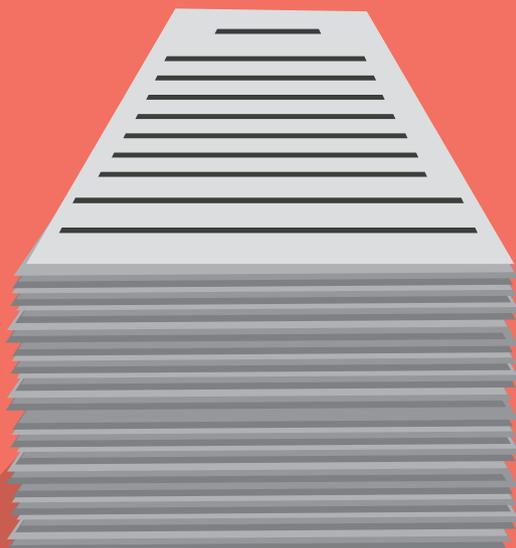


Difficulties accessing public documents



Even though public documents should be accessible to all citizens, media or civil society according to the Kosovo law, they are often kept inside institution drawers.

While Public institutions are obliged to publish documents of public interest online, they rarely do so. In addition to not publishing, institutions often do not allow access to documents even after formal official requests are submitted. Usually in these cases, institutions do not respond at all, either they give uncertain or uncomplete answers.

When institutions do not respond to requests

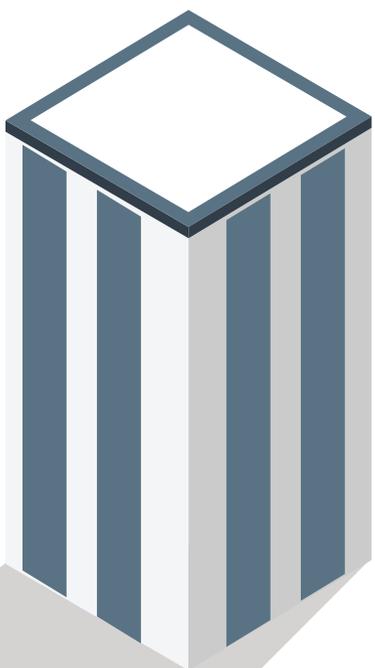
The Kosovo Democratic Institute (KDI) in 2017 requested from the Central Election Commission (CEC) access to the financial reports of political entities in 2015, reports that were not audited. After the legal deadline for response to the request had expired, the organization had contacted CEC officials to verify the receipt of the request.

The institution's response was that they didn't receive any email related to this issue. After this, **KDI had once again forwarded the request, but even after the expiration of the second deadline, the CEC did not respond.**

Therefore, KDI has submitted a request to the Ombudsman Institution, which in 2018 entitles KDI to have access to all financial reports of political entities. Further to the response from the Ombudsman Institution, the CEC replies to KDI that they cannot receive the reports as the law on financing the political parties does not allow such a thing. The CEC in this case acted against of the decision of the Ombudsman Institution.

The organization filed again a similar request this year at the same institution, but they didn't receive any response.

This is just one of the cases when public institutions have not responded to civil society organizations. Many representatives of the organizations say that these are the most frequent cases of refusals, which they consider to be the most inappropriate method since there is no cooperation between the parties.



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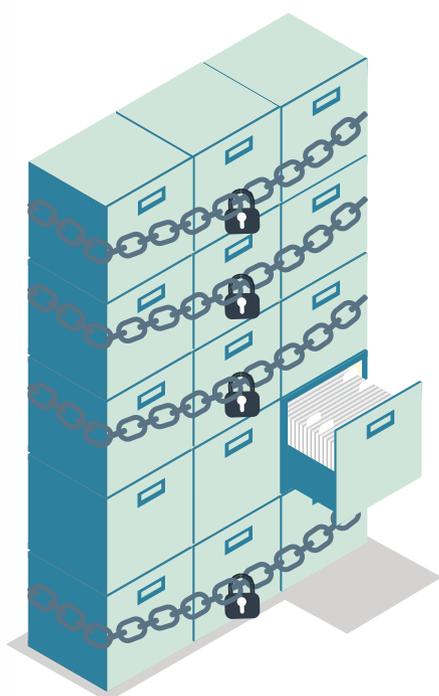
Limited access to documents

There are cases where access to documents is incomplete or limited.

In 2014 some civil society organizations and journalists had requested access to the contract for the construction of the highway Pristina – Hani Elezit.

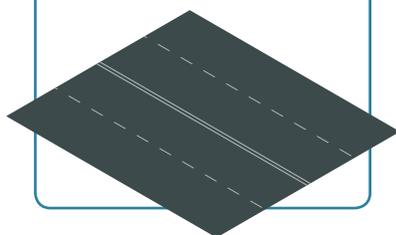
The Government at the time insisted that access could not be granted because of protection of business secrets and that this contract was an international contract and government cannot publish it.

After public pressure, the Ministry of Infrastructure had decided to allow access to this document, **but the opening of this contract to the public had been much as a show. The ministry had made available only three copies of the contract, 200 page material, by restricting the concerned parties its consultation on a longer and deeper analysis, the contract was open to the public only from 8 am to 3 pm, a very short time to analyse all the material. As well the contract was only in English.**



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Refusals without legal basis

In 2014 the Organization “Çohu” requested from the Ministry of Agriculture and Rural Development (MAFRD) access to the list of Non-Governmental Organizations to which this ministry had donated.

This ministry did not justify its refusal in any legal provision (other than quoting the law in general), stating that:

“Based on previous reports of the NGO where you work, which treats official materials with propaganda approach and commercial purpose that’s prohibited by the aforementioned law, your application is hereby rejected.”

After the unfounded response, “Çohu” filed a complaint with the Ombudsman Institution over the denial of the right of access to public documents.

Following the complaint, the Ombudsman has compiled a detailed report stating that:

On 20 August 2014, the representative of the Ombudsman Institution met with the MAFRD spokesperson to discuss the reason for the refusal of the request for access to public documents of the organization “Çohu”. It was understood by him that one of the reasons for the ministry’s **refusal of the organization’s request** was the possibility that the requested information could be used by organization “Çohu” for publication in a “Preportr” (Preportr is a Centre for Investigative Journalism that operates within the organization “Çohu”).

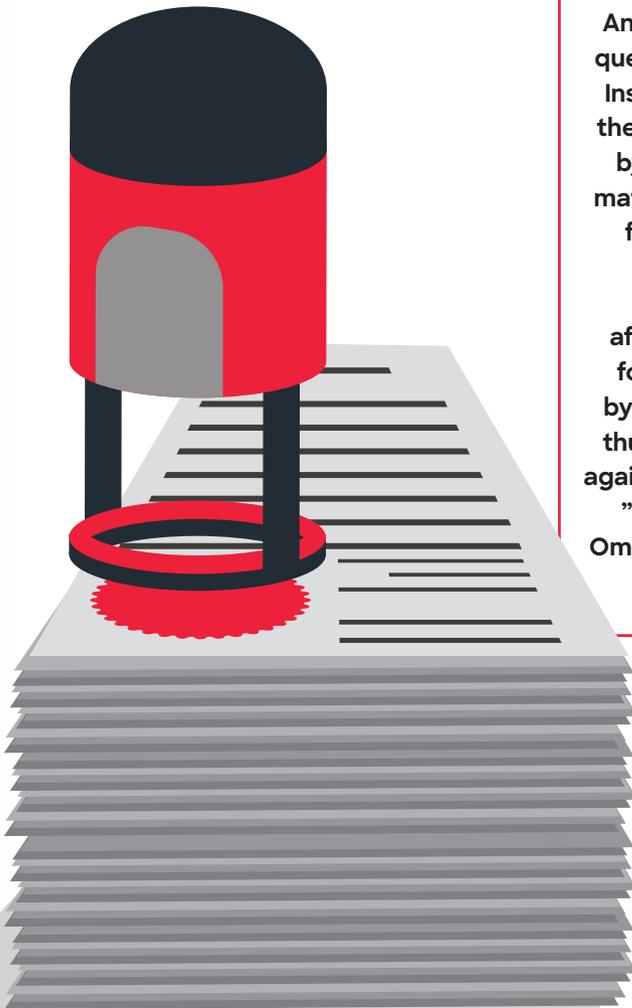
It also highlights the Ministry's unwillingness to cooperate, the Ombudsman has addressed two letters to the MAFRD Minister in order to inform him about the legal reasons for refusing the request. In both cases the Ombudsman Institution didn't receive any response..

"Moreover, the unwillingness of the aforementioned Ministry is noted in the non-applicability of Law no. 03/L-215, on Access to Public Documents (LAPD), as well as in non-cooperation with the Ombudsman Institution, as provided by the legal competencies stipulated by the Constitution of the Republic of Kosovo and Law no. 03/L-195, for Ombudsman".

The report finally recommends the MAFRD to review the request of the organization "Çohu" and to **provide access to the required documents**. However, the Ministry has never sent the required documents

“

Analyzing the issue in question, Ombudsman Institution notes that the alleged restriction by MAFRD, that the material could be used for "propaganda" approach, is not included in the aforementioned law for LAPD approved by the Assembly, and thus the restriction is against the constitution, ". As quoted in the Ombudsman Institution report.



Protection of “personal data” above public interest

In many cases institutions are called on protection of the personal data by consequently violating the right to information.

Movement “Fol” in 2018 and 2019 has requested access to data on the expropriation of private property along the highway Pristina-Gjilan/Dheu i Bardhe. For two consecutive times the Ministry of Finance rejected the approach on the grounds that:

If the Ministry of Finance makes this information public it will be in violation of Law no. 03/L-215 on Access to Public Documents, Article 12, Exceptions to the Right of Access to Documents 1.2. public safety, 1.6. privacy and other legitimate private interests. ”

In relation to this case, the Agency for the Protection of Personal Data has issued an opinion in support of Movement “Fol” request, which states:

“The agency considers that the restriction of the right for protection of data is related to the fact that the expropriation is done by public funds of the state and in the public interest, their right is limited and this limitation corresponds with the public interest.



On the same occasion, this organization has filed a complaint with the Ombudsman Institution and the latter has recommended that the Ministry of Finance should provide access to the requested data.

In another case, the Organization “Çohu” in 2017 requested from the Rectorate of the University of Pristina the data on basic and additional fees for professors of the University’.

The Rectorate had initially rejected the approach, based on the **protection of professors’ personal data**. In this regard, “Çohu” filed a complaint and requested interpretation from the State Agency for the Protection of Personal Data.

In response, the Agency stated that since the University of Pristina is a public institution and is of public interest, a balance must be struck between the protection of personal data and the public interest:

“It’s enough for researchers to access the details on the number of professors, names, degrees, and the amount of funds they have received from the Public Budget, anonymizing personal data, which is considered sensitive data.”

Even after this interpretation, the Rectorate has not responded positively.



Payment for access to public documents

In 2016 the GAP Institute requested some data from the Business Registration Agency (KBRA), but the agency allowed access on the condition that the applicant would have to pay 0.30 euros per each page of the document. This is justified by referring to an Article of the Law on Access which foresees that.

However, the amount required by this agency is contrary to the law, as the law states:

“A fee may be charged to the applicant for a copy of the document, which is reasonable and cannot exceed the true costs of reproducing and supplying the document file “

After this, GAP Institute after many explanations had to sign a memorandum of cooperation with KBRA to grant access, although the law does not foresee the need for this.

The same agency, in some requests of the Organization “Çöhu” in 2011, requested payment for each page of the documents, but after insisting that this was in violation of the law, the KBRA decided to allow free access.



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