16 Recommendations on the Law on Free Access to Information of the Former Yugoslav Republic of Macedonia

1. **The definition of 'information-holders' in Article 1(1) and Article 3(1) should be simplified.** It should not list any bodies in particular, but should define in general terms which types of bodies are covered by the law. A sentence should also be added to Article 5, stating that the annual list of information-holders published by the Government is indicative, not exhaustive.

2. **The definition of 'information of a public character' in Article 3(1) should be simplified.** It should state that 'information of a public character' is any document (as defined in Article 3(1)) held by information-holders, regardless of its form or source. In particular, the definition should not appear to be limited to information *created* by a public body.

3. **The law should state clearly that in case of a conflict with another law, the Law on Free Access to Information shall prevail.** Article 1(2) should be amended to reflect this principle.

4. **The organisation of Article 6, on exceptions to the right to access information, should be modified.** Article 6(3) contains the fundamental 'public interest test' which should be moved to the beginning of the Article. It should also state clearly that access to information may never be denied, unless one of the exceptions listed in the present Article 6(1) (to become Article 6(2)) applies.

5. **The list of exceptions in Article 6(1) should be more narrowly drawn and should ideally not refer to any other laws, or should reaffirm the principle that in case of conflict, the Law on Free Access to Information prevails.** Specifically:
    a. We are not sure that exception 3 is necessary, as it seems that the same goal is served by exception 2.
    b. Exception 4 does not appear to serve a legitimate purpose recognised by international law, and should probably be removed.
    c. Exceptions 6, 7 and 8 are too vague. They currently state that information relating to criminal investigations or any kind of court proceedings may be

withheld if disclosure "would have adverse consequences for the proceedings". This should be changed to "would cause serious prejudice to the fairness of proceedings" or a similar formulation.

d. Exception 9 is too general in nature. It should specify clearly which types of commercial and economic interests are meant. For example, it could read:
   - "…relates to the government's management of the economy, and publication would severely harm the government's ability to perform this function…"
   -" relates to a public bidding or auction process whose effectiveness would be undermined by publication of the requested information…"
e. Exception 10 is also too general in nature. Possible misinterpretation does not justify the non-disclosure of documents, but the need for public bodies to be able to freely exchange views and consider proposals internally does.
   The exception could be changed to read: "relates to the formulation or development of policies, and disclosure of the information would cause serious prejudice to the deliberative process."

   We note that the proposal for amended law prepared by PRO MEDIA contains an alternative proposal for Article 6 which would comply with international standards. Consideration should be given to adopting this proposal.

6. **Article 39 should be removed and an Article to the opposite effect should be added to the law.** This provision creates an incentive for officials and information-holders to withhold as much information as possible, to minimize the risk that they will be prosecuted for disclosing information. It runs counter to the whole purpose of a freedom of information law and should certainly be deleted. A provision to the opposite effect should be added, stating that officials responsible for mediating information and information-holders will not be held criminally liable for any disclosure of information done in good faith.

7. **A provision protecting whistleblowers should be added.** This provision could be based on Article 47 of the ARTICLE 19 Model Freedom of Information Law:

   1. No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.
   2. For purposes of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.

8. **Article 10 should contain, in the beginning, two new items:** 1) "information on the procedure for requesting access to information held by the information-holder;" and 2) "information on the procedure for appealing against the denial of an information request."

9. **The feasibility of the time limits specified in the Law should be reassessed.** The terms of three days specified in Articles 13(2), 18(1) and 24(3) are unrealistically short and should be extended to 10-15 days. The term of 15 days in Article 34(2) is likewise too short and should probably be doubled to 30 days.
   On the other hand, the term of three days specified in Article 17(1) for the amendment of an incomplete request is unnecessary. Instead, it could simply be specified that the information-holder is not bound to undertake any further action until such time as the information-requester has submitted an amended request, at which point the normal deadlines for processing requests start to apply again.

10. **Section VI, on the National Commission for the Protection of the Right to Free Access to Information of a Public Character, should contain more guarantees of the Commission's independence.** In particular, a provision on incompatibilities should be added. The proposal by PRO MEDIA contains a useful example which could be adopted.

11. **The requirement under Article 16(1) for an information-requester to disclose his or her name should be removed.** There is no need to know the name of the information-requester, as long as he/she provides contact details to enable information to be communicated.

12. **When an information-holder denies an information request under Article 20(3), the information-holder should not only be required to state written reasons, but also to point out the possibility of appealing to the National Commission.** In addition, Article 20(4) should be rephrased; the phrase "the request shall be considered denied" should be changed to "the information-requester may consider the request denied and lodge an appeal in accordance with Article 28".

13. **Article 25 should not appear to grant preference to the Macedonian language and the Cyrillic alphabet over other official languages of the Republic.** The provision could be made more simple and neutral by stating: "A request for information may be submitted in any official language, and may specify the official language in which the information is to be released. If no language is specified, the information-holder shall release the information in the language in which the request was submitted."

14. **Articles 13(1) and 26(1) should not refer to Article 6(1), but to Article 6 as a whole.** This reaffirms the principle that an information-holder must always perform the 'public interest test' of Article 6(3).

15. **Article 34 should include an item "-informing the public about the present law through an advertising campaign in the period following its entry into force."**

16. **Article 37(2) should specify that the Commission will coordinate the efforts of information-holders to enact the provisions of the law.**