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*Note. This publication was prepared based on extracts from the Constitution of the Republic of Azerbaijan, the Constitutional Law of the Republic of Azerbaijan "On the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan" and the Law of the Republic of Azerbaijan "On Access to Information" and other normative legal acts. For more detailed information you can look at those legislative acts.*



## THE COMMISSIONER FOR HUMAN RIGHTS OF THE REPUBLIC OF AZERBAIJAN (OMBUDSMAN)



## RIGHT OF ACCESS TO INFORMATION!





THE COMMISSIONER FOR HUMAN RIGHTS  
OF THE REPUBLIC OF AZERBAIJAN  
(OMBUDSMAN)



SABINA ALIYEVA

Ombudsman's authority to draw up an  
administrative protocol for violations of the  
Legislation on Access to Information

The Ombudsman, Chief of Staff, and Deputy to the Chief of Staff are entitled to compile a protocol on administrative violation on behalf of the Commissioner for Human Rights of the Republic of Azerbaijan, as prescribed in Articles 371-374, 382, and 554 of the Code of the Administrative Offences, in accordance with Presidential Decree No.1361 dated 3 May 2017 on the approval of the "List of officials authorized to compile protocols on administrative offenses considered by district (city) courts".

Articles of the Code of Administrative Offenses

**Article 371** - Violation of the rules for the use of information resources.

**Article 372** - Unlawful restriction of environmental information.

**Article 373** - Failure to consider the merits of a request for disclosure of classified information.

**Article 374** - Violation of the law on the right to information.

**Article 382** - Violation of the rights of journalists

**Article 554** - Obstruction of the legitimate activities of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan.



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MƏCƏLLƏSİ

## Complaint about refusal or improper execution of information request

The requester has the right to complain about it to the court or to the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan. The holder of the information, who executes the information request, explains this right to the requester and mentions it in the submitted answer (information).

## Grounds for consideration of a complaint on violation of the right to access information by the Ombudsman

- ✓ Registration of an application for obtaining information (hereinafter - an information request).
- ✓ Provision of information requests in the manner, period and method prescribed by law.
- ✓ Refusal to comply with the requirements of the law
- ✓ Exact and complete fulfillment of the task of disclosing public information.
- ✓ Meeting the development of an Internet information resource the requirements of the law.
- ✓ Determination of restrictions on obtaining information in accordance with the law.
- ✓ The Commissioner demands the elimination of the violations from the state body, local self-government body or official who has the information in connection with the complaint about the violation of the right to obtain information.
- ✓ After receiving the Commissioner's instruction, the state body, local self-government body or official who has the information must inform the Commissioner in writing about the measures taken within 10 working days.

## Right (Freedom) of access to information

Under Article 50 of the Constitution of the Republic of Azerbaijan, everyone is free to legally seek, receive, impart, produce, and disseminate any information.

Article 2 of the Law of the Republic of Azerbaijan on Access to Information reaffirms that any person is entitled to apply directly or via his (her) representative to the information owner and to choose the type and form for obtaining the information.

## What is Information?

**Information** – any facts, opinions, knowledge, news or other sort of information produced or acquired as a result of any activities, irrespective of the date of production, presentation form and classification.

**Public information** - any facts, opinions, knowledge produced or acquired during the performance of duties provided by legislation or other legal acts.

## Oversight of the Law on Access to Information:

-by a manager of the information owner – on the official basis, by the superior body- on the basis of subordination;

-by the Commissioner for Human Rights Republic of Azerbaijan – carries out in line with the Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan.



### **Classification of Information:**

Depending on the form of access, the information is classified:

- publicly available (not restricted)
- restricted information

Types of information with limited access in accordance with law:

- secret (state secret)
- confidential information - official secret, professional (doctor, attorney, notary), commercial, investigation or judicial secrets with access limited in order to protect the lawful rights of individuals, entities, agencies, organizations and other legal entities, irrespective of the type of ownership, as well as private information are the confidential information.

- Private information - is a collection of information on private and family life

- Personal data, which is always available (name, last name and patronymic)

- Open (anonymized in the prescribed manner, publicly announced by the subject or personal data entered into the public information system with the consent of the data subject)

- Confidential (Information protected by the owner, operator and users with limited access to this information in accordance with the law)

### **In what cases is the execution of the information request refused?**

- when the request relates to the information access to which is limited by law, or the requestor is not duly authorized to acquire such information or when the requestor fails to present an identification document as required by the Law on Access to Information;

- when the information owner lacks the required information or finds difficulty in determination of this information's owner;

- it is not practicable to determine which information is requested by the requestor.

- when the information owner lacks the required information or finds difficulty in determination of this information's owner;

- it is not practicable to determine which information is requested by the requestor.

### **In what cases Information holder may refuse the execution of the request?**

- the requestor has already been provided with such information and the reason for the repeated access to the information is not grounded in the request;

- due to the large volume of the requested information, the execution of the request impedes the fulfillment by the information owner of his public duties or causes unreasonably heavy expenses;

- impracticability to provide the execution of the request at a time;

- execution of the request requires systematization, review and documentation of the information.

The answer to the refusal to provide the information request should be prepared in a clear and justified manner, indicating the relevant articles of the legislation of the Republic of Azerbaijan.



### Methods of submitting an information request:

-verbally by applying to the information owner's office directly or by phone;

-to deliver the information to the information requester personally or in written form by sending it by post, fax, or e-mail.

### Execution Deadlines for an Information Request:

-Information request is executed within the shortest period of time, but no later than 7 working days.

-If the information loses its efficiency in this period, the request should be processed immediately or, if impractical, no later than 24 hours.

-In cases of convincing threat to the life, health or freedom of a person, the information requiring a certain time for search and preparation should be presented within 48 hours (except for weekends, elections, and national holidays and mourning days).

- If the request is incomplete or inaccurate, the official informs the requester about the identified deficiencies within 5 working days.

-The duration of execution of the request for information as provided by the present Law starts on a working day following the date of registration of the request.



### Grounds for Official Use of the Information:

Information holder may consider the information as intended for official use by limiting access to it,

-information collected on criminal or administrative violation cases – until filing the case to a court or passing decision on termination of the case;

-information collected during the effecting of state control – until the respective decision is made;

-information that will or may impede the formation, improvement and successful completion of the state policy in case of premature disclosure – until the agreement on completion of the process is reached;

-information that will or may endanger the effectiveness of testing or financial audit by the state authority in case of premature disclosure – until the completion of testing or financial audit

-information that will or may violate the exchange of views and process of consultations at the state authorities in case of premature disclosure – until the decision is taken;

-information that may affect adversely the conduction of economic, monetary and credit or financial policy of the state authorities in case of premature disclosure – until completion of certain actions related to economic, monetary and credit or financial activities;

-information that will or may prevent the administration of justice – until making a court judgment;

-documents received from foreign states and international agencies – until reaching a mutual agreement on document disclosure;

-information that will or may endanger the environment or damage the environment components – until the elimination of the reasons causing the danger;

-when the disclosure deteriorates the lawful interests of the information owner, or the utilization of the information for official use is provided by agreement with private legal entities engaged in exercising public functions - information on technology solutions.



### Who are Information Holders?

-State entities and municipalities;

-Legal entities, fulfilling public duties (public legal entities), private legal entities and natural persons, serving in education, health, cultural and social fields by normative legal acts or on a contractual basis.

### Who are equal to information holders?

-dominated in the commodity market, special or legal entities that have an exclusive right or a natural monopoly - on information related to the conditions of offering goods and services and their prices, changes in those conditions and prices;

-wholly or partially state-owned, or dependent non-profit organizations, off-budget funds, as well as commercial associations of which the state is a member or participates - on information related to the use of funds provided from the state budget or property allocated to them.

### Duties of the Information Holder:

-answers the request for information as soon as practicable and in the manner most applicable for the requestor;

-maintains the register of documents;

-provides the public with periodic information on the fulfillment of public duties;

-discloses the public information that is due to be disclosed under the procedures and terms established by the relevant Law;

-assists a requestor;

-informs a requestor of the limitations of information access;

-protects information, to which access is limited by law;

-avoids furnishing incorrect, incomplete or inaccurate information, checks accuracy and reliability of the information in case of any doubts.



### Information Requester

-Legal and natural persons applying to acquire the information in written or verbally

### What is an Information Request?

Information request - writing or oral application to the information holder to acquire the information