

## Freedom of Information and Government-Media Communication in the Republic of Armenia

### Research

#### *Main Goal, Methodology and Structure*

The main goal of this research is to examine the role of strategic communication and freedom of information in the Armenian government agencies' work with the media, to identify the main problems in the area and recommend practical solutions.

The research employed different methods and was carried out in different phases. The first phase consisted of the researcher's direct observation and examination of the official websites of various government agencies. At the same time, formal requests for official information on a number of issues related to the study were sent to various government agencies. This phase was followed by the examination of questionnaires filled out by the press spokespersons or freedom of information officers of various government agencies. A total of 18 questionnaires had been filled out and sent to us. This information was later supplemented as a result of meetings/interviews with spokespersons of various government agencies (representatives of 12 government agencies participated in such meetings/interviews). The experience of the Freedom of Information Center NGO was also examined. This NGO specializes in this subject and receives complaints from journalists who experience difficulties with access to information.

The research covers all the 11 ministries (except the RA Ministry of Defense), the State Oversight Service under the Prime Minister's Office, the State Revenues Committee under the RA Government and the five inspectorates that have information and/or public affairs officers. The study covers a total of 18 government agencies (their complete list is included in Annex 1).

The research consists of 6 main sub-sections. Each sub-section contains specific recommendations on how to increase the effectiveness of work with the media, improve freedom of information and ensure balanced, accurate, comprehensive and timely information flow between the government and the public.

#### **1. *Brief Analysis of Communication Strategies of Various Government Agencies***

**Survey has shown that more than a third of all government agencies have a communication strategy and/or action plan.**

Seven of the 18 government agencies included in the study mentioned that their respective agencies have adopted general communication strategies that serve as a basis for their main information policies.

However, a closer examination of these documents has revealed that three of the strategies are already outdated (being adopted in 2010 and 2011, they do not cover some of the current challenges and priorities in the area of information). Representatives of these agencies said that every year their press secretaries and information and public affairs units develop and adopt an annual plan and timetable of activities that are supposed to be publicized.

Two government agencies have adopted their communication strategies in 2019. In terms of their content, these documents are more like a program of specific activities (with their timetables) planned in the near future, rather than systematic strategic documents outlining the main priorities, goals and tools in the area of communication.

Similar action plans exist in two other agencies. Their representatives said that they had been adopted in order to ensure the publicity/visibility of individual projects, as an integral part and a mandatory component of grant or credit programs.

Representatives of some agencies noted that, even though they have no specific strategy as such, the general functions of their information departments/units are set out in their agencies' annual programs.

Representatives of two government agencies informed us that they are currently developing their communication strategies and noted that an international expert's assistance on the subject could be very effective.

It's worth noting that the RA Government also does not have a communication strategy.

Thus, it can be concluded that there is no government agency in Armenia that implements an information policy based on a comprehensive modern communication strategy.

### ***Recommendations***

- ✓ *The Government should develop and adopt a common information (communication) strategy for the entire government, in order to manage the information flows aimed at both the domestic and the external audience.*
- ✓ *Based on the Government's common information strategy, every government agency should develop and adopt a **long-term information (communication) strategy** aimed at implementing the said agency's information policy, which will*

*regulate the main communication priorities, directions and tools for that agency. Based on the communication strategy, every government agency should develop and adopt an annual action plan aimed at implementing the priorities outlined in the strategy.*

- ✓ *It is important to use common methodology and tools to develop the strategies and action plans for various government agencies.*
- ✓ *In order for these recommendations to be implemented properly, it is extremely desirable to organize and carry out a special training course to develop the government agencies' skills on how to prepare and implement a communication strategy.*
- ✓ *Local and international experts should work together to develop communication strategy guidelines for government agencies, which will ensure the compatibility and uniformity of any future strategies.*

## ***2. External and Internal Factors and Obstacles Affecting the Government-Media Communication***

The obstacles affecting the communication between government and media are multi-layered and diverse. This section covers each of these obstacles and offers concrete recommendations.

**2.1 Representatives of all government agencies noted that there is a big shortage of journalists who are familiar with various sectors and there is a need to provide professional/sectorial knowledge to journalists.**

All of the survey participants mentioned that they are open to all the media outlets. The majority of them also added that they have a list of trusted media outlets or journalists who are interested in their particular sectors, are committed to the journalistic ethics principles, regularly cover their sectors, refrain from spreading disinformation and fake news and have many years of experience of cooperating with their particular government agencies.

All of the surveyed speakers noted that one of the most serious problems is the journalists' lack of knowledge about their particular sectors, which occasionally leads

journalists to making very grave professional mistakes or spreading disinformation. There are also “universal” journalists who write about anything, without any relevant knowledge or understanding of any particular sector. At the same time, there are also journalists who are specialized and very knowledgeable, and are committed to ethical journalism, which enables them to provide high-quality information. Generally speaking, all of the speakers mentioned the shortage of ethical journalism and talked about the importance of promoting ethical journalism in Armenia.

The majority of the survey participants said they were confident that journalists don't have a full understanding of the scope of work and the role of the communication specialists in government agencies, which may lead to wrong expectations and ineffective relationships.

The survey participants assured that they did not have any “black lists” of “undesirable media outlets”; however, they all mentioned some media outlets that would provide negative coverage, regardless of the situation. There are unofficial lists of trustworthy and untrustworthy media outlets. However, information is provided to everyone, without exception.

#### ***Recommendations:***

- ✓ *Organize short-term and regular trainings for sectorial journalists, thus creating a pool of specialized journalists covering the activities of specific government agencies.*
- ✓ *Develop a face-to-face and virtual mechanism for a regular exchange of experience among journalists, thus ensuring the continuity of training and exchange of experience.*
- ✓ *Develop mechanisms to find resources that are necessary to provide training for journalists covering specific government agencies. If possible, training of journalists should be included as a required component in large-scale reforms or international donor programs.*

## **2.2. There is an overlap in the functions of information departments and speakers, and there is a lack of uniform practice**

In six of the 18 government agencies covered by this research, the speakers are also in charge of the information departments. In addition, these departments have different names in different government agencies: public affairs and information department, public affairs department, media and public affairs department, etc. Six government agencies have both speakers and information departments (each with its own head). In

the body under the Prime Minister there is only a speaker. In the six bodies under the RA Government there is only a department in each. Thus, in the 18 government agencies there are 4 different models and practices, which is unacceptable.

The scope of powers of speakers and heads of information departments is extremely varied in different government agencies. In order to receive answers to their requests for information, journalists have to deal with both speakers and heads of information departments. These matters are regulated very differently in different government agencies.

The overlap in their functions becomes apparent, when a journalist sends a written request for information, which, according to the Freedom of Information Law, falls under the responsibility of the freedom of information officers in the respective government agency. Also, as a rule, freedom of information officers in different government agencies represent very different levels, starting from the secretary-general to the head of the public affairs department and others.

Another challenge is the lack of adequate and sufficient internal coordination between the secretariat, information department and the head of the relevant government agency.

According to the 2018 Law on Public Service, public affairs and information departments/units in government agencies should be coordinated by press speakers/secretaries. However, this regulation has not contributed to the introduction of a uniform practice in the public administration system. The new regulation has been in place for a year, but many government agencies still have both press speakers and heads of departments, with both being responsible for the same subject. Moreover, the adoption of this law has created the following problems in the area of communication:

1. According to Article 8, paragraph 7 of the RA Law on Public Service, head of public affairs department in ministries is a discretionary position (i.e. political appointment) occupied by the press secretary, in accordance with procedures set out in this law. Thus, the immediate supervisor of civil servants in such a department is a person occupying a discretionary position (the press secretary, in this case), who is also in charge of evaluating the staff and sending them for training. Therefore, the person in this discretionary position must possess skills related to civil service, such as an ability to evaluate his/her staff's performance, to identify their training needs and to manage the department, which is very difficult to ensure.
2. Another concern related to this provision is that the information and public affairs departments of government agencies (i.e. the implementer's of their respective agencies' information policy) are headed by a person in a discretionary position, i.e. a person whose position does not have political neutrality.

3. According to Article 8, paragraph 8 of the same law, discretionary positions require a “position passport” (position description), the standards for which are to be defined by the immediate supervisor of the person in question. Thus, the position standards for the press secretary (head of department) can be extremely discretionary, not uniform and very different in various ministries, because they are set by different heads of government agencies.
4. Finally, according to Article 8, paragraph 9 of the law, appointments to discretionary positions are made by the person who has the power to make such an appointment, without a competition, provided that the position requirements are met. Thus, press secretaries (heads of department) are appointed without a competition, as long as they meet the requirements of the discretionary position’s “passport.” Being a constantly changing document that does not contain the main principles related to the functions of the position, this “passport” is not sufficient to ensure that the appointed individual would be familiar with the relevant ministry’s sector and the functions of the relevant government agency and that he/she would contribute to the development of the desired public opinion, which in turn doesn’t contribute to the stability and continuity of the government agency’s information policy.

***Recommendations:***

- ✓ *There needs to be a normative act clearly separating the powers and functions of the press secretary/public affairs and information departments from those of the freedom of information officers, to avoid any overlap. There is a need to harmonize the relevant provisions in the RA Law on Freedom of Information, the RA Law on Public Service and the RA Government’s Decision N1204-N.*
- ✓ *Develop a common mechanism and practice in all government agencies, which will help increase the public administration’s predictability and efficiency for the media.*
- ✓ *Redraft Article 8 of the RA Law on Public Service and address the existing problems arising from the aforementioned contradictions in the law.*

**2.3 Different speakers or heads of departments in charge of information functions have very different levels of knowledge and skills on freedom of information and communication.**

The number of information requests submitted by journalists and regular citizens has multiplied since the new government came into power. Some new individuals appointed to the information-related positions do not have sufficient experience and practical skills on the subject. On the other hand, the technical resources have remained the same.

The technical capacity of the relevant departments in different government agencies is highly uneven. Most of the agencies need more technical and professional capacity. There is no single mechanism or a common picture of the distribution of technical and human resources. The human resource distribution is also very different in different government agencies, with staff numbers in information departments ranging from one to seven or more.

Generally speaking, the shortage of skills and relevant experience is a serious obstacle for the implementation of the state information policy in various government agencies. Another problem is that some agencies have extremely limited and outdated technical capacity. However, as one of the survey participants mentioned, they need more resource, more training and more updated knowledge, rather than more people, in order to carry out the work properly and on time.

Despite the fact that the freedom of information and communication training has been part of the mandatory annual training required by the RA Civil Service Council since 2009, these trainings are conducted quite irregularly and only with donor financing, because there are no resources allocated for that purpose from the state budget.

Staff and equipment needs are numerous: they need operators, editors, graphic designers, SMM specialists, PR marketing specialists, IT technicians, human resources and tools for visual content development, and translators. In some agencies, several functions are carried out by a single person, which decreases the efficiency. They also need financial resources to promote materials in social networks. However, such things are not envisaged in the public procurement procedures.

Representatives of different agencies also noted that they really need media monitoring tools. The survey has revealed that every government agency has selected its own media monitoring toolkit, based on its own needs. Some of them use paid services provided by private organizations, such as Rumors Monitoring <https://rumorsmonitoring.com> , a resource developed by Deem Communications that provides free services to government agencies until the end of this year. Some others use the Max Monitor resource <https://www.maxmonitor.am> , also developed by a private organization.

***Recommendations:***

- ✓ *Government agencies spend an enormous amount of resources on acquiring their media monitoring tools. A single media and social networks monitoring tool should be developed and used by the government, and this tool/model should*

*meet all the needs of various government agencies and give them a possibility to add some additional sub-tools/features or delete the unnecessary ones. This tool should be developed with the direct participation of public administration bodies and only after their needs have been assessed.*

- ✓ *Organize training/professional consultations for the main speakers (including the heads) of various government agencies, in order to develop their skills that are necessary for working with the media, including their public speaking skills.*
- ✓ *Organize regular training on freedom of information, communication and public affairs for all speakers and the relevant staff members of all government agencies. The training must cover both the legal aspects of access to information and the technical/practical skills of information management. Media monitoring skills can be an important component of any such training.*
- ✓ *Strengthen the technical capacity of all government agencies and provide sufficient technical resources to the information officers and public affairs departments to enable them to do their job properly.*

#### **2.4 Some of the most frequent obstacles mentioned by the speakers are the very short deadlines for responding to requests for information, as well as the frequently repeated requests and requests that constitute an abuse of the freedom of information right.**

This issue has two sides. On the one hand, the speakers mention that the 5-day deadline set by law is insufficient and creates inconveniences in terms of responding on time; on the other hand, many journalists, who had complained to the Freedom of Information Center, have noted that the 5-day deadline is much too long and is incompatible with journalistic work, especially in the case of television news programs and daily newspapers.

According to the Freedom of Information Center's electronic resource, [www.givemeinfo.am](http://www.givemeinfo.am), in the period between May 1, 2018 and June 1, 2019, only 53 percent of requests for information were answered within the deadline specified by law. In some cases, the deadline is not kept even if requests for information are denied. Some government agencies have the following practice: first they make use of the possibility to provide a reply in additional time, and then they deny the request for information in 10-15 days. The issue of delayed responses is dealt with in more detail in section 3, which also contains recommendations on how to overcome the problem.

#### **2.5 Unethical journalism, disinformation and fake news**

***How the government agencies fight against fake news and disinformation on traditional and social media? This is the most important challenge facing the government, which requires balanced and long-term solutions.***

Almost all the speakers mentioned the spread of fake news and disinformation in both traditional and social media and social networks as a new and serious challenge. Every government agency has its own way to fight against the spread of fake news and false information presenting the agency or its head in a bad light.

In the case of disinformation, they first try to solve the problem directly with the media outlet in question. If disinformation results from a misunderstanding or some missing information, then the media outlets usually correct the mistake right away. The problem is usually resolved at this point. If the problem is not resolved, then the government agency asks for a retraction or an opportunity to provide a reply. All of the participants of this survey mentioned that they respond to disinformation by means of an official clarification and retraction, using all possible channels. However, there are cases when their retractions and clarifications are not published properly, or when journalists do not try to find out the relevant ministry's position on the subject in question and publish a one-sided story. If a media outlet refuses to publish the requested retraction or the reply, then the government agency expresses its views in another media outlet.

Some speakers noted that they react to all fake news, without exception and as quickly as possible, if they are disseminated knowingly and intentionally. Others said they react only if the material in question can cause panic or seriously damage the reputation of their agency. They think that if they responded to every single rumor, they would be giving the fake news the unnecessary weight and publicity.

One of the participants mentioned that they prefer to be the first to talk about their problems, but this is not always possible. In this case, they quickly get one of their ministry's officials to provide comments to a credible media outlet with a large audience. One of the surveyed participants rightly mentioned that one of the most important skills is to react to disinformation quickly and with all the available tools. Two of the speakers talked about the importance of press releases and press conferences. It is important to note that, according to the Prime Minister's instructions, every government agency is required to hold a press conference at least once every three months and to answer questions from the media.

Addressing the issue through the judiciary is considered a highly exceptional measure. Not everyone is prepared to file lawsuits. Only one of the government agencies covered in this research has a pending court case against the media. According to official information provided by the RA Judicial Department, there have been ... court cases against the media in the last year.

In the beginning of 2019, Prime Minister Nikol Pashinyan instructed the head of the National Security Service to fight against the spread of "information of manipulative

nature.” The Prime Minister’s instruction was criticized by civil society and ended with the arrest of a fake Facebook profile owner. Fortunately, it stopped here. The Government is currently making efforts to use more appropriate, effective and soft tools for fighting against the spread of false information, tools that will lead to long-term solutions.

The Public Relations and Information Center state non-profit organization has recently launched a state information check platform (<https://www.facebook.com/infocheck.am/>) as a way to refute fake news. It says on that page that the information check center is an information platform that contains the refutation of disinformation found in the media, as well as objective and accurate information about the government’s activities. Only one of the speakers in our research was aware of this platform.

Members of the government have become more inclined to use extra-judicial bodies and mechanisms to settle their differences with the media. For example, the Ethics Monitoring Council has received 3 complaints from the government or its representatives since the revolution, asking them to analyze some media publications from the point of view of ethics. The complaints came from the RA Ministry of Justice, Ministry of Foreign Affairs and the Government. The Council had never received any complaints from any government agency before the revolution.

It is important that, in the meantime, the Government has initiated a large-scale media literacy campaign to develop the public’s media literacy. It is true that the resources allocated for these programs are not sufficient, but it is a very welcome development.

In this context, almost all the speakers mentioned another important problem, which is the issue of real ownership and financial transparency of the media. Who finances the media and who are the real owners? These questions are of concern for all the government agencies. Transparency of such information is a key component of a democratic media system. Media outlets must be honest and fair with their audience and provide the information about their real owners as soon as possible.

The Government and media NGOs are doing a lot of work on this subject. This issue has been included in the Open Governance Partnership’s 4<sup>th</sup> Action Plan (2018-2020). Armenia has been one of the first countries to make a commitment under OGP on the subject of real ownership of businesses, including the media. According to the plan, all businesses, including the media, must declare their real owners by November 2020, with this information made public and accessible in an open public registry created for that purpose. It is worth noting that this idea was proposed by civil society and was accepted by the government.

### ***Recommendations:***

- ✓ *The Government should refrain from heavy-handed interference on the subject of disinformation and fake news, as well as from adopting legal acts that impose strict limitations, which may lead to a disproportionate restriction of freedom of expression.*
- ✓ *Expand and support the Government's media literacy efforts and programs. Carry out comprehensive media literacy programs targeting all societal groups. Media literacy in a multimedia ecosystem is important for all age groups and in all areas of life.*
- ✓ *Start a wide public discourse on the subject, within and outside of the government-civil society professional groups.*
- ✓ *Develop common guidelines for the speakers of all government agencies on the means and tools for dealing with disinformation.*
- ✓ *Public officials and politicians should be more tolerant when it comes to public criticism directed at them in publications containing slander and offensive language. It would be desirable for them to turn to journalistic self-regulatory mechanism rather than the judiciary to seek satisfaction, if they feel their right to honor or dignity has been violated. Such self-regulatory mechanisms included the Ethics Monitoring Body and the Information Disputes Council. These are extrajudicial bodies for dispute resolution, and they provide an ethical and legal assessment to any dispute within a short period of time. In the rare cases when government agencies take journalists to court, they should seek only a refutation, right to reply or a public apology, and they should refrain from demanding high financial compensation.*
- ✓ *Define "hate speech" in the law and make the public expression of hate speech punishable by law. This would make it possible to avoid the wide and ambiguous interpretation of this term, as well as to prevent the use of disproportionate restrictions on the part of the government.*
- ✓ *Take steps to ensure transparency of real owners of the media. First, the legal foundations for regulating this issue must be established; this should be followed by the process of declarations and inputting the data into an open register, which should then be made public. Having an open register would make it possible to ensure public control over the accuracy of the published data. It is essential to define "media" in the law. A definition exists in the RA Law on Mass Media, but it is outdated and does not reflect the modern nature of media. The Council of Europe's Committee of Ministers Recommendation on financial transparency of the media, adopted in 2018, can serve as guidance for reforms in this area.*

### ***3. The Practice of Responding to Requests for Information from the Media***

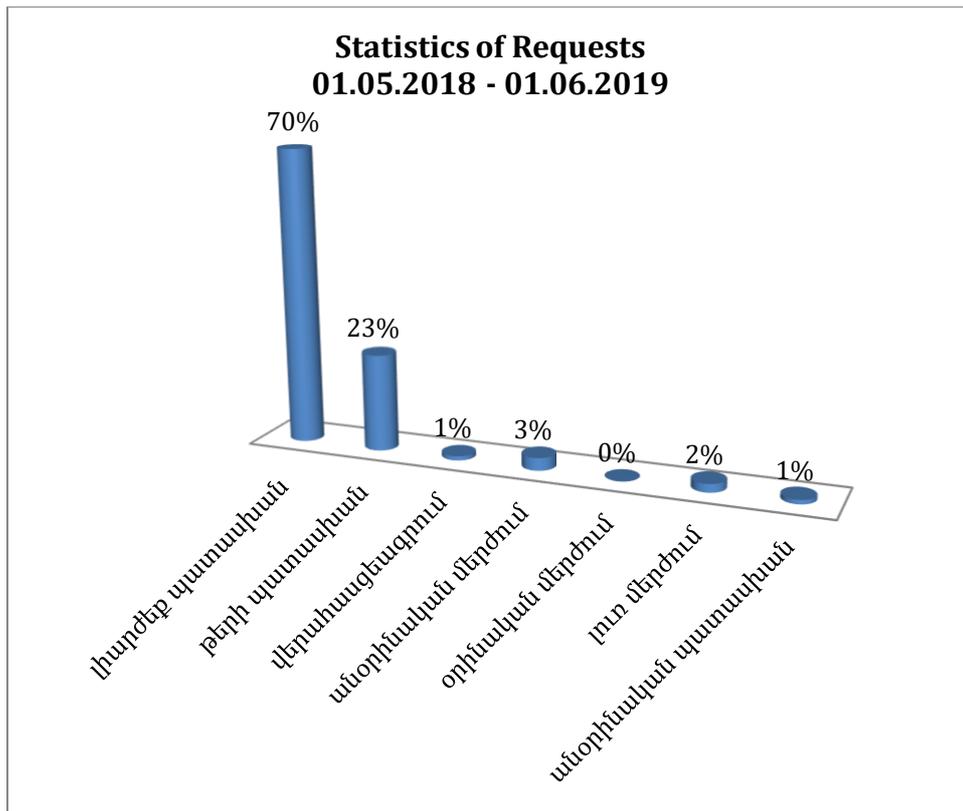
Proactively providing information, on the one hand, and responding adequately and in a timely fashion to information requests by the media, on the other hand, can significantly reduce the amount of disinformation. If journalists do not get timely and adequate information from government agencies, this creates fertile ground for the spread of disinformation and fake news.

Since the Government does not collect in one place all the statistics on requests for information, we have looked at the statistics of requests for information, sent out by the Freedom of Information Center NGO in the period between May 1 2018 to June 1 2019, in order to identify the main problems encountered when trying to receive information.

An analysis of these requests makes it possible to draw certain important conclusions on the practice of receiving information and the problems related to it.

In the past, about 5% of requests for information did not reach the intended recipients, because of various issues related to electronic addresses, problems with the postal service and other reasons. The problem has been resolved completely with the Government's introduction of the e-request.am system in 2018. The system is connected to the Mulberry electronic documents system used by all public administration bodies; requests sent through that system enter the internal network right away and there is no way for these requests to be lost or misdelivered.

Following is the general picture of official replies to the Freedom of Information Center's requests for information



70 percent of requests for information from government agencies were answered fully. In 23 percent of the cases the answers were incomplete. The 70 percent for complete answers is slightly down from the previous years. The number of complete answers in 2014-2016 was between 77 and 86 percent.

On the other hand, there has been a significant reduction in the number of cases where requests for information were silently ignored. That number stands at 2 percent, as opposed to 12-16 percent in 2014-2016. The number of late replies has increased by about 5 percent. Only 53 percent of requests received full and timely replies. Full but late replies were provided in 17 percent of cases, as opposed to 12-15 percent in the previous years.

In 23 percent of cases the replies were incomplete and unsatisfactory. The number of incomplete answers has increased, compared to the 10-13 percent in the previous years. This increase in incomplete answers is somewhat comparable with the number of denied or ignored requests in the past. This has to do with two important factors. First, there has been a significant increase in the number of requests (the number nearly doubled), and government agencies do not have enough resources to deal with this amount of work. The second factor is that some new people have been appointed as speakers or information officers in government agencies, and they do not have enough experience or knowledge for the job.

6 percent of requests for information have been denied, including:

0 percent – lawful refusal,

3 percent – ungrounded refusal,

1 percent – ungrounded reply

2 percent - no replies or silently ignored.

To compare, there were 10 percent of silently ignored requests and 1 percent ungrounded refusals in 2016.

“Ungrounded refusal” are the ones where the holder of information refuses to provide the information without any legal grounds.

“Ungrounded reply” is when in order to provide the information, the holder of that information starts requiring things from the requester that are not specified by law.

“Silently ignored” are the cases where the holders of information provide no reply at all.

Journalists request information from government agencies in writing (through the postal service or electronically, i.e. through the e-request system, by email to the address provided on the official website or through Facebook. According to the Freedom of Information Center’s data, in 2015-2017, the RA Government and the 18 ministries received a total of 276,003 electronic requests for information, which is quite high in terms of the use of e-governance tools.

Some of the surveyed speakers said that they also processed requests for information received through social networks and provided replies within the timeframes set out by law. Some others said that they do not process requests received through social networks at all. They mentioned that they process requests only if they contain a signature, as required by the RA Freedom of Information Law and the relevant government decision. One of the government agencies has adopted an even stricter practice: in the case of electronic requests, they process only the requests containing electronic signatures, but not scanned documents.

An analysis of complaints by journalists to the Freedom of Information Center makes it possible to identify the following practical problems encountered by the media dealings with government agencies.

In some cases, when a government agency provides important information through social networks, it refuses to talk to an individual media outlet, saying that the requested

information is already available on social networks. However, at the same time, this information is not available on that agency's website (which is considered to be the official source), which creates problems for the media in terms of figuring out how final, unedited and official the information on social media is.

Journalists also noted that there are cases when the request for information is prepared very professionally and is provided on the media outlet's official letterhead, but the reply comes back without a signature, without a letterhead, without even mentioning the name and title of the official who provided it. Such replies are often sent from non-official email addresses.

One of the journalists, who complained to the Freedom of Information Center, said that a written reply from one of the ministries explicitly stated that they did not want to give an interview to that particular journalist. This is a clear case of discrimination, which is completely unacceptable.

Journalists also mentioned that sometimes the officials abuse the legal provision allowing them to ask for extending the deadline for replies. In a few government agencies, asking for additional time is a routine used in every single case.

When requests for information contain more than one question, the law requires government agencies to number all the questions and provide accurate and full reply to each one of them. However, in practice they often provide a general answer to all the questions together, which is not in line with the legal requirement, and it becomes difficult to understand which specific question the answer pertains to.

In some cases, they violate the legal requirement to provide a grounded refusal. The Freedom of Information Law has very specific grounds and procedures for refusing to provide information. Such refusal must be in writing only, and it must contain the grounds for refusal, citing the concrete provision of the law that allows them to withhold the specific information.

A new problem in the work with the media stems from an arbitrary or ambiguous interpretation and implementation of the 2015 Law on the Personal Data Protection. Refusing to provide information by citing that law has become a fairly common practice. Government agencies often refuse to provide information, saying that it contains personal data. There is a very fine line between freedom of information and personal data protection. Unfortunately, the temptation to refuse to provide information on the grounds of personal data protection is quite high. The problem has become more serious since December 2016, when the Personal Data Protection law was amended without any public debate and an important provision protecting the media in Article 3 of the law was removed. According to that provision, the law did not apply to personal data processing for the purposes of journalism, with the latter being an important value protected by that law. This amendment created a completely new reality for the media.

The amendment led to a situation that required journalists to get prior consent when collecting, storing, publishing or otherwise using personal data about an official or any other person. This requirement is incompatible with the media's function to investigate, publish or report on corruption risks or on cases of alleged use of public resources for personal purposes.

***Recommendations:***

- ✓ *Government agencies are required to provide adequate, full and timely information to the media; this refers to information in their possession that is of public interest. Government agencies must provide the complete information in their possession.*
- ✓ *Regular training and exchange of information for and between government officials who process request for information should be a continuous process. Newly appointed speakers and freedom of information officers must gain proper skills and knowledge on both national and international regulations and best practices.*
- ✓ *Government agencies must provide complete answers to all requests by journalists; there must be no delays. No requests for information by the media should go ignored. Incomplete answers should be eliminated completely or, at least, minimized.*
- ✓ *No discrimination against various media outlets, regardless of anything.*
- ✓ *Refusals must be grounded, clearly citing the legal provision allowing the refuse the provision of the requested information. Refusals must be made in writing, in all cases.*
- ✓ *If the provision of information requires additional time, then the authors of the request must be informed about it in writing, within five days, and the reason for needing additional time must be mentioned. The possibility to delay the response must not be abused.*
- ✓ *Introduce a special provision in the Personal Data Protection Law providing for an exception for the use of personal data for the purposes of journalism. It is extremely important for the personal data protection legislation not to be used as a shield to prevent the investigation of violations, abuses or fraud.*
- ✓ *More active use of the e-request electronic system and statistical analysis for every government agency.*
- ✓ *There are many channels by which requests for information can be sent: hotlines, social networks, e-request system, official websites, email, etc. However, there is no common practice or regulation. Common regulations and practice on the requirements for electronic requests and for their processing must be developed and implemented, and this common practice must be mandatory for all*

*government agencies. Those who request information should know clearly what mechanisms will be used to process their requests sent through any given platform. Moreover, this mechanism should be identical in all government agencies.*

#### ***4. Complaints Mechanisms against Violations of the Media's Right to Receive Information***

It is extremely important to have mechanisms to protect the journalists' right to receive information. There are three such complaints mechanisms in the Republic of Armenia:

- Administrative appeal
- Complaint to the Human Rights Defender
- Judicial appeal

According to our observations, journalists are not satisfied with any of the existing mechanisms. As a rule, the administrative appeal mechanism is extremely ineffective. When complaining to a higher official, the complaint is often forwarded to the person against whom the complaint was launched in the first place. This practice is widespread, despite being in violation of the law. After the complaint to a higher official is examined, the original decision of the first official is almost always upheld and the requested information is not provided.

The problems are different in the case of the Human Rights Defender. The Human Rights Defender's Office is very busy protecting other more vulnerable human rights and is sometimes unable to react quickly to violations of the right to receive information. The Office told us that they received 46 and 109 allegations of violations of the right to receive information in 2017 and 2018, respectively. To compare, Freedom of Information Center received more than 350 such complaints from regular citizens and journalists in 2018 alone.

The judicial complaints mechanism is the most effective of the three, even though it has its own shortcomings. Even though the current judicial practice of protecting the right to receive information is rather positive, it is not very efficient. However, the peculiarities of judicial protection do not make it possible to address the practical issues of freedom of information without government support. A case can take years, and the information provided at the end is no longer important or relevant. Filing a lawsuit becomes a matter of principle only. Information is outdated very quickly, and because court proceedings take a long time, the information in question is no longer needed by the applicant. In addition, filing a lawsuit entails some costs that the media cannot afford. The judicial complaints mechanism has been used mostly by non-government organizations. For example, the Freedom of Information Center has had more than 80 strategic litigation cases, 70 percent of which had a positive outcome.

There is no government agency in the Republic of Armenia that would do at least the following:

- Protect the right to freedom of information,
- Collect and analyze statistics and best practices on the freedom of information practice,
- Consult citizens and the holders of information on the exercise of the right to freedom of information,
- Provide clarification of various provisions of the freedom of information legislation and ensure its uniform implementation in practice.

We believe that these functions should be carried out by an extrajudicial body, which is used effectively in international practice. International experience shows that the best way to protect the right to receive information is to create an information commissioner's office. Such an Information Commissioner/Authorized Body is a state agency that provides extrajudicial settlement of disputes related to freedom of information. Such a Commissioner should become a state authorized agency for extrajudicial complains related to the right to freedom of information.

1. Creating an Information Commissioner can help protect the freedom of information right by preventing abuses in the implementation of FOI legislation and the relevant complaints procedures. At the same time, the public needs to know what the right to freedom of information is and how it works, how to request information, what are the procedures for receiving information and how to complain if that right has been violated. It is also important for the public to know what kind of information may be withheld, in accordance with the law, so that any justified refusal to provide information does not produce less trust towards government agencies.
2. Providing independent review of violations of the freedom of information rights is another reason for having an Information Commissioner. His/her main function should be to receive and examine complaints about violations of freedom of information rights. The Commissioner should also have the right to challenge any such violations, regardless of the nature of violations, be they unlawful refusals to provide information, request being silently ignored and other violations of the freedom of information right.
3. Another reason for having an Information Commissioner is to have someone who collects information about the FOI practice in the country, i.e. statistics on how many requests for information were sent, how many replies were received, within what time, what were the main problems raised through those requests, etc. Any such data can serve as guidance for a more effective exercise of the freedom of information right.

4. Another very important function of an Information Commissioner would be to inform, consult and educate the holders of information and the regular citizens on the best practices in the area of freedom of information. The Council of Europe Convention on Access to Official Documents states in Article 9<sup>1</sup> that the Parties shall inform the public about its right of access to official documents, which, among other things, requires the Parties to educate public authorities in their duties and obligations with respect to the implementation of this right. The government does not implement this provision at all. Everything contained within this provision is implemented by NGOs.

### ***Recommendations***

- ✓ *Create an independent extra judiciary mechanism (Information Commissioner) to ensure proper protection of the journalists' right to receive information, on the basis of the international best practices.*
- ✓ *Until this independent body is created, the RA Human Rights Defender's Office should be more active in processing complaints about violations of the right to receive information and taking measures to protect that right. It would be highly desirable to have a designated person or a group of individuals in the Human Rights Defender's Office to deal with all the complaints related to freedom of information.*
- ✓ *Courts should examine freedom of information lawsuits and render decisions on them as quickly as possible, because information gets outdated very quickly.*

### ***5. Government Agencies' Proactive Publication of Information, Issues Related to Proactive Openness and Proposed Solutions***

The principle of proactive provision of information is one of the most important aspects of freedom of information. The meaning of this principle is that the holders of information provide information about their activities at their own initiative, including by means of new technologies. Government agencies must take steps to make official documents of general interest public, both at their own initiative and by request, in order to contribute to the openness and effectiveness of public administration and to promote informed public participation.

Experience with freedom of information shows that it is easier for the public to exercise the right to freedom of information more effectively, when government agencies are more proactively open. Obtaining information through requests is time consuming and

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<sup>1</sup> See: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805d2118](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d2118)

costly. Proactive publication of information is beneficial for government agencies themselves, because it reduces the use of public financial and technical resources, and saves times.

Related to this is the requirement for the published information to be truly accessible and understandable to the public. It should be presented in a way that it is easy to find and simple and easy to understand.

In the Republic of Armenia, the aforementioned rules are prescribed in Article 7 of the Freedom of Information Law, adopted in 2003. The article requires to publish proactively 13 types of information. On January 1, 2016, Government Decision N 1204-N went into effect, which sets out procedures for management of information and provision of information (or copies thereof) (Translator's Note: the actual title of the Government decision is much too long and confusing to be translated into understandable English. End note). This Decision contains additional measures to promote proactive publication of information.

The Freedom of Information Law also specify the frequency with which certain types of information must be made public. Article 7, paragraph 3 of the Law says that the holder of information must make public the following types of information, at least once a year." According to Paragraph 4, any change in the information mentioned in paragraph 3 must be made public within 10 days of making that change. It is important that publishing information on the Internet is also envisaged by the Law. However, posting things on the Internet is not mandatory; it is only one of the ways to make information public.

Our studies have revealed the following. There has been general progress in terms of proactive publication of information. However, many government agencies still do not fully grasp the importance of proactively publishing information at their own initiative. None of the official websites contain the full scope of information that government agencies are required to make public in accordance with the Freedom of Information Law. Many official websites do not contain some essential information. In many cases, the available information is not easily accessible or is out of date.

Our observations also revealed that the official government websites need to be standardized. Even though the Government has adopted the Decision N 1521-N on the minimum requirements for official government websites, as envisaged by the first Action Plan under the Open Governance Partnership, these requirements were not fully implemented in practice. None of the official website of various government agencies meets all the requirements set out in the government decision. Lack of resources was mentioned as the main reason for this failure to meet all the requirements. However, given how much money has been spent so far on the development and maintenance of websites in various government agencies, we can conclude that the problem is caused by the lack of a systemic and uniform approach to the issue, rather than by the lack of money. According to official information provided to the Freedom of Information

Center, 99,786,220 Armenian Drams were spent in 2014-2019 on the development and maintenance of the government's and various ministries' websites, of which 75,558,920 were allocated from the state budget. 14 new websites were created and 56 older websites were upgraded during that time. We believe that this expenditure did not contribute to a long-term and system solution of the problem.

Materials on freedom of information are not systematized on official websites. Many documents, data and clarifications related to freedom of information have still not been fully published or they are placed in different parts of websites, which makes them difficult to access. Updating the already published material is also a problem.

According to paragraph 14 of Annex 2 of the Government Decision N 1204-N of 2015, official government websites must have a "Frequently Asked Questions" or another similar section where they have to publish frequently asked (more than 5 times) questions and their answers. This provision encourages proactive publication of information. The same government decision says that if the holder of information receives frequent requests for the same information, then this information should be summarized and published on the official website. *Even though that most of the ministries' websites have "Frequently Asked Questions" sections, they are rarely updated.* They contain a number of questions related to the ministry's activities or the sector, posted when the site was first created, and they have not been updated ever since. However, the government decision says that these sections must contain all questions (and answers) that the government agency has received 5 and more times. The Frequently Asked Questions sections contain one or two questions and answers, at best. In the meantime, journalists raise many questions that are often repeated and government agencies have to keep drafting replies and sending them to the journalists in response to their requests.

Thus, our observations show that the information published on official government websites is not complete and comprehensive, and is not updated regularly. A significant part of information is not really accessible, even though it is published, because it is very difficult for user to find what they are looking for. <sup>[1]</sup><sub>[SEP]</sub>

#### ***Recommendations:***

- ✓ *Ensure content and structural uniformity of official websites. They have to follow the same logic, same format and same interface.* <sup>[1]</sup><sub>[SEP]</sub>
- ✓ *Ensure that the information posted on official websites is complete, regularly updated and accessible.*
- ✓ *Choose the form of publication: holders of information should publish the information in such a way as to make it easily and speedily accessible to everyone*

*who is looking for it or who needs it. It is extremely important for users to find similar types of information in the same sections in all official websites. For example, all websites should have a section for statistics where users can find statistical data.*

- ✓ *Proper implementation of the provision on frequently asked questions can significantly reduce the number of requests for information. If frequently asked questions are collected and their answers are published proactively on official websites, the number of requests for similar information will be reduced, which will save government resources. <sup>[[1]]</sup><sub>SEP</sub>*
- ✓ *Having well-trained staff is an important precondition for ensuring a higher level of transparency and openness in government agencies. We recommend regular (at least once a year) trainings and workshops on freedom of information, which will cover the right to freedom of information and the provisions of the RA Freedom of Information Law.*
- ✓ *Recommendations on classification/grouping of specific pieces of information published on official websites: <sup>[[1]]</sup><sub>SEP</sub>*
  - *Put the name and contact data of the information officer (person in charge of providing information) in the most visible place on the main the main homepage. In the section on the structure of the government agency, put information about the person in charge of freedom of information and describe his/her functions. This would make the journalists' job much easier.*
  - <sup>[[1]]</sup><sub>SEP</sub> *The main homepage should contain a section on Freedom of Information, which should contain procedures on how to obtain information, a template for requests for information, a sub-section to send a request online, information about the freedom of information officer, clarifications on the right to freedom of information, fees associated with the provision of information, statistics on requests for information, legal acts on freedom of information and other relevant materials.*
  - *All documents containing numbers should be posted in a convenient format (preferably Excel). PDF documents should be printable. This is very important for being able to work with the data contained within these documents.*

## ***6. Social Media and Networks as a Vital Communication Tool for the Government***

Official websites and Facebook are the main information platforms for government agencies. None of the agencies has any guidelines or internal procedures on the use of

**social networks. Communication specialists have very different levels of skills of using the various online platforms, and they use them differently.**

16 of the 18 government agencies covered in this research have official websites. Only two agencies mentioned that they do not have official websites yet and they would need assistance in developing such sites. In the meantime, they use social networks to publish their information.

All government agencies have Facebook pages. Only the Ministry of Foreign Affairs has an official presence on YouTube, Twitter and Instagram.

The participants of the survey mentioned that they update their social network pages at least once a day. Official releases are published first on their websites, and then on Facebook. The work on social media is done by different communication specialists in various agencies: in five of the government agencies, the official website and/or social media (not the content) page is run by IT specialists.

Following are the numbers of followers of various government agency Facebook pages, as of June 10, 2019:

1. RA Government - 77,204
2. Ministry of Education, Science, Culture and Sports - 44,376
3. Ministry of Health - 35,476
4. Ministry of Defense - 35,219
5. Ministry of Foreign Affairs - 25,703
6. Ministry of Justice - 14,242
7. Ministry of Labor and Social Affairs - 11,116
8. Ministry of Territorial Administration and Infrastructure - 10,626
9. Ministry of Economy - 7,863
10. Ministry of Emergency Situations - 6,891
11. Ministry of High Technology Industry - 6,871
12. Ministry of Environment - 5,845
13. Ministry of Finance - 4,574

Government agencies do not have guidelines for running the official websites and social network pages: every specialist follows his/her own personal observations and judgment. Most of the participants mentioned the development of their social network skills as one of their main needs.

The speakers also mentioned that they need some monitoring tools to analyze social media publications on their agencies and to respond to them. The Public Affairs and Information Center state non-profit organization carries out social network and media monitoring and provides that information to government agencies on a daily basis.

However, the participants mentioned that the provided information does not meet all of their needs, and that's why they would need additional tools.

***Recommendations:***

- ✓ *Government agencies should proactively publish information both on their official websites and in social networks, in different formats. An agency's institutional memory is seriously jeopardized if the only activity is in social networks.*
- ✓ *Make social network pages of government agencies as similar to each other as possible, which would make them instantly recognizable by users.*
- ✓ *Develop and implement mechanisms to ensure promotion of official materials on social networks (perhaps state budget allocations would be the most acceptable way to do it).*
- ✓ *Develop common practical guidelines for social network activities for government agencies, clarify individual and institutional mechanisms for communication specialists to ensure visibility.*
- ✓ *Organize training to provide practical knowledge on the use of online platforms and their content and technical peculiarities.*
- ✓ *Develop a practical manual for speakers on how to implement the government's communication policy on social networks. There need to be special guidelines for speakers on how to work on social networks – a brief manual with concrete practical skills. The differences between various social networks should also be highlighted.*