

Bilgi edinmek kolay değil

BilgilenmeHakki.org'un araştırmasına göre, vatandaşlar 'bilgi edinme hakkı'nı kullanıyor. Ancak Milli Eğitim, Sağlık, Çalışma ile Tarım ve Köy İşleri bakanlıklarından yanıt almak zor

İSTANBUL - Bilgi Edinme Hakkı Yasası'nın uygulanmasını yönelik yapılan bir araştırmanın sonuçları değerlendirilen Leeds Üniversitesi Hukuk Fakültesi öğretim üyesi Dr. Yaman Akdeniz'in raporuna göre, yase, bazı bakanlıklarda sağlıklı işleniyor.

Yasanın uygulanmadaki takibi için kurulan bilgilenmeHakki.org portalının yaptığı araştırmanın sonuçlarına göre, yaklaşık bir ay içinde 15 bakanlığa yapılan 2 bin 519 başvurunun yüzde 23'ü yanıtız kaldı.

Dr. Yaman Akdeniz'in raporuna göre araştırma, 15 bakanlığa Bilgi Edinme Hakkı Yasası'nı ne şekilde uyguladığını saptamak için yapıldı. Web sitesi yeni kurulduğu için Enerji ve Tabii Kaynaklar Bakanlığı dışında 15 bakanlığa standart bilgi edinme

hakkı başvurusunda bulunuldu ve gelen yanılara göre de rapor hazırlandı. Başvurular 22-23 Ağustos tarihlerinde yapıldı.

Dokuz yanıt, altı ret

Kanuna göre 15 işgünü içinde, yani en geç 13 Eylül Pazartesi gününe kadar yanıt verilmesi gerekiyordu. 13 Eylül'de Milli Sanayi ve Ticaret, Maliye, Dışişleri, Bayındırlık ve İskân ile Çevre ve Orman Bakanlıklarından yanıt ve bilgi geldi.

İçişleri Bakanlığı, 22 Ağustos'taki başvuruya 17 Eylül'de yanıt verdi, ancak istenilen bilgileri vermedi. Sağlık, Milli Eğitim, Çalışma ve Sosyal Güvenlik ile Tarım ve Köy İşleri Bakanlıklarından ise 22 Ağustos ve

13 Eylül'deki iki başvuruya yanıt gelmedi.

Rapora göre kanunun yürürlüğe girdiği 24 Nisan'dan itibaren bakanlıklara sonu yağı. Ağustos ayı ortasından Eylül başına kadar bakanlıklara toplam 2 bin 519 başvuru yapıldı. Bunlardan 1909'u, yani yüzde 77'si kabul edilip yanıtlandı, 500'i, yani yüzde 23'ü çeşitli nedenlerle reddedildi.

Bakanlıklara başvurular ve verilen yanıtların dağılımı şöyle: Milli Sanayi ve Ticaret Bakanlığı'na 335 başvuru, 126 ret. **Kültür ve Turizm**: 344 başvuru, 23 ret. **Adalet**: 735 başvuru, 65 ret. **Ulaştırma**: 69 başvuru, sıfır ret. **Sanayi ve Ticaret**: 398 başvuru, 107 ret. **Maliye**: 294 başvuru, 144 ret. **Dışişleri**: 48 başvuru, bir ret. **Bayındırlık**: 93 başvuru, bir ret. **Çevre ve Orman**: 203 başvuru, 33 ret.

Rapora göre, başvurular genellikle 'usule uygun olmadığı' için reddedildikleri, diğer ret nedenleri ise 'belirli başvuru izlenliği' ve 'kurum içi düzenlemeler' oldu. Yasanın uygulanmadaki yansımaları 'kayıp' olarak değerlendirilen raporda, şöyle denildi:

'Uygulama, yasadan önemli'

'Sağlık, Milli Eğitim, Çalışma ve Sosyal Güvenlik ile Tarım ve Köy İşleri Bakanlıkları, bu hakkın kullanılmasına yardımcı olmadı sınıfta kaldı. Açık ve şeffaf bir Türkiye için bu kanunun gereğince uygulanması, kanunun kendinden önce daha önemli. Vatandaşlar başvurularıyla üzerlerine düşen görevi yaptı. Şimdi sıra bu kanunun uygulanmasından sorumlu kuruluşlarda.' (Radikal)

FREEDOM OF INFORMATION IN TURKEY: A Critical Assessment of the Implementation and Application of the Turkish Right to Information Act 2003

By Dr. Yaman AKDENİZ

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FREEDOM OF INFORMATION IN TURKEY: A Critical Assessment of the Implementation and Application of the Turkish Right to Information Act 2003

By Dr. Yaman Akdeniz*

Background to the Study

In 2003-04, the author conducted an Open Society Institute (“OSI”) International Policy Fellowship and Information Policy programmes supported project entitled *Civil Society Participation to the Policy Making Process of the Turkish Government in relation to the Development of an Information Society in Turkey*. The project examined and analysed the developments and models and modes of governance with regards to the development of an Information Society in Turkey. It was designed to develop a foundation for the building of a civil society movement working in the field of law and policy issues involving e-democracy, human rights and the Internet in Turkey. During the fellowship research period, the author also became involved in the implementation of Turkey’s Right to Information Act. This law was enacted in October 2003 and came into force in April 2004. The law aims to provide a right to information to all citizens according to the principles of equality, impartiality and openness that are the necessities of a democratic and transparent government. For the purposes of monitoring the implementation and application of the Right to Information Act, the author set up the BilgiEdinmeHakki.Org pressure group (see www.bilgiedinmehakki.org) in October 2003 and began efforts to monitor the implementation of the Act.

The research for the Continuing IPF Fellowship aimed to provide an assessment of the implementation and application of the Right to Information Act. This report incorporates the data and research gathered between 2004-2008, and provides a detailed analysis of the implementation and application of the Right to Information Act in Turkey. This includes an assessment of the work of the Turkish Right to Information Review Council between June 2004 and March 2008 as well as the assessment of the implementation of the law by central and local government agencies. The final report further assesses whether the enactment of a freedom of information law in Turkey helped to achieve an open and transparent regulatory process and whether the new law promotes openness and good practice within government institutions in terms of provision of information. However, some caution is necessary at this stage as the adoption of “freedom of information laws is part of a culture shift that can take time. In some countries, the problem is often related to inherited difficulties with freedom of expression,”¹ and closely tied up with the development and imposition of laws on official or state secrecy.²

* Senior lecturer at the School of Law, University of Leeds. Akdeniz is also the founder of BilgiEdinmeHakki.org, a pressure group working in the field of freedom of information in Turkey. His recent publications include *Internet Child Pornography and the Law: National and International Responses* (London: Ashgate, 2008: ISBN: 0 7546 2297 5). For further information about his work see <<http://www.cyber-rights.org/yamancv.htm>>.

¹ See *Access to information by the media in the OSCE region: Trends and recommendations: Summary of preliminary results of the survey*, Organization for Security and Co-operation in Europe, Office for the Representative on Freedom of the Media, Vienna, 2007, at <<http://www.fas.org/sgp/library/osce-access.pdf>>.

² See Banisar, D., *Government Secrecy: Decisions Without Democracy*, People for the American Way Foundation and OpenTheGovernment.Org, 2007, at <<http://www.openthegovernment.org/otg/govtsecrecy.pdf>>. See further Banisar, D., *Legal Protections and Barriers on the Right to Information, State Secrets and Protection of Sources in OSCE Participating States*, (Preliminary version), May 2007, at <<http://www.privacyinternational.org/foi/OSCE-access-analysis.pdf>>.

Turkey and Freedom of Information

The right to information is guaranteed in international law, including as part of the guarantee of freedom of expression in article 19 of the International Covenant on Civil and Political Rights.³ Many countries around the world are now giving legal effect to the freedom of information as a fundamental right, both by enshrining access to information in their constitutions and by adopting laws which give practical effect to the right, providing concrete processes for its exercise.⁴

Even though governments may recognise the importance of openness, the political and bureaucratic pressures to control information can be irresistible in many countries including in the western world. That is why legislation to guarantee openness through the enactment of a freedom of information law (“FOIA”) is crucially essential.⁵ An insightful account of the role of freedom of information in a modern and democratic society is provided in section 3 of the 1999 Finnish Act on the Openness of Government Activities:

“to promote openness and good practice on information management in government, and to provide private individuals and corporations with an opportunity to monitor the exercise of public authority and the use of public resources, to freely form an opinion, to influence the exercise of public authority, and to protect their rights and interests.”⁶

FOI laws usually have a common format. They provide the individual with a right of access to documents held by government and other public authorities. Usually the applicant is not required to give reasons for, or justify his request, and the public authorities cannot withhold information from those it considers do not have a valid reason. Information can be withheld only where the law permits it. Exemptions to the right of access generally apply where disclosure would harm specific interests such as defence, security, international relations, law enforcement, privacy, commercial interests, or the decision-making process. Refusals can be challenged by appealing to (depending on the country) an existing ombudsman, a special information commissioner or commission, the courts, or a combination of these. The recently enacted Turkish law has some of these characteristics incorporated to its provisions.

Turkish Right to Information Act 2003

In the last few years, Turkey has completed comprehensive constitutional and legislative reforms that reinforce and safeguard fundamental rights and freedoms, democracy, the rule of law, and the protection of and respect for minorities, as set out in the Turkish *National Programme for the Adoption of the European Union Acquis* of 24 March, 2001.⁷

³ See generally Mendel, T., *Freedom of Information: A Comparative Legal Survey*, UNESCO, 2008 at <<http://unesdoc.unesco.org/images/0015/001584/158450e.pdf>>; Boserup, L. K., *An Introduction to Openness and Access to Information*, Danish Institute for Human Rights, 2005.

⁴ See generally Banisar, D., *Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws*, London: Privacy International, 2006, at <<http://www.privacyinternational.org/foi/survey>>. Note also Justice Initiative, *Transparency & Silence*, Justice Initiative, 2006, at <http://www.justiceinitiative.org/db/resource2/fs/?file_id=17488>.

⁵ See generally Frankel, M., *Freedom of Information: International Characteristics*, paper given at a seminar entitled *Transparency in Europe* for government officials from EU member states, organised by the Dutch Ministry of the Interior, The Hague, 15-16 February 2001, at <<http://www.cfoi.org.uk/pdf/amsterdam.pdf>>.

⁶ See generally Banisar, D., *Freedom of Information and Access to Government Records Around the World*, Privacy International, July 2, 2002, at <<http://www.freedominfo.org/survey.htm>>. See further Article 19, *A Model Freedom Of Information Law*, July 2001, at <http://www.article19.org/docimages/1112.htm>

⁷ See generally Republic of Turkey, *National Programme for the Adoption of the Acquis*, Official Gazette, 24 July 2003 No. 25178 bis, at <<http://www.abgs.gov.tr/NPAA/up.htm>>.

Several international conventions relating to the political criteria have been signed or ratified, among which Additional Protocol No. 6 to the ECHR Concerning the Abolishing of the Death Penalty, the UN Convention on the Elimination of All Forms of Racial Discrimination, the UN Covenant on Civil and Political Rights, the UN Covenant on Economic, Social and Cultural Rights, the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labour (No. 182), and the UN Convention on Prevention of All Types of Discrimination Against Women and its Optional Protocol, can be cited.⁸ Moreover, the Human Rights Advisory Board, which constitutes an effective platform for dialogue between state and civil society in the area of human rights, has become operational.⁹ This is in addition to the establishment of the EU Harmonisation Commission within the Turkish Grand National Assembly which aims to increase the efficiency of the process of legislative harmonisation with the EU.

Parallel to these significant developments, there were calls for the enactment of a Turkish freedom of information law for many years. The 1982 Turkish Constitution through article 26 provided a right of free expression including the right to receive information but this did not include a right to seek information from public authorities.¹⁰ There was a serious attempt at legislation between 1998-2001. A draft bill entitled *Idari Usul ve Bilgi Edinme Hakkı Kanunu* (*Administrative Procedural and Right to Information Law*) was developed by the Prime Ministry but this never reached the Parliament.¹¹

Subsequently, the 58th Government Plan of 2003 (Ak Party - Justice and Development Party) announced that the government would legislate and provide its citizens with a right to information to ensure transparency, participation, and public accountability.¹² This was a welcome announcement towards openness, and democratization. Turkey was not, for example, obliged by the European Union to adopt a freedom of information law with regards to its pending membership negotiations with the European Union. In fact, on the contrary, Turkey was quicker than Germany to adopt such a law and to provide its citizens with a right to receive information from public institutions.¹³ Further details for the legislation were revealed within the Government's January 2003 Emergency Action Plan,¹⁴ and it was announced that

⁸ *Ibid.*

⁹ Republic of Turkey, National Programme for the Adoption of the Acquis, Official Gazette, 24 July 2003 No. 25178 bis, at <<http://www.abgs.gov.tr/NPAA/up.htm>>.

¹⁰ Article 74 of the Turkish Constitution provides for a right of petition and Article 125 provides for judicial review and compensation of administrative decisions. See Constitution of the Republic of Turkey, <<http://www.tbmm.gov.tr/english/constitution.htm>>.

¹¹ See Hiz, Y., Yılmaz, Z., *Bilgi Edinme ve Dilekçe Hakkı*, Seckin, Ankara, 2004, p. 50-51.

¹² See Official Gazette, 29.11.2002, No. 24951. "*Toplumsal denetim ve katılımın artırılması bakımından; Bilgi edinme hakkı, toplumun bütün kesimlerine yaygınlaştırılacak ve bunu sağlamak için "Vatandaşın Bilgi Edinme Hakkı Kanunu" çıkarılacaktır. Yeni bilgi ve iletişim teknolojilerinden yararlanılarak, kamu kuruluşlarının hizmet ve işlemleri halka duyurulacak, yönetimde şeffaflık sağlanacaktır. Kamuda verimliliğin artırılması ve şeffaflığın sağlanması için hizmet birimlerinin, parlamentoya ve kamuoyuna performans raporu sunmaları yönünde çalışmalar başlatılacaktır.*"

¹³ In Germany, the Act to Regulate Access to Federal Government Information was adopted in June 2005 and went into force on 1 January, 2006. See Banisar, D., *Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws*, London: Privacy International, 2006, at <http://www.privacyinternational.org/foi/survey>, p. 77.

¹⁴ T.C. 58. Hükümet Acil Eylam Planı (AEP), 3.1.2003, Action Item KYR-13, at <<http://ekutup.dpt.gov.tr/plan/aep.pdf>>. "*Şeffaflaşmanın sağlanabilmesi ve vatandaşların haklarını daha etkin arayabilmesi için bilgi edinme hakkı bütün vatandaşları kapsayacak şekilde geliştirilecek, böylece kamu kuruluşlarının karar alma süreçlerinde şeffaflık ve hesap verilebilirlik sağlanacaktır. Kanunun yürürlüğe girmesinden sonra uygulanabilmesi için kuruluşların kendi içlerinde gerekli hazırlıkları süratle*

the work towards the drafting of a Right to Information Bill would be conducted within the following three months. This was part of the government's plan to reform the central public administration and the lead responsibility was given to the Ministry of Justice.

The draft legislation prepared by the Ministry of Justice was introduced to the Parliament on 25 June, 2003. A Parliamentary report by the EU Compatibility Commission of the Parliament was published on 16 July, 2003. A subsequent report on the draft bill prepared by the Justice Commission of the Turkish Parliament was published on 24 July, 2003.

On 08-09 October, 2003 the Turkish Parliament discussed the Right to Information Bill. 237 Turkish MPs out of a total of 550 were present for the final voting on the Right to Information Bill and all of the present MPs (including from the opposition) unanimously voted for the Bill to become law. The Turkish Parliament enacted the Right to Information Act 2003, Bilgi Edinme Hakkı Kanunu (No: 4982).¹⁵ The government also announced the drafting of further legislation to clarify the meaning of "state secrecy" and "trade secrets" on the day the Right to Information Act was enacted. Although the draft bills on these related secrecy laws (*Devlet Sırları Kanunu Tasarısı*, and *Ticari Sırlar Kanunu Tasarısı*) were published by the Ministry of Justice during 2004, they are yet to become law as of writing, but a new State Secrecy Bill was announced in April 2008 as will be discussed later in this report.

The Right to Information Act 2003 came into force six months after the date of its publication in the Official Gazette on 24 April, 2004.¹⁶

The Provisions of the Act

The 2003 legislation aims to regulate the procedure and the basis of the right to information according to the principles of equality, impartiality and openness that are the necessities of a democratic and transparent government (article 1). The law covers all public authorities and private institutions performing public functions.¹⁷

Definition of "information" and "document" provided in the Act

Information is defined as "every kind of data that is within the scope of this law and are included in the records of the institutions" by article 3(c) of the 2003 Act. Article 3(d) defines "documents" as "any written, printed or copied file, document, book, journal, brochure, etude, letter, software, instruction, sketch, plan, film, photograph, tape and video cassette, map of the institutions and the information, news and other data that are recorded and saved in electronic format that are within the scope of this law."

tamamlamaları sağlanacak, evrak akış ve karar alma süreçleri gözden geçirilecek, vatandaşa yol göstermek ve yardımcı olmakla görevli birimler oluşturularak sorumlular belirlenecektir. Kuruluş düzeyinde tatmin olmayan vatandaşın başvuru mercii olacak ulusal düzeyde bir birim oluşturulacak, bu birimin de yetersiz kalması durumunda yargı yoluna gidilmesi sağlanacaktır. Böylece, idare ile vatandaş arasındaki ihtilaflar da azalacağından yargının hızlı çalışması sağlanmış olacaktır."

¹⁵ Law on Right to Information; Law No. 4982, <http://www.bilgiedinmehakki.org/en/index.php?option=com_content&task=view&id=7&Itemid=8>. See generally <<http://www.bilgilenmehakki.org>>. See Official Gazette, 24.10.2003, No. 25269.

¹⁶ Implemented by Circular 2004/12 "The exercise of the right of petition and access to information". Official Gazette No 25356, January 2004, at <[http://bilgiedinmehakki.org/doc/Prime%20Ministry%20Circular%20on%20Right%20to%20Information.p](http://bilgiedinmehakki.org/doc/Prime%20Ministry%20Circular%20on%20Right%20to%20Information.pdf)df>.

¹⁷ See Council Decision 2005/506, 29.06.2005. "4982 Sayılı Kanunun 2 nci maddesinin birinci fıkrası bu Kanunun kamu kurum ve kuruluşları ile kamu kurumu niteliğindeki meslek kuruluşlarının faaliyetlerinde uygulanacağı hükmünü amirdir."

Article 3(3) provides a definition for “access” to information and documents. The law requires access to “information” and the public authorities need to provide copies of any documents requested that are available within their institution. This could be photo-copies or documents in electronic format. However, in cases where it is not possible to provide a copy of the document requested, an applicant may be permitted to examine the original information or the document or see the contents of such documents, or any form of data, and should be allowed to take notes.

Right to Information and the Obligation to Provide Information

Everyone has a right to obtain information under article 4 of the Right to Information Act 2003. All natural and legal persons could apply to the public authorities to exercise their right to information. However, the Act also includes some limitations to this general right to information. Foreigners domiciled in Turkey and the foreign legal entities operating in Turkey can only exercise this right on the condition that the information that they require is related to them or the field of their activities; and on the basis of the principle of reciprocity.¹⁸

All public authorities have a legal obligation to provide access to information and documents (subject to the exceptions set out in the Act) requested under article 5. They also have a legal obligation to respond to the applicants even if the information or documents requested do not exist. The authorities are obliged by law to review and decide on the applications for access to information promptly, effectively and correctly. Furthermore, the public authorities are required to take administrative and technical measures to deal with right to information requests under the 2003 Act.

Application for Access to Information

Article 6 of the 2003 Act regulates the application for access to information. According to this provision, the application should be made through a petition that includes the name, surname, residence or the work address of the applicant and the signature; where the applicant is a company, its title and the address, and the signature of the authorised person together with a certificate of authorisation, to the public authority that possesses the information or the document. The application can also be made through electronic or other types of communication tools, if the identity and the signature of the applicant can be legally determined.

¹⁸ The rights and the obligations of Turkey under the international conventions are reserved under article 4.

BİLGİ EDİNME BAŞVURUSU FORMU
(Gerçek Kişiler İçin)

Başvuru sahibinin adı :

Başvuru sahibinin soyadı :

Oturma yeri veya iş adresi :

Türkiye Cumhuriyeti Kimlik No :

(Elektronik ortamda yapılacak başvurular için doldurulması zorunludur)

Başvuruya hangi yolla cevap almak istersiniz ? ☐ Yazılı ☒ Elektronik

Elektronik posta adresi:

(Elektronik ortamda yapılacak başvurular için doldurulması zorunludur)

İmzası

4982 sayılı Bilgi Edinme Hakkı Kanunu gereğince istediğim bilgi veya belgeler aşağıda belirtilmiştir. Gereğini arz ederim.

İstenilen bilgi veya belgeler:

Gönder İptal

A web based right to information form used by the Turkish Intelligence Agency

The information and the document that is required by an applicant must be specified in the petition but information and documents that are already published or disclosed and are in the public domain can not be part of an access to information request.¹⁹ However, the public authorities, in practice, in their response to the applicants can point out how to obtain such publicly available and previously published information and documents.

Article 7 states that the application for access to information to a specific public authority should relate to the information or the documents that the specific authority in question possesses or should have possessed due to their tasks and activities. Additionally, under article 7, where the required information or the document is at an institution other than the one that is requested from, the petition will be sent to the relevant institution by the authority that received the application, and the applicant will be notified accordingly about where the original application was forwarded to and its status.

¹⁹ **Article 8-** The information and documents that are published or disclosed to the public either through publication, brochure, proclamation or other similar means, may not be made the subject of an application for access to information. However, the applicant will be informed of the date, the means and the place of the publication or disclosure of the information or the document.

BIMER website provides a facility for users to track the status of their right to information requests.

Since 2006 right to information requests can also be made through BIMER, a communication system developed by the Prime Ministry in Ankara. BIMER acts as a central repository and enables citizens to lodge right to information requests to any public authority through its website at <<http://www.basbakanlik.gov.tr/bimer/index.htm>>. Once an application is lodged through the website, BIMER ensures that the relevant public institution receives the application. Applicants can then trace the status of their application through the BIMER website. Once a response is drafted by the relevant public authority, the response is then communicated to the applicant through the BIMER system via email or via post.

Access to the Information under the Act

Article 10 states that all public authorities will provide a certified copy of the required document to the applicant. Where the information or the document is not suitable for copying or may cause damage to the original document, the authority will provide the applicant with the necessary means

- a) to examine the original document and take notes from those that are published or written,
- b) to listen to the material that are in the form of sound recording,
- c) to watch the material that are in the form of visual recording.

Where access to the information or document requires other means than those mentioned above, such information or document shall be provided unless it damages the original material. The applied authority shall charge the applicant for the cost of the procedure if necessary.

The public authorities may turn down the requests for any information or document that require a separate or special work, research, assessment or analysis. If the requested documents contain any classified parts, these would be set aside (if separable) and the applicant should be notified of the grounds for this exemption under article 9.

It is required under article 11 that the public authorities will provide the required information within 15 working days.²⁰ As mentioned above, even if no information is to be provided the

²⁰ However, where the required information or document is to be obtained from another unit within the applied institution or it is necessary to receive the opinion of another institution or if the scope of the application

applicants are entitled to a written response from the public authorities. Under article 12, if the request is rejected the applicant will be notified of the reasons for denial and the appeal mechanism against the decision. According to article 11, the 15 working days time limit shall be suspended at the time when applicants are notified of the cost of access to the information or the documents they requested. The applicant will be considered to have withdrawn the application unless the requested cost is paid within the next 15 working days.

Information is not necessarily free

Article 10 of the 2003 Act provides that the public authorities may charge the applicants for the cost of the procedure. This is to be added as an income to their budget and the cost would be proportionate to the expenses occurred by the public authorities. It is explained in article 22 of the related Regulations on the Application of the Right to Information Act²¹ that the tariff of the cost would be determined by the Ministry of Finance. However, according to the Regulation, the public institutions are not allowed to demand any cost for the first 10 pages of documents containing the information requested by the applicants as well as the related postal charges. The public institutions are also not allowed to charge for access to documentation in electronic format.

The lack of clarity within the legislation and the related regulations led to some confusion about the cost issue and a decision of the Right to Information Assessment (Review) Council led into an amendment of article 22(1) of the Regulations on the Application of the Right to Information Act in November 2005.²² It was reaffirmed by the Council that there would be no cost in relation to the first 10 pages of documents containing the information requested by the applicants as well as the related postal charges. However, proportionate charges could be applicable for anything beyond 10 pages including for electronic documents if the public authorities had to conduct research, and spend time for copying and reviewing, and compiling the information requested. They can also charge for postage if the documents are sent via post.

Subsequently, the details of the charging policy were announced in February 2006 when the Ministry of Finance published the tariff and the right to information application charges policy. This new policy came into force in March 2006.²³ According to the new policy, there is no obligation to charge, and the public authorities are free to decide whether they would require the applicants to pay for the information requested. However, if the public authorities decide to charge for the right to information requests, they then need to follow the Ministry of Finance policy. The policy clearly establishes that the charges are introduced to recover a proportion of the costs incurred to provide the requested information. The new charges policy was not introduced for the public authorities to make a profit, and should, as a matter of policy, not be more than the cost to obtain and gather the information. It is provided that photocopy and printing charges would be 50 Yeni Kuruş (0.5 YTL) per page (both for A4 and A3 size papers) but no charges would be applicable for the first 10 pages of any document. Additionally, the

pertains more than one institution; the access shall be provided in 30 working days. In such case, the applicant will be notified of the extension and its reasons within 15 working days.

²¹ *Bilgi Edinme Hakkı Kanununun Uygulanmasına İlişkin Esas ve Usuller Hakkında Yönetmelik*, Resmi Gazete, 27 Nisan, 2004, Sayı 25445, Karar Sayısı : 2004/7189. Bu Yönetmelik'in yürürlüğe konulması 4982 sayılı Bilgi Edinme Hakkı Kanununun 31 inci maddesine göre, Bakanlar Kurulu'na 19/4/2004 tarihinde kararlaştırılmıştır.

²² See Ministerial Council Decision No. 2005/9585: *Bilgi Edinme Hakkı Kanununun Uygulanmasına İlişkin Esas ve Usuller Hakkında Yönetmelikte Değişiklik Yapılmasına Dair Yönetmelik*, published in the Official Gazette, 22.11.2005, No. 26001.

²³ See Official Gazette, 14.02.2006, No. 6080: *Bilgi ve belgeye Erişim Ücreti Genel Tebliği (Sıra No: 1) ile Bilgi ve Belgeye Erişim Ücret tarifesi*.

public authorities may charge for research, reviewing, and compiling, but this should in any case be no more than 5YTL per page,²⁴ and no more than 100YTL in total regardless of the length of the document. The policy also provides that there may be some additional costs if the information requested may not be provided electronically, or on paper. In terms of communication charges, public authorities may apply relevant postal charges,²⁵ and 50 Yeni Kuruş (0.5 YTL) per page if the applicants require the documents to be faxed to them. Finally, and more importantly, the Ministry of Finance policy established that the public authorities will not charge for documents that are provided electronically to the applicants regardless of the length of the documents. However, they may still charge for research, reviewing and compiling. The application of the Ministry of Finance policy was confirmed in a decision of the Right to Information Assessment (Review) Council in March 2006 with regards to an unreasonable amount asked by an educational authority in Samsun.²⁶ The Council ruled that the amount of 3,149YTL asked by the authority for research, reviewing, and compiling, was unreasonable and the maximum amount that could be charged in such a scenario was no more than 100YTL subject to *no charges would be applicable for the first 10 pages of any document principle* as laid down by the Ministry of Finance policy.

Exemptions in the Act

Almost all freedom of information laws around the globe include certain types of exemptions “setting out categories of information that can be withheld from release”²⁷ by public authorities. The Turkish Act also provides a long list of exemptions. The exemptions are provided through articles 15 to 28 of the 2003 Act, and these include the documents that are not subject to the Judicial Review,²⁸ the information and documents pertaining the state secrets,²⁹ the economical interests of the state,³⁰ the state intelligence,³¹ the administrative investigations,³² and judicial investigations and prosecutions.³³ Limitations also apply for the

²⁴ No charges would be applicable for the first 10 pages of any document.

²⁵ *Ibid.*

²⁶ Council Decision, 15.03.2006, No. 2006/173.

²⁷ Banisar, D., *Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws*, London: Privacy International, 2006, at <http://www.privacyinternational.org/foi/survey>, p. 22.

²⁸ **Article 15-** The transactions that are not subject to the judicial review, those that affect the working life and professional honour of the persons, are within the scope of this law. The right to information provided in this way, does not eliminate the restriction regarding the judicial review of the transaction.

²⁹ **Article 16-** The information and documents which qualify as state secrets which their disclosure clearly cause harm to the security of the state or foreign affairs or national defence and national security are out of the scope of the right to information provided herein.

³⁰ **Article 17-** The information or documents of which their disclosure cause harm to the economical interests of the state or will cause unfair competition or enrichment, are out of the scope of this law.

³¹ **Article 18-** The information and documents regarding the duties and activities of the civil and military intelligence units, are out of the scope of this law. However the information and documents, that affect the professional honour and working life of the persons, are within the scope of right to information.

³² **Article 19-** The information or the document that is related to the administrative investigation held by the administrative authorities and which will; a) clearly violate the right of privacy of the individuals, b) endanger the security or the life of the individuals or the officials that carry out the investigation, c) jeopardise the security of the investigation, d) disclose the source of the information which needs to be kept secret, or endanger the procurement of similar information in connection with the investigation, are out of the scope of this Law.

³³ **Article 20-** The information or the document of which its disclosure or untimely disclosure will a) give rise to a criminal offence, b) endanger prevention and investigation of the crime or endanger the legal procedure for the detention and the prosecution of the criminals, c) obstruct the proper operation judicial duty, d) violate right to fair trial of a defendant in a pending case are out of the scope of this law.

privacy of the individuals,³⁴ privacy of communications,³⁵ trade secrets,³⁶ intellectual property (works of art and science),³⁷ public authorities' internal regulations,³⁸ and internal opinions, information notes and recommendations,³⁹ requests for recommendation and opinions,⁴⁰ and formerly classified information and documents.⁴¹

Implementation Plan

“The mere existence of freedom of information laws do not ensure their appropriate implementation and functioning.”⁴²

The new Turkish law itself did not lay out an implementation plan but article 31 of the Right to Information Act required an implementation plan to be prepared by the Ministry of Justice concerning the essentials for the application of this law. The required regulations under Article 31 of the Act and the implementation plan were prepared by the Prime Ministry, and they were put into force by the Council of Ministers on 27 April, 2004.⁴³ The Regulations on the Application of the Right to Information Act⁴⁴ included six provisional articles in relation to the implementation of the Right to Information Act 2003 by the public authorities.

The provisional articles of the April 2004 Regulations required all public authorities to establish Right to Information Units to deal with the requirements of the 2003 Act within a month after the publication of these regulations. Therefore, it was expected that by 27 May, 2004, all public authorities would establish their Right to Information Units. It was also

³⁴ **Article 21-** With the proviso where the consent of the concerned individual has been received, the information and documents that will unjustly interfere with the health records, private and family life, honour and dignity, and the economical and professional interests of an individual, are out of the scope of the right to information. Due to public interest considerations, personal information or documents may be disclosed by the institutions on the condition that concerned individual is notified of the disclosure at least 7 days in advance and his/her written consent is obtained.

³⁵ **Article 22-** The information and documents that will violate the privacy of communication, are out of the scope of this law.

³⁶ **Article 23-** The information and documents that are qualified as commercial secret in laws, and the commercial and financial information that are obtained by the institutions from the private or corporate persons with the condition of keeping secret, are out of the scope of this law.

³⁷ **Article 24-** In the event of application for access to information concerning intellectual property, the relevant provisions of the intellectual property law shall apply.

³⁸ **Article 25-** The information and documents of the institutions that do not concern the public and are solely in connection with their personnel and the internal affairs, are out of the scope of the right to information. However, the employees of the institutions who are subject the regulations have the right to access to such information.

³⁹ **Article 26-** The information and document qualified as opinion, information note, proposals and recommendations which facilitate the execution of the activities of the institutions are within the scope of the right to information, unless the opposite is decided by that institution. The opinions of the units, individuals or institutions that are legally obliged to give reports on scientific, cultural, technical, medical, financial, statistical, legal and other similar expertise fields are within the scope of the right to information with the proviso that such opinions constitute the basis of administrative decisions taken by the institutions.

⁴⁰ **Article 27-** The requests for recommendations and opinions are out of the scope of this law.

⁴¹ **Article 28-** The information and documents which cease to be classified either by a judicial or administrative decision are open to the applications for access to information, with the proviso that they fall within the scope of the other exceptions provided in this law.

⁴² See *Access to information by the media in the OSCE region: Trends and recommendations: Summary of preliminary results of the survey*, Organization for Security and Co-operation in Europe, Office for the Representative on Freedom of the Media, Vienna, 2007, at <<http://www.fas.org/sgp/library/osce-access.pdf>>.

⁴³ Resmi Gazete (Turkish Official Gazette), 27 Nisan, 2004, Sayı 25445, Karar Sayısı : 2004/7189.

⁴⁴ *Bilgi Edinme Hakkı Kanununun Uygulanmasına İlişkin Esas ve Usuller Hakkında Yönetmelik*, Resmi Gazete, 27 Nisan, 2004, Sayı 25445, Karar Sayısı : 2004/7189.

required that all public authorities with no websites would develop and launch their websites within two months of the publication of the regulations, by 27 June, 2004. Finally, it was required that the newly established Right to Information Units would be in a position to receive right to information requests via email or via web based forms within two months of the publication of the regulations, by 27 June, 2004.

The majority of central government agencies complied with the implementation plan requirements. However, there were considerable delays in terms of local government agencies' implementation and the establishment of the Right to Information Units to receive right to information requests.

Implementation by Central Government

A study was conducted by BilgiEdinmeHakki.Org in August 2004, approximately 5 months after the Right to Information Act coming into force, to test the implementation and application of the law by the 15 Ministries in Turkey. Firstly, BilgiEdinmeHakki.Org examined whether the 15 Ministries implemented the Right to Information Act according to the requirements set out in the implementation plan. This part of the research was conducted by collecting data from the ministries' websites. Following this research, BilgiEdinmeHakki.Org contacted each Ministry and made an access to information request with a set of standard questions to each ministry.⁴⁵

According to the BilgiEdinmeHakki.Org findings, all 15 Ministries had established their freedom of information units and started to accept right to information requests including requests sent through the Internet. Despite the formation of right to information units, four Ministries, namely Ministry of Health, Ministry of Labour and Social Security, Ministry of Agriculture and Rural Affairs, and Ministry of Education, did not reply to the access to information requests within 15 working days as required by law.



Ministry of Health Right to Information pages at the time the BilgiEdinmeHakki.Org research was conducted.

⁴⁵ The report that analysed the responses and information provided by the Ministries is published at http://www.bilgilenmehakki.org/doc/tr_uygulama_rapor.pdf in Turkish.

More worryingly, at the time of the research, the Ministry of Health decided not to accept right to information requests through its website and the above announcement through its website stated that right to information requests can only be made by telephone, a provision which was not provided by law! This fundamentally wrong practice was abandoned after a few months following the publication of a critical report by BilgiEdinmeHakki.org.⁴⁶ The Ministry of Energy and Natural Resources was 3 months late in establishing its right to information unit and could not be contacted during the research period. An updated version of this study and the implementation status of these 15 ministries is provided below in **Table 1**. Some delays were obviously inevitable and all ministries now comply with the requirements of the Right to Information Act.

However, it is still observed that the information provided on the Ministries' websites is not standard. There are right to information units with missing communication details and some websites do not provide full information about the law and the related regulations, as well as information about the appeal process for rejections and information about the Right to Information Assessment (Review) Council.

⁴⁶ See BilgiEdinmeHakki.Org Raporu, *Bilgi Edinme Hakkı Kanunu'nun Sağlık Bakanlığı Tarafından Uygulanmasındaki Yanlılıklar*, October 2004, at <http://www.bilgiedinnehakki.org/doc/saglik_rapor.pdf>.

TABLE 1 – Information about the implementation of the Right to Information Act by the 15 Turkish Ministries. Research conducted by the author in March 2006.

Ministries	Right to Info Unit	Link from the Main Website	Contact Details	Information about the law and the related Regulations	Receive requests via e-mail	Receive web based requests	Information about appeals and the Council
Ministry of Defence http://www.msb.gov.tr	✓	✓	✓	✓	✓	✓	✗
Ministry of Health http://www.saglik.gov.tr	✓	✓	✓	✓	✓	✗	✗
Ministry of Culture and Tourism http://www.kultur.gov.tr/	✓	✓	✓	✓ ✗	✓	✗	✗
Ministry of Justice http://www.adalet.gov.tr/	✓	✓	✓	✓	✓	✗	✗
Ministry of Education http://www.meb.gov.tr/	✓	✓	✗	✓	✗	✓	✗
Ministry of Labour and Social Security http://www.csgb.gov.tr/	✓	✓	✓	✓	✓	✓ ✗	✗
Ministry of Transport http://www.mt.gov.tr/	✓	✓	✓	✓	✓	✗	✗
Ministry of Agriculture and Rural Affairs http://www.tarim.gov.tr	✓	✓	✓	✓	✗	✓	✗
Ministry of Trade and Industry http://www.sanayi.gov.tr/	✓	✓	✗	✓	✗	✓	✗
Ministry of Energy and Natural Resources http://www.enerji.gov.tr/	✓	✓	✓	✓	✓	✓	✗
Ministry of Interior Affairs http://www.icisleri.gov.tr/	✓	✓	✗	✓	✗	✓	✗
Ministry of Energy and Natural Resources http://www.bayindirlik.gov.tr/	✓	✓	✓	✓	✓	✓	✓
Ministry of Finance http://www.maliye.gov.tr/	✓	✓	✓	✓	✓	✓	✗
Ministry of Foreign Affairs http://www.mfa.gov.tr	✓	✓	✓	✓	✓	✓	✗
Ministry of Environment and Forestry http://www.cevreorman.gov.tr/	✓	✓	✗	✓	✗	✓	✓

Implementation by Local Government

In terms of implementation by the local government agencies, a comprehensive survey was conducted by Avniye Tansug for BilgiEdinmeHakki.org during 2004-2005 to observe the implementation and application of the Right to Information Act by the Turkish municipalities and the Governorships they are affiliated to.⁴⁷

Within the scope of this study, Tansug observed 132 Municipalities⁴⁸ (Greater Cities, district and county scale) and 55 Governorship that they are affiliated to.⁴⁹ The first survey was conducted in November 2004, and the second review survey in February 2005. The study found that 26 out of the 55 Governorship websites did not have any information about the establishment or existence of a right to information unit in February 2005, nearly a year after the Right to Information Act came into force. 35 lacked contact information, and 23 did not provide any electronic means (whether by web form or e-mail) for lodging right to information requests. 12 of them did not provide a direct link to the unit from their main website.

In terms of the Municipalities, the Tansug survey observed that 111 out of the 132 Municipality websites did not have any information about the establishment or existence of a right to information unit. 114 lacked contact information, and 110 did not provide any electronic means (whether by web form or e-mail) for lodging right to information requests. 100 of them did not provide a direct link to the unit from their main website. Furthermore, it was observed that there was no standardization in terms of domain names used by the Municipalities which in some cases made it extremely difficult to locate their websites. In terms of style, they were all different and as mentioned above many did not provide a direct link to their right to information units. On the other hand, uniformity was witnessed in terms of the 55 Governorship websites.

It was concluded by the study that the Governorship Offices were more sensitive in terms of implementing the Right to Information Law as directed by the Prime Ministry. While on the other hand, perhaps due to lack of resources and man-power, the Municipalities were slow to implement the 2003 Act. However, there was no central government mechanism or initiative for monitoring compliance. In theory, the Right to Information Assessment (Review) Council (see below) could have taken a proactive role in terms of monitoring compliance by all public authorities but they have adopted an indirect monitoring system solely based upon appeals and complaints made to the Council.

Regardless of problems witnessed during the first year of implementation this did not affect Turkish citizens using their newly given right to information extensively as will be witnessed in the next section.

⁴⁷ Findings of the Bilgiedinmehakki.Org Survey on Central and Local Administrations 2004-2005 is published in Tansug, A., *Bilgi Edinme Hakkı Araştırması Sonuçları*, Yerel Kimlik, Sayı: 15, at <http://www.tarihikentlerbirligi.org/i/yerelkimlik/atansug_beh_arastirma_sonuc.doc>. Note further research conducted in terms of implementation and application of the Right to Information Law by TESEV, the Turkish Economic and Social Studies Foundation. See *Vatandaşın Bilgi Edinme Hakkı Uluslararası Konferansı Konferans Tutanakları*, Tesev Yayınları, March 2006, at <http://www.tesev.org.tr/etkinlik/bilgi_edinme_hakki_kitap.pdf>.

⁴⁸ It should be noted that there are 3,225 Municipalities in Turkey. This number is to be reduced to 2,101 by a new law enacted in March 2008: 5747 Sayılı Büyükşehir Belediyesi Sınırları İçerisinde İlçe Kurulması Ve Bazı Kanunlarda Değişiklik Yapılması Hakkında Kanun. See Official Gazette, 22.03.2008.

⁴⁹ Criteria included all members of the Association of the Historical Towns in Turkey.

Turkish Freedom of Information Law in Practice

In terms of monitoring the functioning of the Turkish law, article 30 of the 2003 Act required that all public authorities prepare annual reports pertaining the previous calendar year and that these annual reports show,

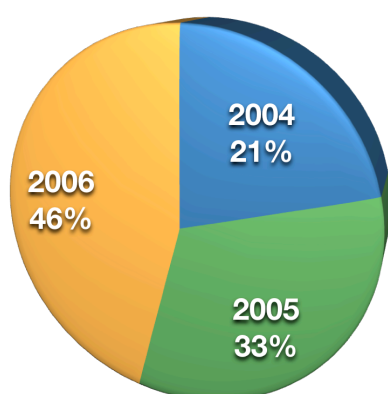
- a) the number of the applications on the right to information requests received by the authorities,
- b) the number of the applications that the authorities accepted and provided access to information or documents,
- c) the number of the applications that are rejected and statistical information about their categorisation,
- d) the number of applications that are accepted and accordingly provided access to information which previously had been qualified as classified.
- e) the number of the appeals following the refusal to provide information or documents and their results.

The individual annual reports prepared by the public authorities are required to be sent to the Right to Information Assessment (Review) Council by end of February each year. The institutions that are associated, related or connected to another public legal entity would send their reports through the Ministry that they are associated with. The Council would prepare a general annual report and send its report to the Turkish Grand National Assembly each year by end of April, together with the individual annual reports received from the public authorities. These reports would be disclosed to the public by the Presidency of the Turkish Grand National Assembly within two months of receipt.

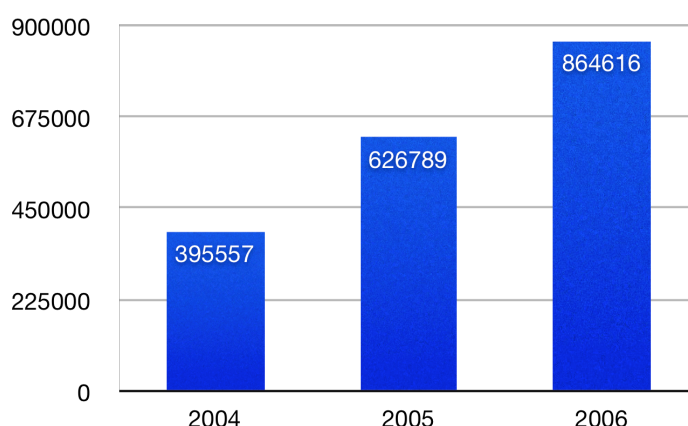
So far, annual reports for 2004, 2005, and 2006 have been published by the Prime Ministry, and the 2007 annual report is due for publication by June 2008.

A total of **1,886,962** right to information requests were made between 2004-2006 in Turkey. Overall number of right to information applications were **395,557** (21%) in 2004, **626,789** (33%) in 2005, and **864,616** (46%) in 2006. A 58% growth was witnessed between 2004 and 2005, and 37% growth between 2005 and 2006 in the number of applications.

Total RTI Requests 2004-06

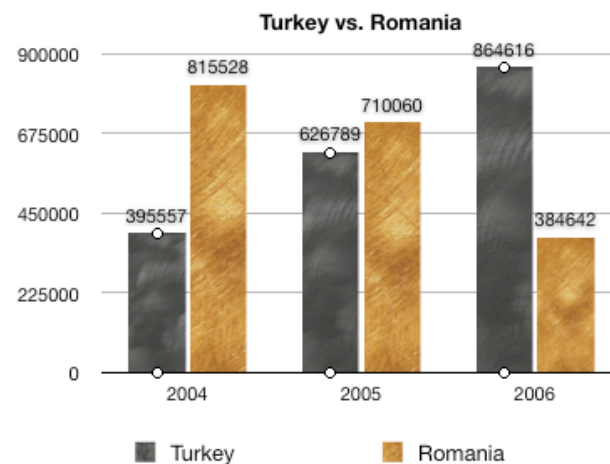
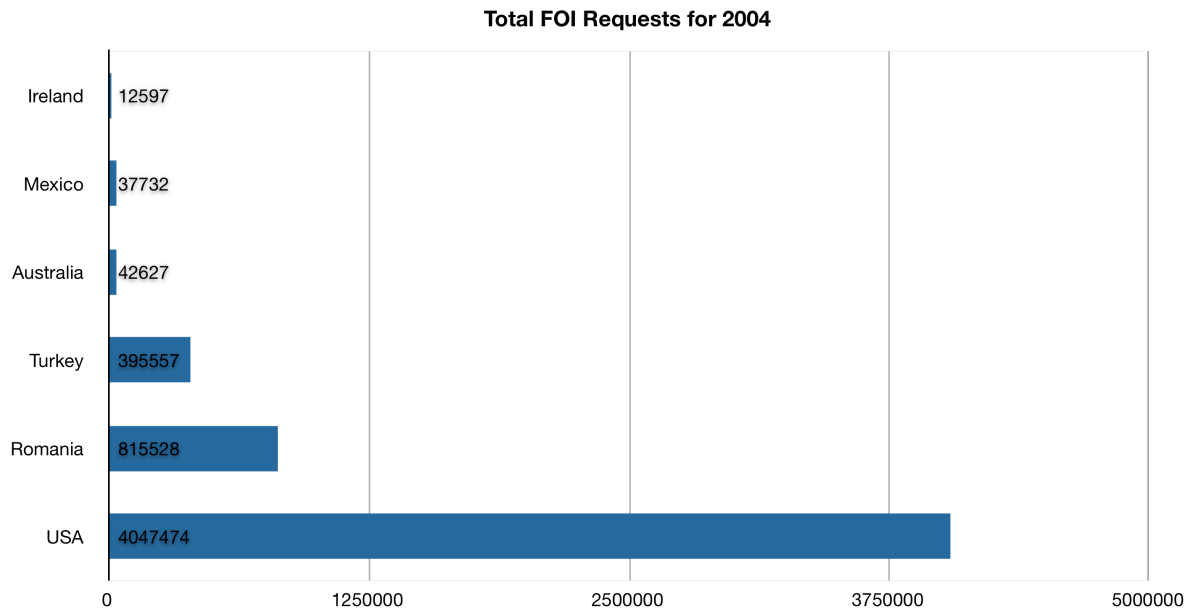


Total RTI Requests 2004-06



The overall number of right to information requests were high compared to other countries. For example, Turkish numbers for the first year were considerable higher than Ireland (only 12,597 requests in 2004) and Mexico (only 37,732 requests in 2004), and Australia (only

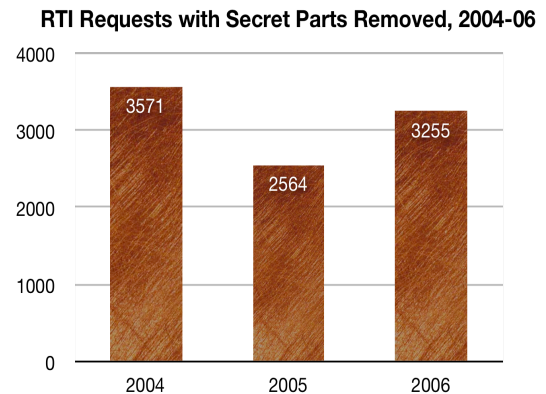
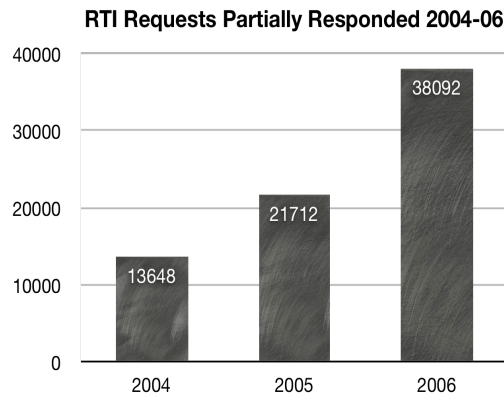
42,627 requests in 2004). In fact, the number of right to information requests made in Turkey in 2006 (which was 864,616) is higher than the total number of what Commonwealth agencies in Australia received between 1 December 1982 (the date of commencement of the Australian FOI Act) and 30 June 2007 with 804,647 requests.⁵⁰ In terms of 2004 statistics, Romania had a higher application number than Turkey with a total of 815,528 requests as well as (more obviously) the United States of America with a total of 4,047,474 requests. In terms of further comparisons with Romania, a neighbour of Turkey, the 2005 statistics were closer, but higher in Romania. However, the Turkish request numbers were much higher in 2006 compared to Romania, and a considerable drop in request numbers were visible in Romania.



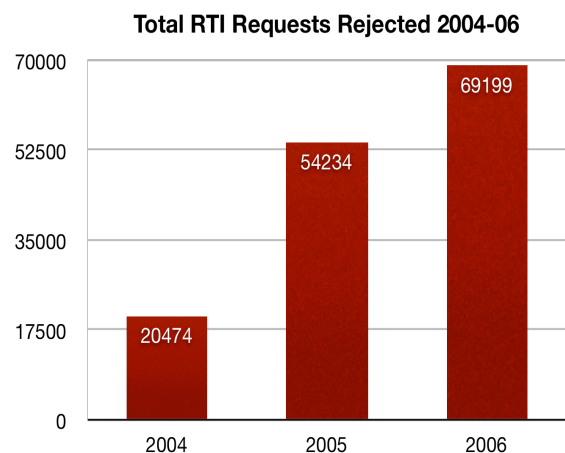
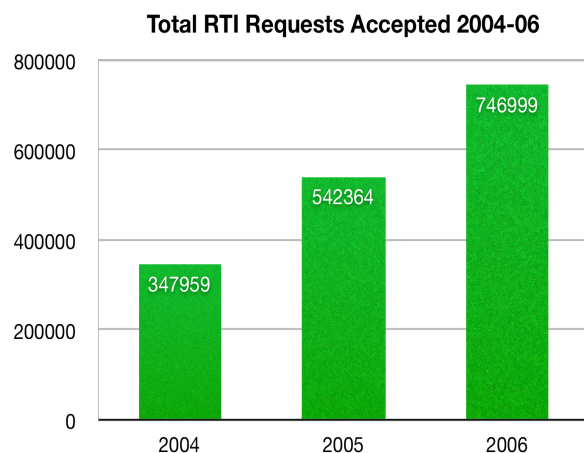
In terms of further details of the Turkish statistics, the total number of requests that were accepted positively and responded to by supplying information or documents between 2004-06

⁵⁰ See Attorney-General to the Parliament on the Operation of the Act, *Freedom of Information Act 1982: Annual Report 2006-2007*, October 2007, at <[http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(756EDFD270AD704EF00C15CF396D6111\)~FOI+Annual+Report+2006-07.pdf/\\$file/FOI+Annual+Report+2006-07.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(756EDFD270AD704EF00C15CF396D6111)~FOI+Annual+Report+2006-07.pdf/$file/FOI+Annual+Report+2006-07.pdf)>.

was **1,637,322**. Individually, these figures were **347,959** (%87) in 2004; **542,364** (%86) in 2005; **746,999** (86%) in 2006. Compared to 2004, a growth of 55% is visible in 2005, and a growth of 37% in 2006 is visible compared to 2005. The number of requests that were accepted as partially positive and responded to by supplying partial information or documents was **13,648** in 2004; **21,712** in 2005; **38,092** in 2006.



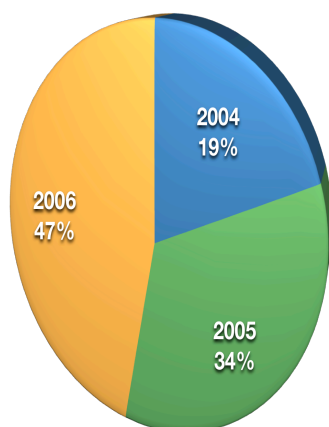
Applications which were positively responded to partially by removing secret/classified or private information was **3,571** in 2004; **2,564** in 2005, and **3,255** in 2006. Although these numbers are positive and seem to be high, there is also some concern in terms of the number of rejected applications. The total number of **rejected applications** for 2004-06 was **143,907**. Individually, these figures were **20,474** (5%) in 2004; **54,234** (%8.6) in 2005; and **69,199** (8%) in 2006. This means that a **164%** growth is visible between 2004 and 2005 in terms of rejections, and **27%** growth between 2005 and 2006. Following rejection, only **311** (%0.05) applicants took their cases to administrative courts for judicial review during 2005 and **539** (0.77%) during 2006.



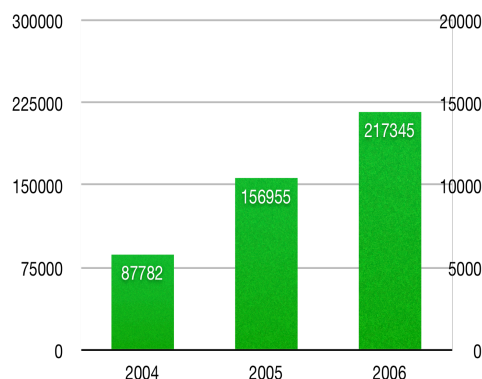
In addition to the overall statistics, the Prime Ministry also published detailed statistics with regards to right to information applications made to local government agencies, primarily with regards to Mayors and Municipalities within 81 provinces and cities. There were a total of **571,498** right to information applications to the Mayors offices between 2004-2006. Individually, these figures were **109,799** in 2004, **195,900** in 2005, and **265,799** in 2006. A total of **462,082** applications were responded to positively between 2004-2006. Individually, these figures were **87,782** in 2004, **156,955** in 2005, and **217,345** in 2006. **8,384** were partially provided the requested information in **2004**, **7,549** in 2005, and **13,702** in 2006. Applications which were positively responded to partially by removing secret/classified or private

information was **2767** in 2004, **2567** in 2005 and **3255** in 2006. The total number of rejected applications were **33,284** between 2004-2006. Individually, these figures were **7312** in 2004, **17,704** in 2005 and **8268** in 2006, almost 50% less compared to 2005. Those who took their cases for judicial review were **207** in 2005, and **298** in 2006.

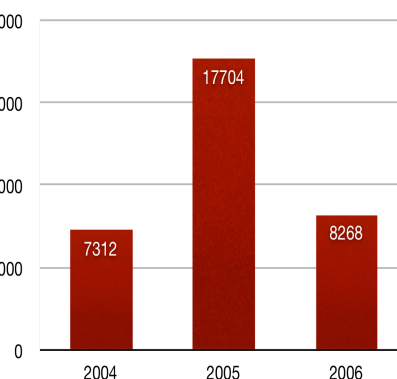
Total RTI Requests Mayors, 2004-06



Total RTI Accepted

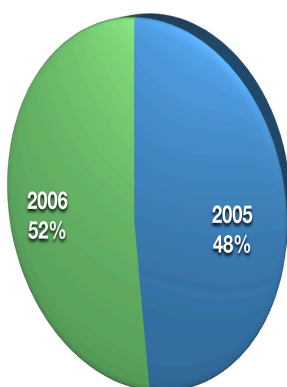


Total RTI Rejected

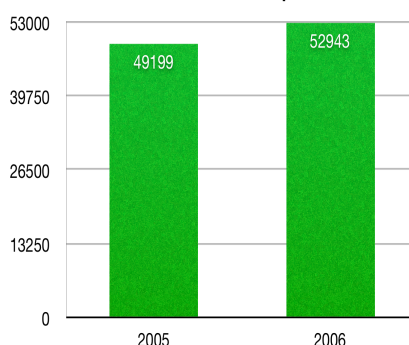


In terms of the municipalities, the Prime Ministry did not provide statistics for 2004. Implementation of the Right to Information Law as well as the establishment of the Right to Information Units was slow with regards to the municipalities as mentioned previously in this report, and this may have caused the lack of statistics for 2004. In terms of 2005-2006, there were a total of **125,414** right to information applications made to the municipalities. Individually, there were **60,520** right to information applications in 2005 and **64,894** in 2006. In total, 102,142 applications were responded to positively between 2005-2006. Individually, **49,199** applications were responded to positively in 2005 and **52,943** in 2006. **5244** were partially provided the requested information in 2005, and **5139** in 2006. Applications which were positively responded to partially by removing secret/classified or private information was **111** in 2005 and **623** in 2006. The total number of rejected applications between 2005-2006 was **23,174**. Individually, these were **3456** in 2005 and **19,718** in 2006. Those who took their cases for judicial review was **24** in 2005, and **22** in 2006.

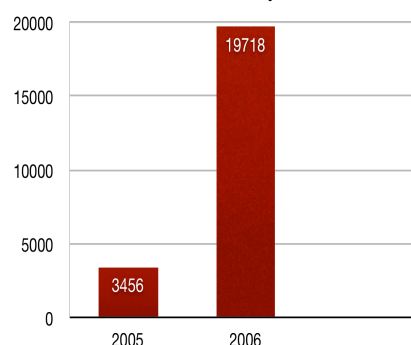
Total RTI Municipalities 2005-06



Total RTI Accepted



Total RTI Rejected



In its first annual report, the Council stated that applicants usually lodge right to information requests to obtain information about themselves, usually their judicial records, or employment records within the public sector, and financial information about public authorities as well as

politicians and their earnings. The Council also stated that the majority of the appeals to the Council involved requests for employment records within the public sector as well as investigatory reports involving public servants. According to the Council, initially there was resistance in terms of providing such information to the applicants but the Council established in a number of cases that such reports and records should be accessible to the persons named within such documents. Therefore, while such employment records and investigatory reports should remain secret and private for third party access, the public authorities are obliged to provide the reports and records to the applicants if they are seeking reports and records involving themselves. The Council also speculated in its 2004 report that the total number of right to information requests were temporarily high but that the Council expected these to go down during the forthcoming years. As can be seen from the above statistics the Council was wrong in its assessment as the overall number of right to information requests doubled between 2004 and 2006. The Council was also critical of the negative attitudes of some public authorities in terms of the application of the Right to Information Act and its implementation and these included the Ministry of Justice, Ministry of Finance, a number of universities, and the Student Selection and Placement Center (ÖSYM). Apart from these, the response of the majority of both central and local government agencies were positive despite limited time and resources in terms of implementation.

Despite initial difficulties of implementation especially at the local government level where the number of right to information requests were considerably higher than requests made to central government agencies, **nearly 2 million requests** (see Table 2 below for detailed statistics) were processed by Turkish public authorities between 2004-2006. Therefore, statistics suggest successful implementation of the Right to Information Act in Turkey. However, consideration of other significant issues including the nature of rejected applications, and the continuing nature of “culture of secrecy” within public authorities as well as the work of the Right to Information Assessment (Review) Council with regards to appeals following refusal to provide information by public authorities need to be assessed before measuring success.

TABLE 2: 2004-2006 Turkish Right to Information Requests Statistics

Year	Total RTI Req.	Accepted	Partial	Secret Removed	Rejected	Court Action
2004	395557	347959	13648	3571	20474	
2005	626789	542364	21712	2564	54234	311
2006	864616	746999	38092	3255	69199	539
Total	1886962	1637322	73452	9390	143907	850

Year	Mayors Total	M. Accepted	M. Partial	M. Sec. R.	M. Rejected	M. Court A.
2004	109799	87782	8384	2767	7312	
2005	195900	156955	7549	2567	17704	207
2006	265799	217345	13702	3255	8268	298
Total	571498	462082	29635	8589	33284	505

Year	Municipalities Total	Muni Accept	Muni Partial	Muni Sec. R.	Muni Reject	Muni Court
2004						
2005	60520	49199	5244	111	3456	24
2006	64894	52943	5139	623	19718	22
Total	125414	102142	10383	734	23174	46

Right to Information Assessment (Review) Council

Following the enactment of the Right to Information Act in Turkey, a Right to Information Assessment (Review) Council (*Bilgi Edinme Değerlendirme Kurulu - BEDK*)⁵¹ was established to deal with appeals on rejected right to information requests. The Council's activities are regulated by article 14 of the Right to Information Act 2003. Furthermore, the Prime Ministry prepared and put into force the regulation concerning the procedure and the basis for the activities and tasks of the Council almost two years after the Council started to convene, and this was published in the Official Gazette on 07 June, 2006.⁵² In addition to dealing with appeals, and resolving the disputes between the applicants and the public authorities, the Council also has the responsibility to prepare an annual statistical report on the application of the Right to Information Act in Turkey. The Council can also recommend amendments to the existing law if necessary.

The Council is composed of 9 members, and the Council members serve for four years. The names of the members of the Council were announced by the Prime Ministry on 27 May, 2004.⁵³ The Council of Ministers appointed two members amongst the four candidates nominated by the General Board of the Court of Appeals and the Council of State from their members; three members, each amongst the scholars of criminal, constitutional and administrative law who bear the title of Professor or Associate Professor; one member among the two candidates that have the qualifications to be elected as chief of Bar and are nominated by the Turkish Bar Association, two members amongst those who have been serving as general director; and a member among judges in service of the Ministry of Justice as recommended by the Minister.

It is required under article 14 that the Council convenes at least once a month or anytime upon the call of the President when there is need. The Council can set up commissions and working groups and in addition may invite representatives from the ministries, non-governmental organisations and other institutions to participate in the meetings as it finds appropriate.

The Procedure for Appeal

In certain circumstances the public authorities may refuse to provide information to the applicants by reference to the limitations provided within articles 15-28 of the Act.⁵⁴ As this report has established, there were a total of **33,284** rejected applications between 2004-2006 in Turkey. Furthermore, in addition to rejected applications, public authorities may fail to respond and provide information to the applicants even though they are obliged to respond by law. They may also not respond in full or respond without providing the requested information. Within 15 days starting from the official notification from a public institution (or in the case of a no official written response within 15 working days), an applicant whose request for access to information is rejected, or an applicant who did not receive a response may appeal to the Council before considering an application for judicial review through an administrative court.

⁵¹ For further information about the BEDK see <<http://www.bedk.gov.tr>>.

⁵² *Bilgi Edinme Değerlendirme Kurulunun Çalışma Usul ve Esasları Hakkında Yönetmelik*, Official Gazette, 07 June, 2006, No. 26191.

⁵³ *Bilgi Edinme Değerlendirme Kurulu Üyeliklerine Seçilenler Hakkında Karar* (2004/7187), Official Gazette, 27 May, 2004, No. 25474.

⁵⁴ In case of a refusal to provide information, the public authorities should inform the applicants that they can appeal to the Council, or take their cases to an administrative court. Furthermore, article 12 of the 2003 Act requires the public authorities to provide detailed explanation on why the applications have been refused.

Originally, the Right to Information Act, through article 13, limited appeals to the Council only in relation to denial or refusal of information on the grounds that the information involved state secrets (article 16) and/or information related to economical interests of the state (article 17). There seemed to be no other grounds for appeal. However, from its inception the Council accepted appeal cases for review on any grounds, ignoring the limitation provided by article 13 with regards to articles 16 and 17. The Council, found authority to act under article 14 of the Act which states that the Council “reviews the administrative decisions rendered under Articles 16 and 17, and makes decisions on the exercise of right to information regarding institutions.” This was clearly explained in the Council’s Decision No. 2005/586 (dated 18.08.2005) with regards to a challenge made by the Anatolian University Rectorate. It was argued by the public authority that the Council did not have powers to render decisions with regards to right to information appeals outside the scope of articles 16 and 17 of the Act. The Rectorate’s argument was strongly rejected by the Council which argued that article 14 provided the Council the authority to make decisions on the exercise of right to information regarding all public authorities with regards to any matter and appeal to do with the provisions of the Right to Information Act. The Council argued that its decision is based on the principles of equality, impartiality and openness that are the necessities of a democratic and transparent government as was established by article 1 of the Right to Information Act.

Further clarity to this dispute was provided by legislative action, and subsequently in November 2005 the Parliament amended article 13 and removed the appeal limitations from the Right to Information Act.⁵⁵

By law, the Council is required to publish its decision within 30 days. The public authorities are obliged to provide all information and documents that are required by the Council for the purposes of its investigation and review within 15 days. If the Council decides in favour of the applicant, the public authorities are obliged to provide the requested information to the applicant. However, there have been several cases in which public authorities refused to provide the requested information despite a decision in favour of the applicant. In such a scenario, the Council does not have powers to enforce its decision but the applicant can commence a lawsuit through an administrative court to enforce the decision of the Council. Furthermore, the applicant can also report a breach of the application of the Right to Information Act to the Public Prosecutor’s Office. In theory, but usually not in practice, the Public Prosecutor’s Office can start a criminal investigation against the officials who refuse to enforce the decision of the Council. Finally, it is provided by article 29 of the 2003 Act that the officials and other civil servants who negligently, recklessly or deliberately obstruct the application of the Right to Information Act shall be subject to disciplinary sanctions as provided in the relevant regulations of personnel regime without prejudice to any prosecution to be conducted by virtue of general provisions of criminal law. Therefore an applicant can bring forward a complaint and report the negligent, reckless, or deliberate obstruction and breach to the highest official within the concerned public authority. Those officials, in theory, but not usually in practice, would be subject to disciplinary sanctions as provided in the relevant regulations of personnel regime.

Finally, if the Council decides in favour of a public authority and rejects an appeal an applicant may appeal to an administrative court and request judicial review of the decision of the Council. The next section will discuss the work of the Council in detail.

⁵⁵ See Law No: 5432: *Bilgi Edinme Hakkı Kanununda Değişiklik Yapılmasına Dair Kanun*, Date: Nov.17, 2005 and published in the Official Gazette on 22 Nov. 2005, No. 26001.

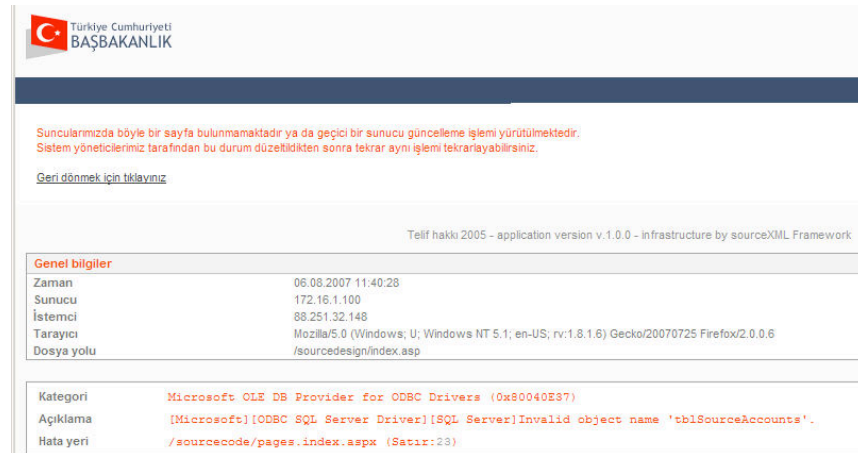
Assessment of the work of the Council

Since its inception, the Council has provided very limited information about its activities, and its decisions. The Council, did not have a proper website until March 2008, and limited information about its activities has been provided through the Prime Ministry website.



Council's initial website provided limited information, and there was no section on its decisions.

Often the website was down, and it was difficult to access the Council's website buried within the Prime Ministry website. Only very recently, in the beginning of 2008, a specific website for the Council was set up at www.bedk.gov.tr but the website continues to provide limited information. However, the new website does provide its published decisions.

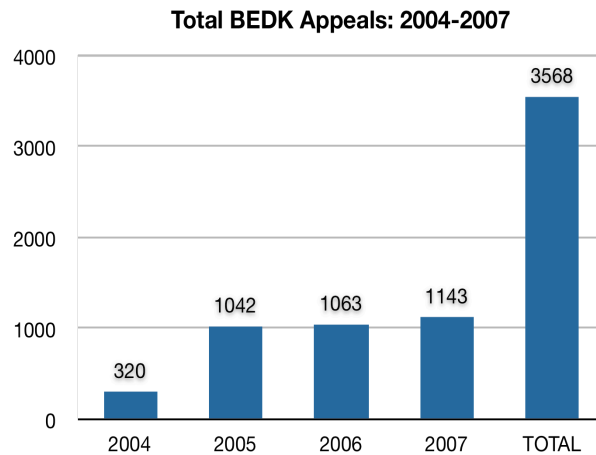


The website of the Council was often down and not accessible during the last few years.

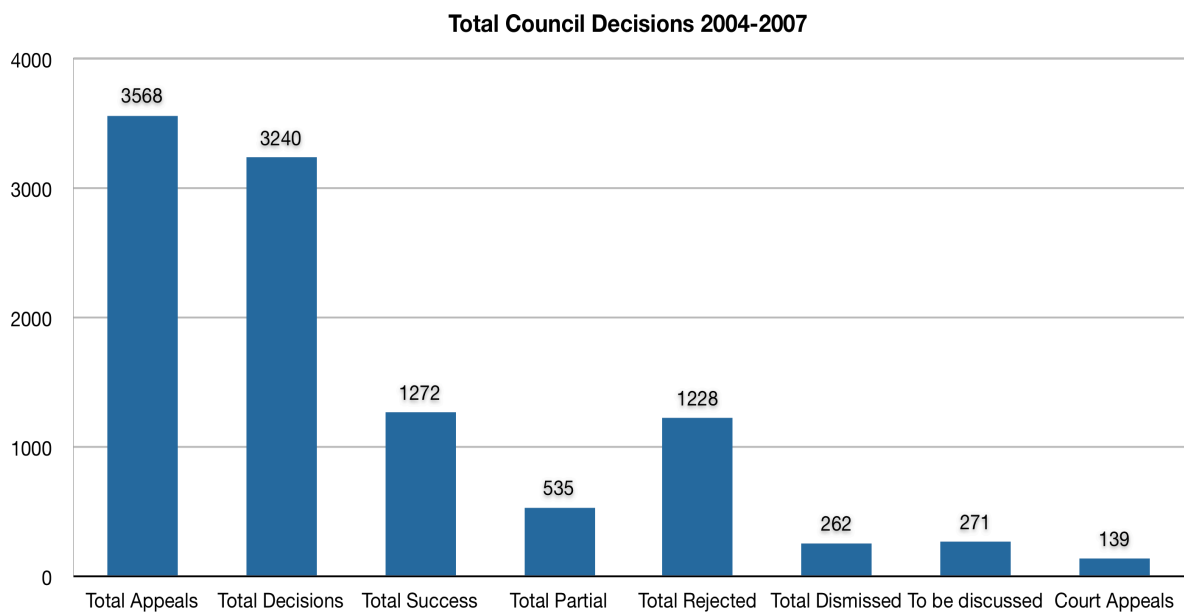
Information about the Council's Work and its Decisions

BilgiEdinmeHakki.Org (www.bilgiedinmehakki.org), a non-profit organisation set up by the author to monitor the application of the Right to Information Act 2003 in Turkey made several right to information requests to the Right to Information Assessment (Review) Council between 2004-2008 (requests dated: 03/08/2004, 29/06/2005, 16/02/2006, 21/02/2007, 28/08/2007, 19/02/2008, 04/04/2008) to obtain information about the work of the Council. Each time BilgiEdinmeHakki.Org asked the Council to publish its decisions but the Council either failed to publish or denied access to its decisions.

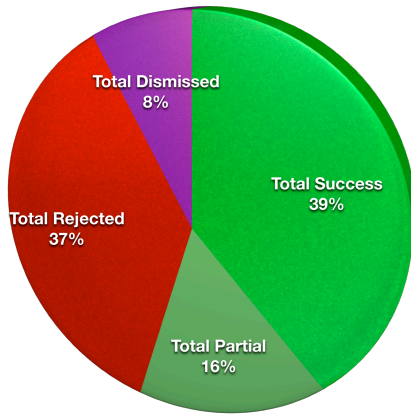
It was discovered by BilgiEdinmeHakki.Org that a considerable number of appeal applications were made to the Council, but the Council did not provide information about its work publicly, and chose to publish only **71 exemplary decisions** in December 2004. Since then no further decisions of the Council were made public. However, according to information obtained through the Council through the above mentioned right to information requests, there were a total of **3568** appeal applications to the Council between 2004-2007.



The Council dealt with **320** appeal cases in its first year of activity during 2004. Subsequently, it dealt with **1042** cases in 2005, **1063** in 2006, and with **1143** during 2007. In total, the Council took decisions in relation to **3240** out of 3568 cases between 2004-2007. Out of these 3240 decisions, **1272** of them involved successful appeals (**39% success rate**), **535 (16%)** were partially successful, and **1228 (37%)** appeal applications were rejected by the Council. **262 (8%)** cases were dismissed as time-barred (late applications) by the end of 2007. Subsequent to Council decisions, a total of **139** cases were taken to the Administrative Courts by both the applicants and public authorities (*see below for further details about these cases*).



Breakdown of Council Decisions: 2004-2007



BEDK	2004	2005	2006	2007	TOTAL
Total Appeals	320	1042	1063	1143	3568
Total Decisions	320	1042	793	1085	3240
Total Success	179	429	239	425	1272
Total Partial	38	160	167	170	535
Total Rejected	77	305	356	490	1228
Total Dismissed	26	148	31	57	262
To be discussed			270	1	271
Court Appeals	11	42	29	57	139

While a total of 2155 decisions were laid down by the Council, only 71 of these were made public between 2004-2006! Following yet another request made in February 2007 by **BilgiEdinmeHakki.Org** the Council decided to change its policy in terms of the publication of its decisions. It was revealed that the Council would start publishing all its decisions from 09 March, 2007, the day the Council's decision (*B.02.0.BHİ.796.001/203*) was sent to BilgiEdinmeHakki.Org.

The Council in its reponse to BilgiEdinmeHakki.Org revealed that it has made **2475 decisions** in relation to right to information appeals from the members of the public between **24/05/2004 – 26/02/2007**. On 09 March, 2007 the Council **published 28 of its 69 decision books containing 641 decisions out of the 2475 decisions** (roughly 495 pages in length). These involved the decisions made by the Council between **07.06.2004 and 15.06.2005**.

In a press release, BilgiEdinmeHakki.Org stated that

“despite considerable and unacceptable delay, the publication of the Council's decisions is a significant step towards openness and transparency in Turkey. We are now in a better position to assess the work of the Council as well as the functioning of the Turkish Right to Information Act 2003. However, the remaining decisions need to be published swiftly and further requests for information has already been lodged with the Council to ensure that.”

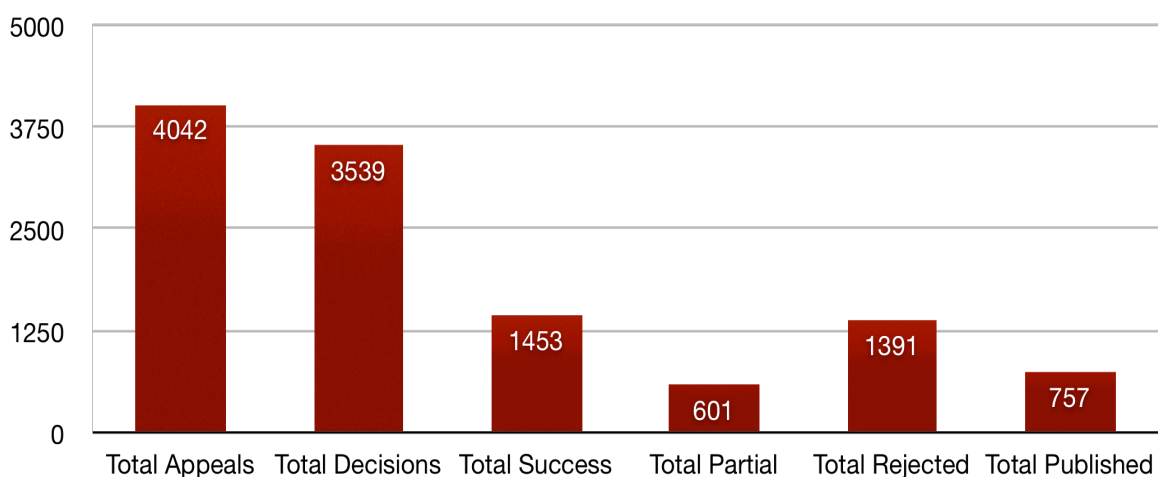
BilgiEdinmeHakki.Org requested further information from the Council on 12 March, 2007 in terms of when the **remaining 41 decision books containing approximately 1834 decisions** taken by the Council between **15.06.2005 and 26.02.2007** would be made public. The Council responded by stating that the remaining decisions would be published at a “later date” following the anonymization of the decisions. BilgiEdinmeHakki.Org made similar requests in August 2007 and March 2008 inquiring further about when the remaining decisions would be published. As a result of these requests, **116 further** cases were published by the Council in February 2008 covering the period of **22.06.2005 and 09.11.2005**.

Current Workload of the Right to Information Assessment Council

In addition to the above statistics, information has been obtained by BilgiEdinmeHakki.Org in March 2008 through a right to information application about the up-to-date work of the Council. As of 19 February, 2008 there has been a total of **4042** appeal applications to the

Council. So far, the Council has made decisions in **3539** cases. **1453** of these 3539 cases were successful appeals, while **601** were partially successful. **1391** appeal cases were rejected by the Council. By 19 February, 2008 only **757** decisions out of **3539** were published and publicly made available.

Council's Workload As of 19 February 2008



BEDK	5 Dec 2006	26 Feb 2007	28 Aug 2007	19 Feb 2008
Total Appeals	2450	2676	3413	4042
Total Decisions	2184	2475	3205	3539
Total Success	851	977	1210	1453
Total Partial	368	419	501	601
Total Rejected	754	888	1120	1391
Total Published	71	641	641	757
Total Unpublished	2113	1834	2564	2782

TABLE 3: Further Details of the workload of the Council

Initially, BilgiEdinmeHakki.Org revealed detailed statistics obtained from the Council in March 2007:

- Total No. appeal applications to the Council between 24/05/2004 – 26/02/2007: **2,676**
- Total Number of Council decisions: **2,475**
- Total number of decision books: 69
- **Number of decision books published: 28**
- Number of unpublished decision books: 41
- **Number of decisions published: 641 (25%)**
- **Number of unpublished decisions: 1834 (75%)**
- Number of applications proceeded: **2,321**
- Number of applications non-processed: **355**
- **Total Number of successful appeals: 977**
- Total Number of partially successful appeals: **419**
- **Total number of rejected appeals: 888**
- Total number of appeals in which further review was necessary: **10**
- Total number of appeal applications to be discussed by the Council: **213**

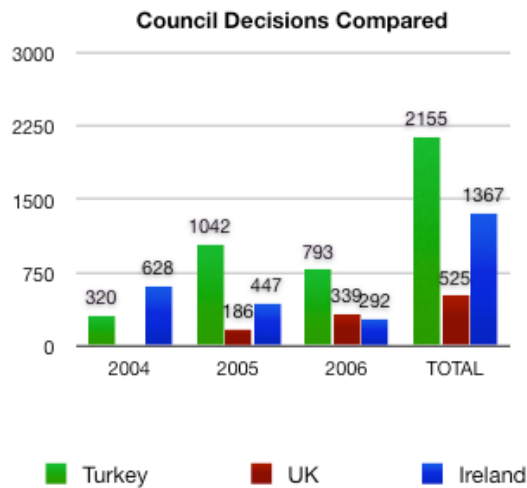
The following detailed statistics were obtained by BilgiEdinmeHakki.Org in August 2007:

- Total No. appeal applications to the Council between 24/05/2004 – 28/08/2007: **3,413**
- Total Number of Council decisions: **3,205**
- Total number of decision books: 81
- **Number of decision books published: 28**
- Number of unpublished decision books: 53
- **Number of decisions published: 641 (20%)**
- **Number of unpublished decisions: 2564 (80%)**
- **Number of decisions cleared for publication but not yet published: 332**
- **Number of decision books cleared for publication but not yet published: 10**
- Number of applications proceeded: 3,264
- Number of applications non-processed: 149
- **Total Number of successful appeals: 1,210**
- Total Number of partially successful appeals: 501
- **Total number of rejected appeals: 1120**
- Total number of appeals in which further review was necessary: 20
- Total number of appeal applications to be discussed by the Council: 208

More recently, in March 2008, BilgiEdinmeHakki.Org obtained the following detailed statistics from the Council:

- Total No. appeal applications to the Council between 24/05/2004 – 19/02/2008: **4,042**
- Total Number of Council decisions: **3,539**
- Total number of decision books: 93
- **Number of decision books published: 38**
- Number of unpublished decision books: 55
- **Number of decisions published: 757 (21%)**
- **Number of unpublished decisions: 2,782 (79%)**
- **Number of decisions cleared for publication (anonymized) but not yet published: 0**
- **Number of decision books cleared for publication but not yet published: 0**
- Number of applications proceeded: 3,893
- Number of applications non-processed: 149
- **Total Number of successful appeals: 1,453**
- Total Number of partially successful appeals: 601
- **Total number of rejected appeals: 1,391**
- Total number of appeals in which further review was necessary: 24
- Total number of appeal applications to be discussed by the Council: 95

The Council's work so far has been remarkable averaging over 750 decisions a year, and approximately 3-4 decisions each working day since May 2004. The Turkish Council has certainly laid down more appeal decisions than the Information Commissioner's Office in the United Kingdom, and the Irish Office of the Information Commissioner during 2005 and 2006 as can be seen below. 1070 further decisions were laid down by the Turkish Council during 2007.



However, the Turkish statistics reveal that almost **79%** of the Council's **3539** decisions are yet to be made public and published as of March 2008. **2,782** decisions are yet to be published, and this is a remarkably high number. The anonymization process, which is the main excuse behind the delay to publish, has been extremely slow, and seems not to be a high-priority for the Council. The total number of rejected appeals is **1,391 (39%)** out of 3,539 cases, and this also seems to be high. However, in the absence of the possibility to analyze all the decisions of the Council, it is difficult to speculate the reasons behind such a high rejection rate.

One particular decision of the Council raised some concern about the work and impartiality of the Council. A right to information request was made to the Defence Ministry by Muteber Öğreten, who runs the *Let us Know* project for the civil rights movement Antenna-tr.org, to obtain detailed information about landmines in Turkey. A response was provided by the Turkish General Staff, the highest military authority, but limited information was provided. For example, Ms. Öğreten asked about the quantity and location of landmines in Turkey but was told that there were mines located in various places. An appeal with the Council was lodged but the Council decided⁵⁶ that the detailed information about the landmines would be denied as such information would be regarded as "state secret" and therefore exempt from the Right to Information Act 2003.⁵⁷ However, the so called state secrets were publicly available through the United Nations' website. Turkey as a party (since September 2003) to the UN Convention on the prohibition of the use, stockpiling, production, and transfer of anti-personnel mines and on their destruction was obliged to produce yearly reports to the UN on

⁵⁶ Decision No: 2005/95, 11.02.2005.

⁵⁷ See article 16 of the Right to Information Act 2003.

national measures and the 2004⁵⁸ and 2006⁵⁹ reports included detailed information on stockpiled anti-personnel mines, detailed location of mined areas and the quantity, and type of mines within these areas, basically all the information that Ms. Öğreten tried to obtain through Defence Ministry in her right to application request.

Form C → → Location of mined areas

Article 7.1 → "Each State Party shall report to the Secretary-General on:

c) To the extent possible, the location of all mined areas that contain, or are suspected to contain, anti-personnel mines under its jurisdiction or control, to include as much detail as possible regarding the type and quantity of each type of anti-personnel mine in each mined area and when they were emplaced."

State [Party]: **REPUBLIC OF TURKEY (TR)** Reporting for time period from: **01 MAR 2004** to: **28 AUG 2004**

1. Areas that contain mines*

Location	Type	Quantity	Date of Emplacement	Supplementary information
ARDAHAN	MISC	9.712	UNDETERMINED	
BATMAN	MISC	386	1991-1993	
DIYARBAKIR	DM11, M14, M16A2	974	1993	
DOĞUBEYAZIT	MISC	138.366	UNDETERMINED	
GAZIANTEP	MISC	179.723	UNDETERMINED	
HAKKARİ	DM11, M14, M16, M2, M48	46.104	1991-1994	
İSKENDERUN	MISC	23.836	UNDETERMINED	
KAĞIZMAN	MISC	1.794	UNDETERMINED	
KARS	MISC	9.578	UNDETERMINED	
MARDİN	DM11, M14, M11, M2A1, MISC	84.899	1991-1994	
SİİRT	DM11, M14, M16, M2, M48, M49, HM	653	UNDETERMINED	
ŞANLIURFA	MISC	269.163	UNDETERMINED	
ŞIRNAK	DM11, M14, M16, M2, M48, M49, HM	106.278	1991-1994	
TUNCELİ	DM11, M14, M15	10.557	1995	
VAN	MISC	39.057	UNDETERMINED	
TOTAL		921.080		

HM: Hand Made

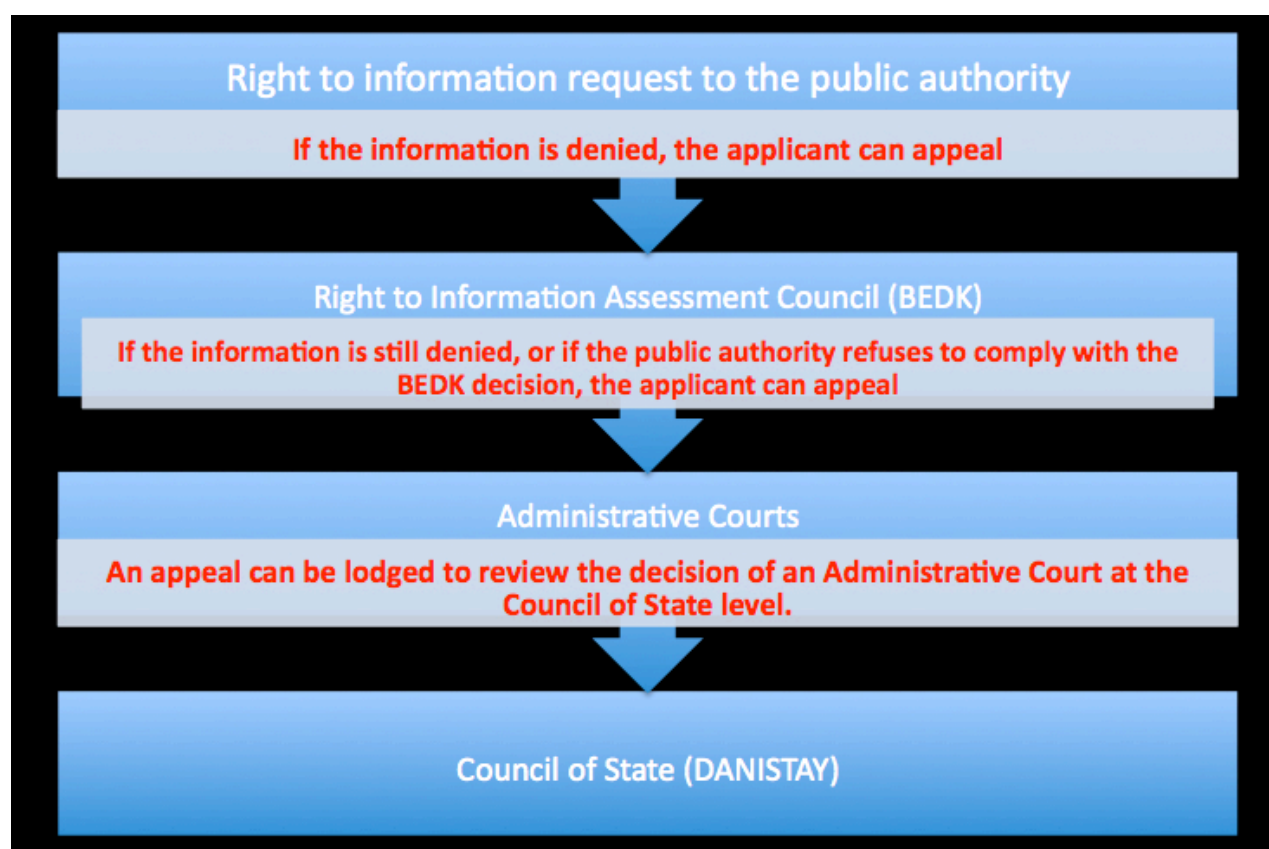
2. Areas suspected to contain mines*

It is a well known fact that the UN reports are publicly available for each country and these reports were obtained by Ms. Öğreten through the UN and distributed to the media subsequent to the Council's rejection decision based on state secrecy. It can be seen from these reports that the information contained within the 2004 and 2006 reports contain detailed information in relation to each and every request made by Ms. Öğreten in her right to information application. Rather than denying her the information and considering it as a state secret, the Ministry of Defence, as well as the Right to Information Council should have provided the requested information. There was no re-consideration by the Council of its decision and Ms. Öğreten unfortunately did not lodge an appeal with an administrative court.

⁵⁸ See <http://www.bilgiedinmehakki.org/doc/Article_7_Turkey_2004_Report.pdf>.

⁵⁹ See <[http://www.unog.ch/80256EDD006B8954/%28httpAssets%29/46E3AA09E9AD605CC12571CC005A60A6/\\$file/Turkey.pdf](http://www.unog.ch/80256EDD006B8954/%28httpAssets%29/46E3AA09E9AD605CC12571CC005A60A6/$file/Turkey.pdf)>.

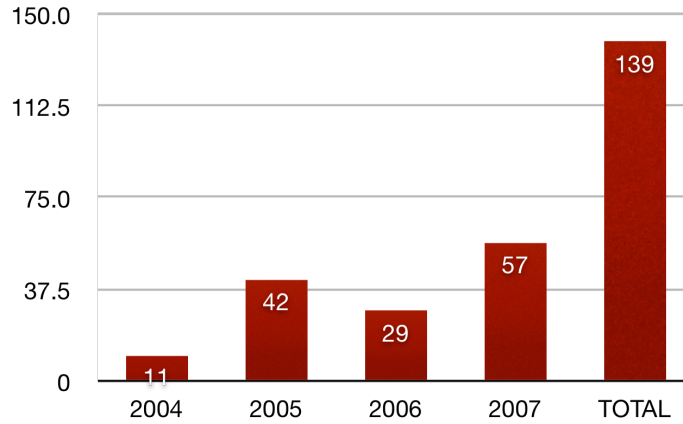
TABLE 4: Turkish Right to Information Appeal Mechanism



Administrative Court Action

The above statistics revealed that **139** cases have been referred to Administrative courts for judicial review of the decisions of the Right to Information Assessment (Review) Council between 2004-2007.⁶⁰

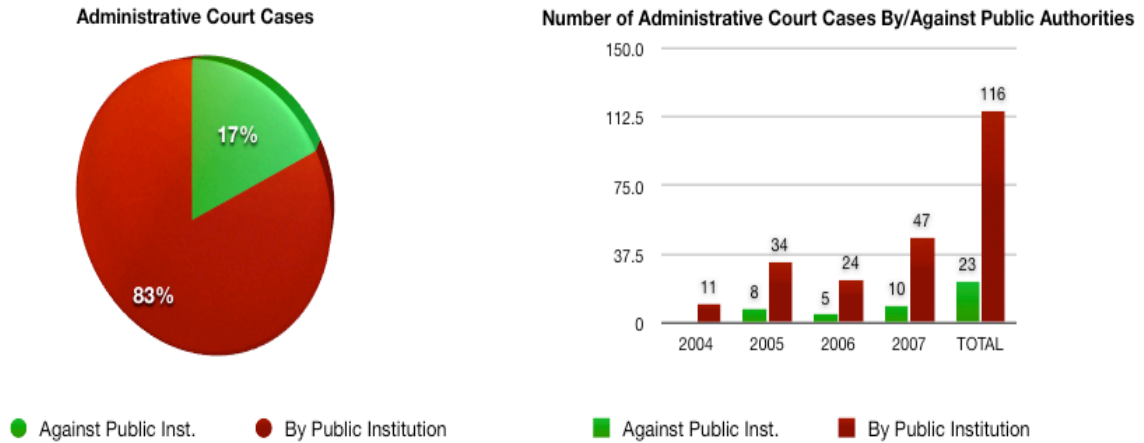
Number of Administrative Court Appeal cases 2004-2007



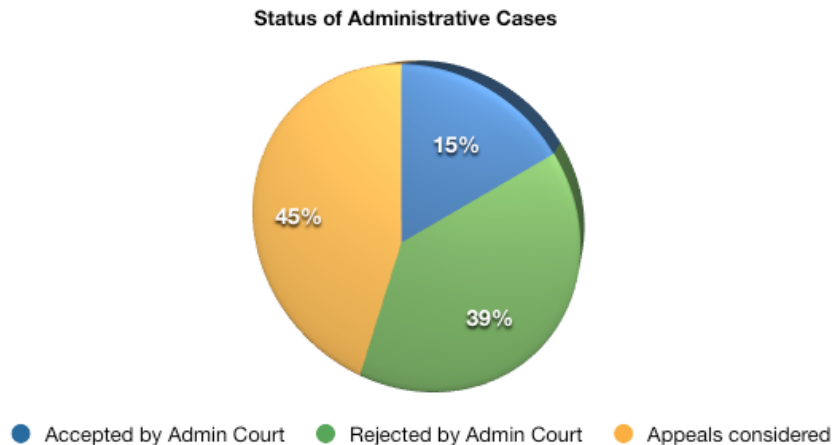
Administrative Court Appeal Cases	2004	2005	2006	2007	TOTAL
Total Cases	11	42	29	57	139
Against Public Inst.		8	5	10	23
By Public Institution	11	34	24	47	116
Accepted by Admin Court	1	5		10	16
Rejected by Admin Court	9	18	2	12	41
Appeals considered	1	21	27	35	47
Council of State (Danistay) Appeal	10	17		10	37

While only 23 of these cases were taken to Administrative courts by the applicants, the majority (116 cases) were taken for judicial review by public authorities who disagreed with the decision of the Council in favour of the applicants.

⁶⁰ The Administrative courts related statistics have been obtained from a presentation by Kilinc, U., Rapporteur for BEDK (the Council), *The Use of Right to Information in Turkey: Legal and Application Problems*, Ankara TESEV International Freedom of Information Conference, 11 December, 2006, at <<http://www.tesev.org.tr/etkinlik/TESEVSunusu-UgurK.ppt>>.



A considerable number of these appeal cases are still under consideration by the administrative courts, and usually the trial process is very slow in Turkey. It is also difficult to find the outcome of these cases as the court decisions are not available online and only selectively published in various law journals, and the courts are exempted from the Right to Information Act through article 15 and therefore not subject to right to information requests. The Council itself should provide detailed information about these court cases but only statistical data can be obtained through the Council via right to information requests. The information revealed by the Council show that 35 of these 139 cases were still under consideration by administrative courts by the end of 2007, and 10 of them were considered by the Council of State. According to the data obtained from the Council, 57 cases were resolved by the courts, and only 16 of them in favour of the applicants while 41 were resolved in favour of the public authorities with the decision of the Council being overruled by Administrative courts.



Council of State (*Danıştay*) Appeals

The Council of State (or the Supreme Administrative Court), in its judicial capacity, is the highest administrative court, mainly with appellate jurisdiction⁶¹ and has the duty to review and

61 The judicial and administrative duties of the Council of State are specified in Act No. 2575 which was amended in 1990 by Act No. 3619 and by various acts after that. For further information about the history

take decisions on appeals against the judgments of administrative courts and tax courts and those judgments rendered by the divisions of Council of State acting as first degree courts.⁶² As a court of appeal, the Council of State either affirms or quashes and refers the case back to the lower court. As a first instance court, the Council of State deals with

- Actions for annulment brought against administrative acts, regulations and by-acts by complainants whose interests have, allegedly, been violated by the contested act;
- Full remedy actions brought by the complainants who allege that their rights have been infringed in the implementation of administrative acts or actions.

A total of 37 cases involving right to information appeals were reported to be sent for judicial review to the Council of State by the end of 2007. However, there is no publicly available information about the status or outcome of these cases as of writing, and the Council of State has not published any of its decisions dealing with right to information appeals. As in the case of other courts the Council of State is also outside the scope of the Right to Information Act and is not subject to right to information requests in relation to its judicial work. This was confirmed by a Council decision (*No. 2004/143, 25.10.2004*) in 2004.⁶³

Resistance for information disclosure – Bergama Cases

An assessment of the 757 published decisions reveal that the Council often ensures impartiality and has enforced the Right to Information Act vigorously in most cases, and has been critical of the practices of many central and local government agencies and other public authorities with regards to the application of the Right to Information Act. However, despite good intentions of the Council, several public authorities refuse to provide information ignoring the decisions of the Council. As mentioned above, in some instances the refusal to provide information triggered appeals to the administrative courts for judicial review. In other cases, public authorities themselves appealed to the administrative courts for the judicial review of Council decisions.

Two inter-related cases will be used as an example to show problems associated with the application of the Right to Information Act in Turkey.

Bergama Case 1

Three lawyers, members of the Izmir Bar Association, who are also environmental protection activists within the Aegean region were involved in the monitoring of the activities of the EUROGOLD Mining Company which has been operating a gold mine in Bergama. Following some media rumours that EUROGOLD would sell the mining facility and leave the area without shouldering any cleaning and reforestation burden, the lawyers tried to obtain information from the Ministry of Finance with a right to information request made in February 2005 and asked the Ministry whether EUROGOLD has carried out its legal and tax obligations in accordance with the relevant domestic regulations. The comprehensive right to information request involved 14 questions.

In March 2005, the General Directorate of Revenue of the Ministry of Finance rejected the applicants right to information request on the grounds that tax certificate information can only

and functions of the Council of State see <<http://www.danistay.gov.tr/eng/index.html>>.

⁶² The judgments of the administrative courts and tax courts that can be appealed before the Council of State, are only those judgments which are passed by a committee of three judge in these courts.

⁶³ Sabah, "Mahkeme kararları "bilgi edinmenin" dışında," 24.11.2004 at <<http://arsiv.sabah.com.tr/2004/11/24/gnd100.html>>.

be provided subject to article 5 of the Tax Procedure Law.⁶⁴ The Directorate stated that the requested information fell within the confidentiality scope provided in article 5 of the Tax Procedure Law. Therefore, no information was provided to the applicants.

Subsequently, during March 2005 the applicants appealed to the Right to Information Assessment Council. In June 2005, the Council issued its decision in favour of the applicants and rejected the reasons raised by the Ministry of Finance.⁶⁵ The Council decided that 12 out of the 14 questions should have been answered and the requested information should have been provided to the applicants. The Council, in its decision, rejected the confidentiality arguments put forward by the Ministry of Finance by stating that the Ministry is under obligation to provide the information requested under the Right to Information Act 2003. According to the Council, article 5 of the Tax Procedure Law is not compatible with the subsequently enacted Right to Information Act. Article 5(2) of the Right to Information Act states that “*the contradictory provisions of other codes [and laws] can not be applied after the date this law came into force.*”⁶⁶ According to the Council, article 5 of the Tax Procedure Law is one of those inapplicable provisions and cannot be used as an excuse to deny information to the applicants. Based on the principles of openness and transparency, the Council unanimously held that there was no legitimate excuse in not disclosing the information requested and this kind of information should be in the public domain, and is in close interest of the public.

Although it was expected that the Ministry of Finance would comply with the Council decision, the Ministry decided not to comply and the applicants were denied information for the second time in July 2005.⁶⁷ In their response letter, the Ministry cited the same excuse based on article 5 of the Tax Procedure law. The applicants contacted the Right to Information Assessment Council for the second time on 27.07.2005 and informed the Council that the Ministry of Finance was ignoring its decision and was not complying with the Right to Information Act.

In August 2005, the Council issued a statement by writing to the applicants and stated that there was no need for the Council to render another decision on the same topic. The Council advised the applicants to submit a complaint petition against the responsible civil servants to the Ministry of Finance and ask the Ministry to take disciplinary action under article 29 of the Right to Information Act. Furthermore, the Council advised that the applicants can file a criminal complaint petition to a competent State Prosecutor’s Office against the responsible civil servants. The Council also reminded that the applicants can take an action before an administrative court in order to review the actions of the Ministry of Finance.

The applicants took an action before the Ankara Administrative Court for a judicial review of the decision of the Ministry of Finance dated 13.07.2005 No. 32509. Furthermore the applicants requested the court to issue a stay of execution decision as to the denial of information decision of the Ministry of Finance on the grounds that the information requested was in the public interest. On 04.05.2006 the 4th Administrative Court of Ankara rejected the applicants’ stay of execution request.⁶⁸

⁶⁴ Tax Procedure Law no: 213.

⁶⁵ The decision of the Council dated 15.06.2005 no.2005/438.

⁶⁶ Note for example that during the UK implementation, the British government decided that the old laws with various secrecy provisions have precedence over the Freedom of Information Act 2000.

⁶⁷ Ministry of Finance letter dated 13.07.2005 no.32509.

⁶⁸ The dismissal decision of the 4th Administrative Court of Ankara dated 04.05.2006 no:2005/1732.

On 07.09.2005 the applicants filed a complaint petition against Mr. Savaş Balkan who is the highest civil servant of the Group Presidency of the Revenue Administration of Ministry of Finance on the grounds that Mr. Balkan committed a crime of duty abuse by not complying with the decision of the Council and by violating the provisions of the Right to Information Act by not disclosing the information requested. The complaint petition was sent to the head of the Ministry of Finance. However, this complaint action led to nowhere as a non-prosecution decision was issued by the Presidency of the Revenue Administration on 06.12.2005.⁶⁹ However, the applicants appealed against the decision not to prosecute before the Ankara Regional Administrative Court on 20.12.2005. The applicants pointed out the value of rule of law and democratic culture in a democratic society where citizens have access to information without any unnecessary criteria. On 08.05.2006 the Ankara Regional Administrative Court dismissed the applicants' appeal application without giving any reasoning for the questions raised by the applicants.⁷⁰ Therefore, there were no punishment or investigation in terms of the highest civil servant who was responsible for the non-disclosure of the requested information.

The dismissal decision of the regional Administrative Court is absolute in nature in accordance with the Turkish domestic law. In other words, the applicants exhausted the domestic ways in connection with their complaints, and decided to take their case and complaint to the European Court of Human Rights by arguing an article 6 violation as they were obstructed to access a fair and just court trial.

The applicants alleged in their European Court of Human Rights application that the Turkish Administrative court, without making any merit examination about the applicants' allegations, endorsed the decision of the institution where the suspect is employed. The applicants allege that the Regional Administrative Court without holding any hearing or requesting any observation from the applicants issued its judgment. The applicants argued that the administration and the judicial system have to issue their decisions by referring to the facts and the questions raised by parties in order to enable them to understand why their application is dismissed. The applicants also alleged that the current Turkish system concerning the investigation and prosecution of civil servant does not have impartial and independent standards. Therefore, the applicants alleged that the current system concerning the investigation and prosecution of the civil servants is absolutely ineffective. Accordingly the applicants state that article 13 of the European Convention was violated by the State Party.⁷¹ The applicants also argued that they were well aware of the tendencies of the government and of its agents in protecting the operations of the mine in Bergama. The application concerning *Özkan and Others v. Turkey*⁷² was lodged with the European Court of Human Rights on 03.10.2006 and an admissibility decision is yet to be made.

Bergama Case 2

⁶⁹ File no: 24714, Decision no: 2005/3.

⁷⁰ The judgment of Ankara Regional Administrative Court (Merit no.2006/15, Decision No.2006/154).

⁷¹ The applicants also emphasized that even the European Court of Human Rights' relevant two judgments (*Taşkın and Others v. Turkey*, application no.46117/99, released on 10 November 2004 and *Öçkan and Others v. Turkey*, application no. 46771/99, released on 28 March 2006) did not change the operational policy carried out by the Government and the gold Mining Company (Normandy/Newmont/Eurogold and now Koza A.Ş.). The ECtHR stated that "Moreover, despite the procedural safeguards laid down by Turkish legislation and the practical effect given to those safeguards by judicial decisions, on 29 March 2002, in a decision which was not made public, the Cabinet had authorised the continuation of the activities of the goldmine, which had already begun operating in April 2001."

⁷² Application no.41418/06.

In a related case, following the 4th Administrative Court of Ankara rejection of the applicants' stay of execution request in May 2006,⁷³ the 4th Administrative Court of İzmir issued a judgment (2005/1732 e, 2007/155 K) in favour of the applicants on 28.02.2007. The Court stated that

“the public authorities are obliged to provide every kind of information and documents to those who ask them in accordance with the principles of equality, impartiality and openness which are requisites of transparent and democratic administration in accordance with article 4 of the Right to Information Act.”

The Ministry of Finance received the judgment of the 4th Administrative Court on 24 April 2007. Subsequently, on 11 May 2007 the Ministry of Finance appealed with a stay of execution request. On 20 June 2007, the 10th Chamber of the Supreme Administrative Court rejected the stay of execution request of the Ministry of Finance. On 31 July 2007, the applicants applied to the Ministry of Finance with a request of the execution of the judgment of the 4th Administrative Court of İzmir. On 29 August 2007, the Ministry of Finance sent a letter to one of the applicants stating that the appeal case at the 10th Chamber of the Supreme Administrative Court had not yet been concluded. The Ministry argued that once the notification was received by the Ministry of Finance the necessary action would be taken.

On 29.08.2007, the 10th Chamber of the Supreme Administrative Court dismissed the appeal of the Ministry of Finance concerning the rejection of the request of a stay of execution decision about the judgment of the 4th Administrative Court of İzmir. On 20 September 2007, the applicants once again applied to the Ministry of Finance with a request of the execution of the judgment of the 4th Administrative Court of İzmir. The applicants stated in a petition that the agents of the Ministry have been deliberately blocking the use of the law by not acting in compliance with their duty. The applicants stated that the agents should be prosecuted in accordance with article 237/1 of Turkish Penal Code (negligence of public agents). The applicants argued that subject to section 28, entitled Consequences of Judgments, of the Administrative Procedure Code, (Law no: 2577),⁷⁴ the administration must take the necessary actions required by the judgments and stay of execution orders given by the Council of State, regional administrative courts, administrative and tax courts without delay. According to the Administrative Procedure Law, this period can under no circumstances exceed thirty days from the notification of the decision to the administration. However, in the actions concerning the implementation of distraint and sequestration, the act shall be implemented by the administration after the judgment becomes final. The Ministry of Finance did not comply and refused to answer to the applicants' petition.

Although the Ministry of Finance received the decision of 4th İzmir Administrative Court in April 2007, it did not comply with the decision by September 2007 and refused to provide the requested information. As of writing (May 2008) the Ministry of Finance has not provided the requested information to the applicants. As the applicants had exhausted the domestic ways in connection with their complaints, they took their case and complaint once again to the European Court of Human Rights. The applicants argued an article 6 violation with regards to the non execution of the judgment of 4th İzmir Administrative Court which violates the fair trial clause of the European Convention on Human Rights. The applicants alleged that the State party has repeatedly violated article 6(1) of the Convention by not complying with the

⁷³ The dismissal decision of the 4th Administrative Court of Ankara dated 04.05.2006 no:2005/1732

⁷⁴ Amended: 10/6/1994-4001/s. 13.

requirements of the Right to Information Law as well as the judgment of the 4th Administrative Court of İzmir. The applicants also claimed an infringement of article 10 as their right to receive information under the Right to Information Act was denied despite a Council decision and an Administrative Court decision in their favour. The applicants referred to the European Court's recent decision in the case of *Sdružení Jihočeské Matky v. Czech Republic*,⁷⁵ which for the first time explicitly recognized application of Article 10 in cases of a rejection of a request for access to public documents. Finally, as the application of the Right to Information Act was rendered null and void by the public authority's lack of compliance, the applicants claimed an article 13 violation. This second ECHR complaint was lodged with the Strasbourg court on 25 September 2007 and an admissibility decision is yet to be issued.

The long Bergama saga shows how difficult it can be to obtain information under the Right to Information Act in Turkey as well as difficulties to enforce the decisions of the Turkish Right to Information Review Council, and administrative courts. On the one hand, the applicants in the Bergama saga should be applauded for their determination to obtain the requested information from a public authority and for taking their cases to the European Court of Human Rights. On the other hand, resistance to disclose information by the Ministry of Finance despite a decision of the Council to the contrary approved by an Administrative court should be condemned.

Such a resistive action sends the wrong message in terms of transparency, openness, and democratic values in Turkey. On the contrary, it shows to other public authorities that the Turkish Right to Information Review Council lacks teeth and is incapable of enforcing its judgments, and so far the Council has done nothing to ensure that its decisions are not ignored by public authorities. For example, the Council itself could have taken judicial action by appealing to an administrative court on the behalf of the applicants. It could have sought political action and an inquiry could have been initiated at the Prime Ministry or Parliament level. The Council could have also made recommendations in terms of amending the existing law so as to enforce its judgments. However, the actions of the Council seems to be politically motivated and the Council prefers to keep silent in terms of serious problems of compliance, and prefers to keep out of the dispute between the applicants and the public authorities once it lays down its decisions.

The above examples also show that despite judicial review and court action at administrative courts, a number of public authorities still do not comply with right to information requests and it has been documented that they do not disclose the requested information. Subsequent complaints and requests for criminal investigations through the State Prosecutors' Office lead to nowhere. Article 29 complaints in terms of civil servants for crime of duty abuse within the public authorities are also largely ignored, or lead into no punishment or internal investigation.

State Secrecy and Data protection Laws

The government announced the drafting of laws on state and trade secrets in October 2003 when it enacted the Right to Information Act, and initial drafts were made public in early 2004 but progress has been slow until very recently.

A new draft law on trade secrets, bank secrets, and customer secrecy was made public in February 2008 but this draft is yet to reach the Parliament. Subsequently, a new draft law on

⁷⁵ Decision by the European Court of Human Rights (Fifth Section), case of *Sdružení Jihočeské Matky v. Czech Republic*, Application No. 19101/03 of 10 July 2006.

state secrecy was announced in January 2008, and made public on 24 April, 2008. This new draft law on State Secrecy was sent from the Prime Ministry to the Parliament for discussion and if enacted will introduce a State Secrecy Council as well as a State Secrecy High Council. The former which will be formed by the Permanent Undersecretary for the Prime Minister, and will include as its members the permanent undersecretaries for the Prime Ministry, Ministry of Justice, Ministry of Interior, Ministry of Defence and Ministry of Foreign Affairs. The State Secrecy Council will be in charge of making the secrecy decisions. On the other hand, the State Secrecy High Council will include as its members the Prime Minister, and the ministers for the Ministry of Justice, Ministry of Interior, Ministry of Defence and Ministry of Foreign Affairs. The Prime Minister will act as the president for the State Secrecy High Council. The State Secrecy High Council will be formed to provide its opinion with regards to court action involving state secret classified documents.

Under the terms of the draft law, documents would be classified as “state secrets” by the State Secrecy Council where their disclosure would seriously undermine and damage national security, the territorial and constitutional integrity of Turkey, or its foreign relations. The draft law also provides that certain documents could be protected as “classified information” by the State Secrecy Council and these would be documents the disclosure of which would seriously undermine the economic well-being of the state, state intelligence, military service, documents pertaining the administrative and judicial investigations and prosecutions, as well as documents which were classified as “secret” or “classified” by relevant authorities. The Prime Minister, the Chief of General Staff, State Ministers, and the National Security Council can ask the State Secrecy Council to classify documents that relate to their business as state secrets. Other public authorities can only ask the Council to classify documents as state secrets through the Ministries that they are connected to. According to the proposed law, the President of Turkey himself decides the nature and classification of secrecy with regards to the documents he holds.

In terms of duration, the proposed law enables time limited classifications as well as indefinite classifications. A maximum period of 75 years is provided by law with regards to time based classifications. The State Secrecy Council can modify the time period on such classified documents, or can de-classify such documents. Indefinitely classified documents are subject to review every 10 years. Classified documents which are classified for more than 10 years are subject to review every 5 years. Indefinitely classified state secrets would automatically cease to be state secrets after 50 years unless the State Secrecy Council decides to the contrary. In terms of the duration of other “classified information”, these are limited by half of the time period specified for state secrets. The proposed law refers to section 258 of the Turkish Criminal Code and reminds that those who publish state secrets would be committing a criminal offence punishable between one to 4 years of imprisonment. However, if the publication and dissemination takes place through the media, or through the Internet, such actions would be seen as an aggravating factor and the penalty would be increased by 50%.

In terms of privacy and data protection, although there has been several attempts at legislation in this field in Turkey no considerable progress has been made until April 2008. On 24 April, 2008 the Prime Ministry published a new draft Data Protection law. This new draft law entitled *Kişisel Verilerin Korunması Kanunu Taslağı* based upon both the 1981 CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg 1981, European Treaty Series No. 108) and the 1995 EU Directive 95/46/EC on the protection

of individuals with regard to the processing of personal data and on the free movement of such data was drafted by the Ministry of Justice. Almost 27 years after signing the 1981 CoE Convention, Turkey is yet to enact and implement a data protection law. When this draft law is enacted, certain requests with regards to personal information (e.g. employment files) will be handled through the data protection law provisions, and this law will clarify the meaning of “personal data” and “access to personal data” with regards to right to information requests. An independent Data Protection Council will be set up under the new proposals. There was considerable pressure from the European Union for Turkey to enact a data protection law and the lack of legislation on data protection was cited several times by the European Commission as a difficulty in terms of cooperation at international level and is an obstacle in terms of relations with Europol, and customs cooperation on crime in addition to creating problems for private sector with regards to processing of data in Turkey.

Conclusion

Although the enactment of the Right to Information Act is a very important first step towards openness, transparency, and democratisation in Turkey, this report has identified several problems with the application of the law. However, the Turkish experience is not completely negative and the final part of this report will outline both the positive and negative observations which have come to light in the first four years of the application of the Right to Information Act in Turkey between 2004-2008. Finally, a set of recommendations will be made for improvement of the application of the Right to Information Act in Turkey.

Positive Aspects of the enactment and implementation of the Turkish law

The Right to Information Act was enacted in October 2003 and came into force in April 2004. Public authorities were required to be ready within three months and the implementation period ended in August 2004. This swift implementation is certainly positive and a welcome development in terms of transparency, openness, and access to information and official documents in Turkey. High number of right to information applications between 2004-2006 (1,886,962 in total) suggest wider awareness of the existence of the law and the availability of a right to information and access to official documents in Turkey. Furthermore, through article 5, public authorities are under a legal obligation to respond to applicants and provide the requested information and documents subject to exceptions provided within the 2003 Act. There was no such broad legal obligation previously. It is also welcome that all public authorities accept right to information requests electronically, some via email, others through web based forms. Additionally, the Prime Ministry launched the BIMER service in 2006 which acts as a central process centre for contacting central and local government institutions as well as members of the Parliament. BIMER is also used for lodging right to information requests and the Prime Ministry ensures that the relevant public authority receives the right to information application lodged through this system. Additionally the applicant can track the status of his/her application through BIMER.

Negative Aspects of the enactment and implementation of the Turkish law

Initially, during the implementation of the 2003 Act, limited or lack of resources created significant problems for public authorities who were not prepared to deal with the compliance requirements of the law. As shown in this report, this was more evident with regards to local authorities such as municipalities.

More importantly, this report has highlighted that despite Right to Information Review Council decisions and administrative court orders, there is still resistance to give information, and a high number of public authorities are disputing Council decisions, either by ignoring them, or

by appealing to administrative courts to challenge such decisions. Failure to provide information is a clear violation of the Right to Information Act, and a violation of the applicants' right to information. The law certainly lacks teeth – nothing seems to happen for non-compliance, no disciplinary action, nor criminal prosecutions take place despite several reported cases of complaints to public authorities and Public Prosecutors' Office. There are also several decisions of the Council which clearly state that disciplinary action should be taken with regards to non-compliance.⁷⁶ Complaints to the Council seem to be fruitless as the Council chooses not to enforce its decisions and so far showed a clear unwillingness to follow up its decisions. The Council has not taken a single case to an administrative court for compliance, and it only encourages applicants to do so.⁷⁷ The Ministry of Finance's attitude and resistance to give information in the Bergama cases as outlined in this report can only be described as criminal and those responsible should have been subject to disciplinary action as well as criminal prosecutions. Two applications have been lodged with the European Court of Human Rights with regards to article 6 and 10 of the European Convention on Human Rights, but admissibility decisions have not been made by the Strasbourg court yet.

With regards to the work of the Council, this report has brought to light that the majority of the Council's decisions remain unpublished as of writing. According to data obtained from the Council with a right to information request **79% of the Council's decisions (2,782 out of 3,539 as of March 2008)** remain unpublished. It is the submission of this report that resistance and systematic delay are the reasons behind non publication rather than lack of resources at the Council level. This conclusion is based upon several right to information requests made to the Council and an exchange of letters with the Council between 2004-2008. Therefore, the lack of openness and transparency with regards to the Council's work should be strongly criticized.

Furthermore, laws on state secrets, trade secrets, and data protection are yet to be enacted, and the lack of such laws creates significant problems in terms of the application of the Right to Information Act.

Final Recommendations

Recommendation 1: Training

In terms of improving the application of the Right to Information Act, it is recommended that the government should offer training for public authorities especially with regards to the

⁷⁶ See for example Council decision No. 2004/10: "Kurulun dilekçe sahibine, itirazının yönlendirildiği kurum tarafından yasal süreler içinde yanıt verilmemesi durumunda, bilgi vermemenin cezai yükümlülükleri olduğunun ve idari yargıya dava açabileceğinin hatırlatılması;" Council decision No. 2005/10: *Daha önce benzer konularda Kurulumuza yapılan çeşitli itirazlar üzerine alınan 05/07/2004 tarihli ve 2004/16 sayılı, 11/10/2004 tarihli ve 2004/128 sayılı kararlarda da Kurulumuzun aynı mahiyette karar almasına ve işbu kararları İstanbul İl Milli Eğitim Müdürlüğü'ne tebliğ etmesine rağmen, benzer mahiyetteki başvurulara hala aynı red gerekçesiyle olumsuz cevap vererek 4982 sayılı Kanunun ve mezkur Yönetmeliğin amir hükümlerinin uygulanmasına "kasıtlı" olarak muhalefet eden anılan Müdürlük yetkilileri hakkında 4982 sayılı Kanunun 29 uncu maddesi gereğince işlem yapılmasını teminen Milli Eğitim Bakanlığı'na yazılmasını".*

⁷⁷ See for example Council decision No. 2004/48: "Adı geçenin Kurul Kararını uygulamayanlar hakkında başvuru yaptığı Kurumun veya bağlı olduğu Bakanlığın en üst amirine şikayette bulunabileceği veya Cumhuriyet Savcılığına suç duyurusunda bulunabileceği ya da idari yargıda dava açabileceği;" Council decision No. 2004/55: "Başvuruya anılan Kanun çerçevesinde süresi içinde cevap verilmemesinde ihmali, kusuru veya kastı bulunanlar hakkında anılan Kanunun 29 uncu maddesi kapsamında cezai işlem yapılması;" Council decision No. 2004/90: "Başvurusuna cevap vermeyen Aydın Bayındırlık ve İskan Müdürlüğü yetkilileri hakkında cezai işlem yapılması için söz konusu Müdürlüğün bağlı olduğu Bakanlığın en üst amirine yazılı şikayette bulunabileceğinin bildirilmesine."

application of the Act by the local government agencies. Funding should also be made available for improving or establishing stand-alone right to information units within local government agencies. Training is also important for the public, media representatives, investigative journalists, and academics. Although a number of training programmes were conducted by non governmental organizations in the last few years, future training programmes should concentrate on the appeal process to the Right to Information Review Council as well as how to take cases to administrative courts for review. As shown in this report, currently, only a fraction of the rejected right to information requests reach the Council and only a fraction of rejected Council decisions reach administrative courts.

Recommendation 2: Transparency at the Council level

Openness, transparency, and accountability are elements of a good democratic system. Therefore, transparency at the Right to Information Review Council level is urgently needed as well as swift publication of all Council decisions. Furthermore, information about Administrative court challenges is not provided by the Council, and there should be more transparency about what decisions of the Council has been subject to challenge, and what decisions have been taken by Administrative courts. For a better understanding of the application of the Right to Information Act, publication of Council and Court decisions needs to be ensured.

Recommendation 3: Political Action for Compliance

This report has established that there are serious problems with compliance and certain public authorities ignore the decisions of the Council as well as the decisions of Administrative courts. With regards to non-compliance, political action is required and the Government should ensure that Council decisions and Court orders are enforced.

Recommendation 4: Detailed Statistics

The Parliament on a yearly basis publishes statistics related to the Right to Information Act. These reports, prepared by the Council are an important source of information. However, more detailed statistics especially with regards to refusal to provide information should be provided and the annual individual public authority reports, as well as the Council annual report should detail use of exemptions and exceptions with regards to refusal to provide information by public authorities. This is a requirement by article 30(c) of the Right to Information Act but the Council and the individual authorities did not provide this information within its 2004, 2005, and 2006 reports. Article 30(e) of the Act also requires information to be published about the outcome of administrative court cases but this information is also not provided.⁷⁸

Recommendation 5: RTI Tracking Mechanisms

All public bodies should establish RTI requests tracking mechanisms. The Prime Ministry, through BIMER offers such a facility but this should be extended to all public authorities.

Recommendation 6: Arbitrary application of the law should be avoided

Some public authorities state on their websites that they would not accept applications if the requests are not drafted in a certain way or that certain information is not provided by the applicants. Furthermore, some public authorities have started to tag certain applications as vexatious or repeated but in most cases such repeated applications are triggered as a result of the public bodies resistance, refusal, and denial of information for no particular reason. Such arbitrary practices should be avoided in the future.

⁷⁸ A right to information request about this matter is pending as of this writing.

Recommendation 7: Detailed responses should be given to the applicants

In the case of refusal to provide information, public authorities should provide the applicants with detailed reasoning behind their decisions not to disclose information. Most authorities including the Council itself, seem to cite one of the exemptions in the Act without explaining why the applicant's request falls within that exemption with regards to right to information requests. Public interest arguments and the presumption of openness seem to be ignored as well as decisions of the Council which repeatedly stress that the applicants should be given detailed reasoning with regards to rejected applications. Public authorities often fail to tell the applicants about their right to appeal to the Council or their right to take their case to an administrative court. This crucial piece of information seems to be deliberately neglected from the refusal responses provided by a number of public authorities and this sort of practice should be avoided in the future.

Recommendation 8: Kiosks for lodging RTI requests

Consideration should be given for the development of kiosks for lodging RTI requests initially within municipalities and mayors offices as Internet penetration, especially in the eastern Turkey is low. The government, through the *e-Transformation Turkey project*,⁷⁹ run by the Prime Ministry's State Planning Organization, Information Society Department, can develop such kiosks for open public use. The 2006-2010 Turkish Information Society Strategy⁸⁰ includes strategic priorities with regards to citizen focused service transformation and modernization in public administration. For example, the BIMER system could be locally accessed through the kiosks set out in public buildings. The public can then lodge and track their applications electronically through such a kiosk.

Recommendation 9: The enactment of the Draft Data Protection Law should not be delayed any further

Although there is constitutional protection for a private life within the Turkish legal system (articles 20 and 22 under section 5 of the 1982 Constitution) there is currently no protection of personal data through data protection laws or through any other regulatory means. This issue deserves the highest consideration from the government, and the recently announced draft data protection law should be swiftly enacted.

Recommendation 10: Independent Oversight is needed for State Secrecy Decisions

The draft law on State Secrecy, if enacted, will establish two governmental bodies, the State Secrecy Council, and the State Secrecy High Council. The formation of both councils involve politicians and high-level ministers. However, it would be preferable to have an independent oversight body to oversee the decisions of the State Secrecy Council rather than a yet another high-level ministerial body.

⁷⁹ See generally <<http://www.bilgitoplumu.gov.tr/eng/default.asp>>.

⁸⁰ See <http://www.bilgitoplumu.gov.tr/eng/docs/Information%20Society%20Strategy_Turkey.pdf>.