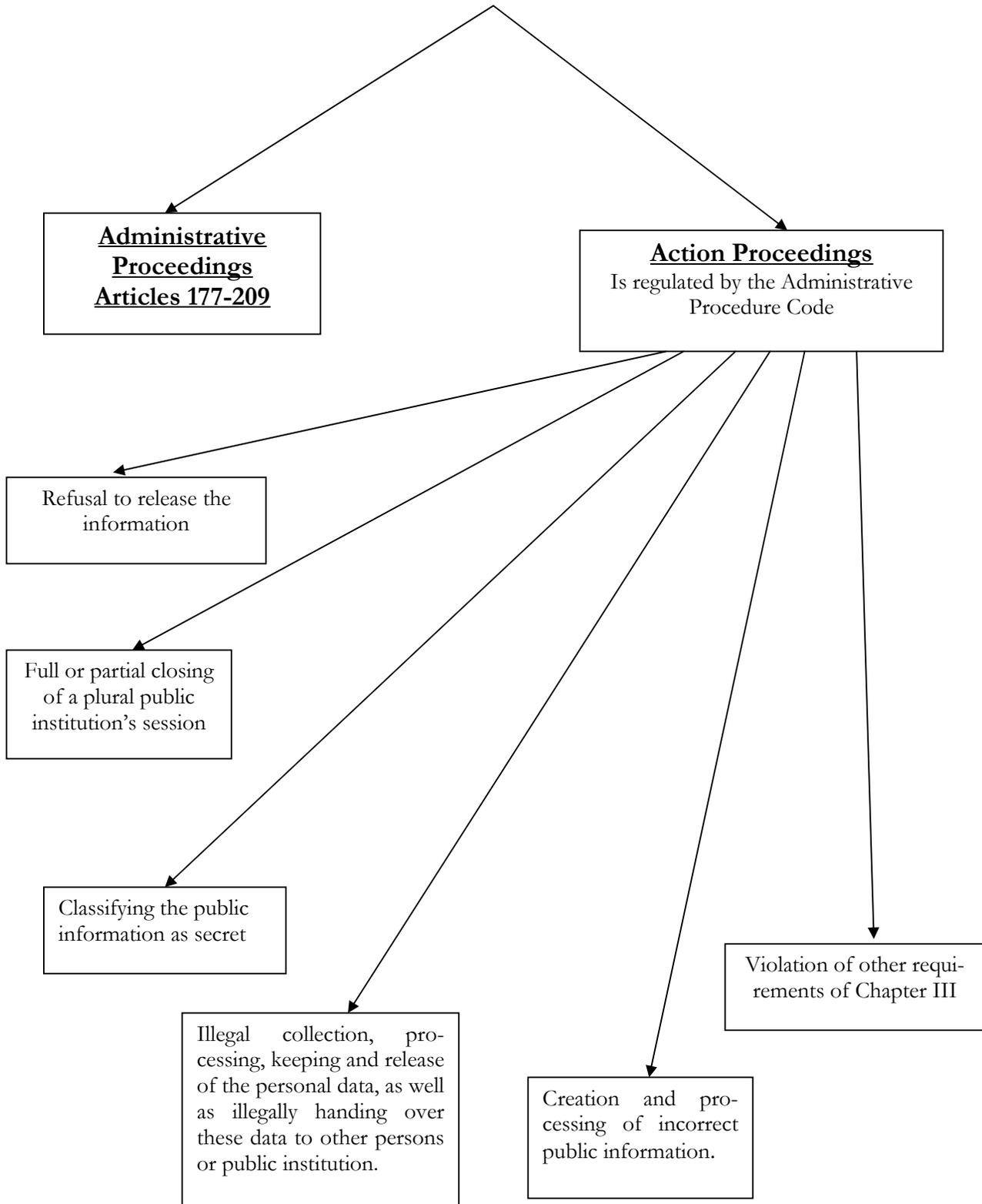
## Refusal to Release the Public Information

### Article 41.

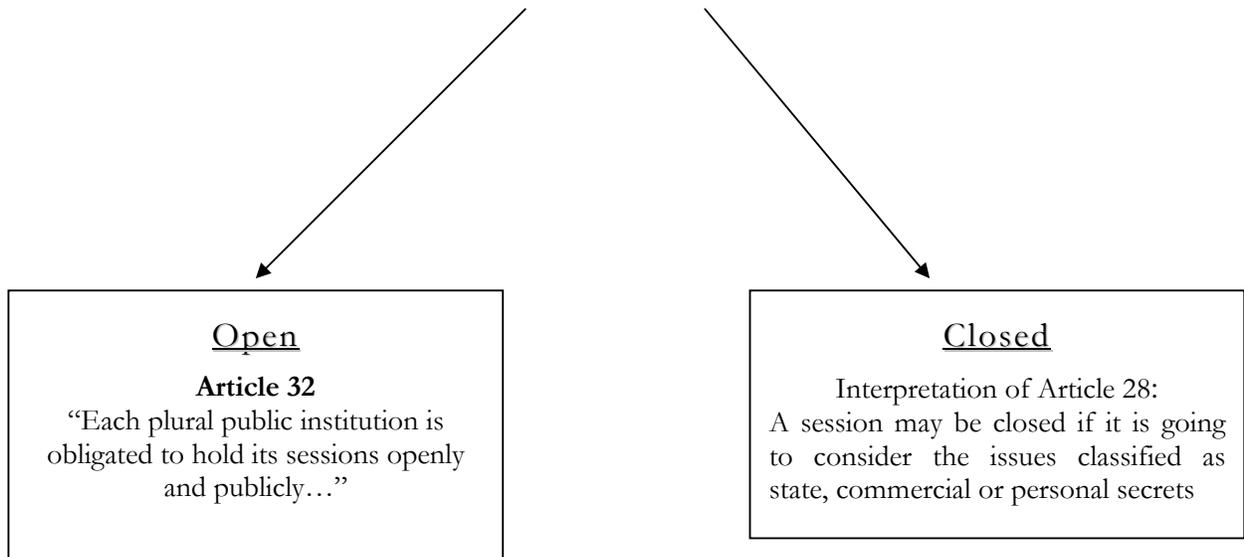
1. Refusal of a public agency to release the public information shall be notified to the applicant immediately.

2. In the case of refusal to release the public information by the public agency, the agency shall be bound, within 3 days from making the decision, to communicate to the applicant, in writing, the applicant's rights and the procedure of appeal, as well as the names of those structural subdivisions or public agencies with which the agency consulted when making the decision on non-release of the information.

# Taking an Appeal from the Refusal to Release the Information



# Session of a Corporate Public Agency



## Article 34

1. Corporate public agency is obligated to announce publicly a forthcoming session, the place at which it is to be held, time of its holding and agenda of the session at least one week in advance before the session begins, and in the case of the respective decision – to announce that the session will be closed.
2. In the case of extreme necessity the corporate public agency has the right to hold the session without observing the rules referred to in paragraph 1 of this Article. In such case, the public agency is obligated to announce immediately the place, time and agenda of the session, and in the case of the respective decision – to announce that the session will be closed.
3. In the case of holding the session of the corporate public agency by reason of extreme necessity or closing of the session, the agency shall be bound, within 3 days from making the decision, to explicate the procedure of appeal of the decision made at the respective session. The corporate public agency shall enter into the Public Register the results of the nominal voting held for the purposes of closing the session, as well as the minutes of the session in accordance with the rules defined under Article 33.
4. A lawsuit with respect to the session held by reason of extreme necessity as well as a lawsuit with respect to legitimacy of the decision on closing of the session shall be filed with a court within one month from the day of the session. Holding of the session of the corporate public agency in violation of the rules prescribed by law shall cause annulment of the decisions made at this session by the court.

**Note:** for the definition of extreme necessity see § 27 (I-j).