

Institute for Freedom of Information Development

### **Glass Half Full or Half Empty?**

#### **National Report on Freedom of Information in Russia: Mutual Misunderstanding.**

On October 9, 2008 experts of the Institute for Freedom of Information Development presented the results of a large-scale study—the National Report on Freedom of Information in Russia at a press conference in St. Petersburg.

The National Report outlines violations of citizens' right of access to information and proposes concrete measures to improve the situation.

The Report consists of two parts: the legal section and the sociological section. The basis of the report is the analysis of the legal problems with freedom of information in Russia over the time period of several decades, evaluation of the new developments and changes in the Russian law on access to information. This analysis helps one understand how the existing system of access to socially significant information works (or does not work), its strengths and weaknesses and to understand what needs to be changed in the existing practice.

### **Legal Analysis**

President Dmitry Medvedev noted on July 17, 2008 that free access to information for citizens is one of the most meaningful characteristics of democratic development.

The Constitution of the Russian Federation, in Article 29, stipulates the right of every person to “seek, get, transfer, produce and disseminate information by any legal means.” This constitutional norm represents the basis and the main legal regulator in the issues of freedom of information and government transparency.

The Doctrine of Information Security, approved by the President of the RF on September 9, 2000, names observance of the constitutional right of citizens in issues of obtaining and using information as the top priority among national interests of Russia in the information sphere.

The Strategy of Development of Information Society in the Russian Federation, approved by the President of the RF on February 7, 2008, set the tasks of ensuring a high level of access to information and technologies for the population, and also of improving the system of state guarantees of citizens' constitutional rights in the information sphere for the state organs.

Lately, a number of normative legal acts were passed, which regulate the sphere of access to information, including the work of organs of state: Federal Law “About Information, Information Technologies, and Protection of Information,” Federal Law “About Personal Data,” Federal Law “About the Procedure of Consideration of Requests from Citizens of the Russian Federation.” However, the legal means and mechanisms of access to information about work of government organs for interested persons are still not defined

in the existing law. Today in Russia there is still no legally defined term “information about the work of government organs.”

There is some contradiction between the norms established by the Constitution itself. According to section 4 of Article 29 of the Constitution, *every person has a right to freely seek and get information by any legal means*. However, according to section 2 of Article 24 of the Constitution, *organs of central government and organs of local self-government and their officials have to ensure for every person the possibility of access to documents and materials, which directly affect his rights and freedoms, if not otherwise stipulated by law*. The sphere of information about the work of government organs, access to which the regulating agencies permit, is often limited by them to the information that directly involves rights and freedoms of the interested persons only.

The report finds that the existing Russian national law establishes the right of any interested persons to have free access to any information about the activities of government organs. However, the practice of implementation of the existing law shows that the entities implementing the law often do not fully recognize the right of citizens to have access to information about the work of state and local organs. One of the main reasons for the gap between the law and the practice is the absence of a mechanism of realization and protection of the right of access defined by the federal law. In this situation the norms established by the federal laws named above have to some extent only declaratory character.

In regards to limiting of access to information, the existing law has a number of substantial deficiencies, which calls for legislative measures. In particular, the law on state and business secrets has provisions, which contradict the norms of the Constitution of the Russian Federation. In accordance with the existing law, the right to free access to information about the work of government organs in the Russian Federation is limited in regard to that part of information, which is classified as state secret or business secret by the federal law. The non-transparent procedures for classifying concrete information, which are established by the present laws, in practice allow the situation where massive blocs of socially important information is left inaccessible in the shadow of state secrets.

The Law on State Secrets has several substantive deficiencies. The first and the most serious deficiency is that the notion of a state secret in its legal interpretation today has all the characteristics of a business secret. The second deficiency of this Law is that in direct violation of the Constitution (Article 15, part 3), the law presupposes a possibility of drawing up and applying of unpublished internal normative legal acts directly affecting the rights and freedoms of citizens. The absolute majority of decrees establishing extensive lists of documents subject to classification as secret, are covered with some level of classification themselves and are not published officially.

The work on a draft of federal law “On Ensuring Access to Information About Activities of State Organs and Organs of Local Administration” began in the Ministry of Economic Development and Trade of the Russian Federation already in 2002. President Putin repeatedly pointed to the need to pass such a law, for example in his annual Report to the

Federal Assembly on April 25, 2005. The first draft of this law was approved at a Cabinet meeting on June 23, 2005. However, it took a year and half for this draft to reach the State Duma. The draft established the presumption of openness of information about the activities of state organs with the exception of information classified as secret. The draft bill was approved in the first reading by the State Duma on April 18, 2007, after which its further consideration was halted.

The law on access to legal and environmental information contains many contradictions, collisions and omissions, which negatively affect the state of protection of the right of the citizens of access to information on these subjects. In contradiction to the norms of federal laws named above, the Law on Hydrometeorological Service” stipulates the possibility of limiting access to such information. A serious obstacle to access to environmental information is the provisions of the Resolution No. 497 of the government of the Russian Federation on Licensing of Activities in Hydrometeorology and Related Spheres. In addition, the Russian national law does not provide a legal definition of terms such as “environmental information,” “data on the state of the environment,” and related terms.

At the present time, in the absolute majority of cases, the fees for access to information about the work of government organs is determined not by federal law but by sub-legal normative acts. Cases where some agencies try to charge fees for access to legal information or information on technological norms and standards are a cause of special concern.

Modern information technologies are an effective means for ensuring the right of the citizens of access to information about the work of government organs. However, the government organs are not using such methods of dissemination of information about their own activities as posting it on their official websites and in easy to access places.

The absence of adequate opportunities for the citizens in realization of their right to access to information about activities of the government represents a cause and provides the grounds for development of such negative societal phenomena as corruption and legal nihilism.

The existing practice of providing and dissemination of information by the government organs contradicts the principle of presumption of informational openness. This study has clearly demonstrated the inequality of relationship between state organs as producers and holders of the socially important information and the citizens. The users mainly play the role of supplicants for information, and officials at all levels of government are trying to apply the “permission-based” procedure for obtaining information.

Citizens are very persistent in noting the limitations in access to information about the work of government organs, but are not always capable of classifying it as a violation of their right. The fact that citizens are not able to see access to information as their right stipulated by the law, means that the violations of this right are either not understood by citizens, or classified as violations of fairness or of interests of individual. In this

situation, it is practically impossible to expect that citizens would utilize or defend their rights in an informed fashion.

Dissemination of information about the work of government organs should be the task of official sources of information created and maintained by those government organs. The current functioning of official sources of information does not satisfy the needs of the citizens.

This study has shown that the government organs are trying to use mass media intensively to inform the population. However, one should mention the dangerous tendencies that come with this practice. First of all, government officials are trying to shift the responsibility for informing the population about the work of the government, for the quality of that information, and for the citizen satisfaction to the mass media. Secondly, informing the population through mass media is subjected to the task of primarily forming a positive image of government in the population, rather than providing objective information.

Absence of feedback relationship between official and citizens is also a source of concern. At the same time, according to the results of this study, not only are the officials absolutely unaware of the serious problems with realization of the right of access to information, they are also absolutely unaware of the level of citizen satisfaction. The overwhelming majority of officials believe that citizens do not experience any problems with access to information about work of government organs.

### **Sociological study.**

The data presented in the sociological study allow one to make many interesting conclusions.

Only 11% of respondents believe that their right to access to information is observed in full, 67.7% of respondents believe that their right is only partially observed, and 14% believe that their right is not observed at all. At the same time, only 55% of respondents are convinced that the right to access to information is written in law. In this situation, it is very difficult to expect that citizens would use and defend their rights on their own initiative.

The information most often concealed from the population is announcements about competitions and tenders—such information is published on official sites in places where nobody would be looking for it, and for the shortest time possible so that nobody would have time to find it, familiarize oneself with the material, and be able to use it. Often, environmental information is concealed, which, by the way, directly affects the interests of citizens. It is practically impossible to obtain information about incidents and conflict situations that are unpleasant for the authorities. Often the classification of information “for internal use only” makes it impossible to publish this information and most importantly makes it very difficult to challenge information contained in a certain document in court.

One of the most unpleasant moments was noted by those who tried to obtain access to information several times—in one's requests it was not only useless, but also counterproductive to refer to the law! The requester demonstrates his competence while some government representatives see it only as an attempt to undermine their authority and try to show the extent of their power. Quite often, government officials did not even know if they had the requested information or not.

The access to information is ensured in practice exclusively by commercial organizations, which provide access to databases of legal information, such as "Kodex," "Garant," "Konsultant Plus," and others. They charge fees for the information, which sometimes could be a serious obstacle for citizens.

However, on the other side of the information barricades and bureaucratic barriers, there are also those who feel unhappy and offended. They are the bureaucrats.

The majority of government officials sincerely believe that problems with access to information in Russia do not exist, and that bureaucrats practically never encounter situations where a citizen wanted to obtain some needed information and did not receive it. In one of the interviews a representative of the procuracy expressed himself in the following way: "I understand that not everybody has internet, or a television. A person, who is interested in the life of the society does. Does a grandmother have TV or radio? If not television, she has radio. In any case, she does receive information in some form ... I think that we have no problems here."

According to the results of the study, numerous state press services and analytical departments responsible for dissemination of information about the work of that government institution don't even set themselves the task of getting any feedback. Bureaucrats work via intermediaries, via mass media, and therefore they suggest that journalists arrange their own contacts with citizens. As a result, instead of receiving socially important information about the work of the government organs, citizens receive information about the importance of government organs in the society.

However, some of the problems were named by the bureaucrats themselves: necessary information is difficult to obtain, the circle of dissemination of important data is shrinking, the giant number of meaningless responses to citizens' requests, and intentional usage of confusing technical terminology in responses.

The study was able to identify the following main conclusions characterizing the situation with access to information in Russia:

- "supplicants for information, not customers"—the study very vividly demonstrated the inequality of the relationship between the state organs as producers and guardians of the socially important information and the professional users of information.
- "hunt for information, not access to it"—notwithstanding the existence and functioning of the formal means of access to information, users are faced with obstacles in satisfaction of their informational needs.

---“information technologies as the engine of progress”—the development and spread of modern information technologies, and primarily of the Internet, should be considered the main factor in the improvement of access to information about the activities of the government organs in the last five years.

---“mirror-like unfairness of distances”—“personal connections” became the indispensable mechanism for obtaining access to information about activities of government organs. The greater the distance of the user from the agency of interest, the harder it is to gain access to that information.

---“the civil society does not fully appreciate the opportunities that access to information about activities of government organs would open to it”—access to information per se does not have any meaning unless it is an instrument of ensuring civil society’s control over state.

---“the procedures that the authorities establish for access to information about their activities do not ensure the realization of the right to access to such information”—from the point of view of government officials, access to information is ensured already by the fact of existence and functioning of formal means of provision and dissemination of information.

---“the citizens’ right of access to information is being turned by the government organs into their own right to provide and disseminate information upon their own consideration”—this prerogative is being used to influence opinion of citizens about the work of government organs—dissemination of information is aimed at creating a positive image of those organs.

### **Recommendations.**

The study allows one to develop the following recommendations:

---It is necessary to adopt a federal law, which would regulate the interactions regarding access to information about the activities of the government organs.

---Each subject of the Russian Federation should adopt a regional law on openness or access to information about the activities of central government organs and agencies of self-government located on the territory of that subject of Federation.

---Each government organ, within its jurisdiction should define the procedure for access to information about its own work in a normative legal act.

---It is necessary to define and stipulate in a corresponding normative legal act the legal, technological, programming, linguistic and organizational requirements that apply to official sites of government organs.

---A cardinal change of the law on state secrets is necessary.

---It is proposed to reconsider the attitude to the notion of business secrets and to define it as not related to the state secrets, as information received by an organ of the central government or an organ of local administration, access to which is limited in accordance with federal law in the interest of other persons.

---It would be expedient for the organs of central government to keep official statistics of requests for information about the activities of government organs from persons and legal entities.