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## **Freedom of Information in Moldova**

### **REPORT 2016**

Many countries in the world have adopted laws to support the right to information and to allow access for the general public to data that is held by national governments. Moldovan legal framework expressly provides the right to access information, both in the Constitution (art. 34) and in subsequent legislation, mainly through the Law 982/2000 on access to information.

According to the report prepared by SIGMA<sup>1</sup>, the legislation on access to public information is in place, but at the same time it does not clearly indicate what information should proactively be disclosed by the public administration. Also, the law does not clearly specify who is being responsible for monitoring the implementation of the legal provisions, as this is not assigned to a particular institution. As a consequence, there is no statistical data that would allow measuring the disclosure of public information, data such as number of requests, how many of them were approved or rejected, etc.

Due to the efforts directed towards increasing transparency and accountability of public institutions, the Government of Moldova records progress in the field of open data, an initiative that started in 2012. The main goal of this initiative is to facilitate the public access to governmental data, by making it available online, up to date, complete and accurate. As part of these efforts the governmental portal [date.gov.md](http://date.gov.md) was created to serve as one-stop shop for government data. Currently there are more than 900 datasets available, published by 48 authorities. According to the Open Data Index from 2015<sup>2</sup> Moldova is ranking 22<sup>nd</sup> place from 122 countries in the index. However, there is still more valuable data to be disclosed that is currently remaining locked up in state-owned registries, databases etc.

Having the legal framework in place, it still a challenge to measure the implementation of Right to information legal provisions, as there is no data that would allow to evaluate the current situation in Moldova. As part of the Open Government agenda that Moldova embraced in 2012 when the country joined the Open Government Partnership, the Law 305 on public sector information re-use was adopted, followed by a Government Resolution that sets up the methodology for implementing this law. According to Annex no. 7 of the Government Resolution no. 886/2013, public institutions should create an annual report where they should state the number of information requests, how many of them were submitted electronically, on paper, or how many of them were accepted, or if rejected, on what backgrounds. These reports should be available on the institutional websites, however this is not implemented.

Lastly, according to a survey conducted by local civil society organizations<sup>3</sup>, there is still place for improvement concerning freedom of information. Referring to central public authorities 57,7% of the respondents have assessed access to information of public interest as satisfactory, 15,4% assessed as being bad and 20,0% as good.

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<sup>1</sup>SIGMA (2015). Baseline Measurement Report: The Principles of Public Administration.

<sup>2</sup><http://index.okfn.org/place/moldova/>

<sup>3</sup>Chiriac L., Tugui E. (2014). Mapping Study: Civil Society Organizations from the Republic of Moldova: Development, Sustainability, and Participation in Political Dialogue.

***Which are the most widely spread risks and challenges (related to FOI / legal aspects) for investigative reporters in Moldova?***

There are several challenges that investigative reporters face related to FOI in Moldova. They can be divided in the following categories: challenges due to legal aspects, lack of technical skills, challenges related to access of paid data.

1. Legal aspects

Moldovan legislation states what information is considered to be public and should be disclosed and what information falls under national security, state secret, and commercial secret or personal data provisions. However, these aspects are generally explained, thus in many cases there is no clear line between what information should be public and which information cannot be disclosed. Thus, there is always space for interpretation and these legal provisions are often abusively used as instruments to stop information disclosure. Recently, there was a public debate related to the disclosure of company registry from Moldova, a database that is highly used by different actors, including investigative journalists. In the attempt to publish it as open data, there was contradiction on releasing shareholders names. On one side, this is an international practice and this data is being released worldwide to bring transparency in the business sector but also as instrument to fight corruption, but on the other side this data represents personal data according to the Moldovan data protection law. Thus, this kind of cases often challenges the investigative journalists to assess if the information requested has a public character or it cannot be disclosed.

2. Lack of technical knowledge and skills

In the era when digital technology is being widely used, a lot of information is available online. One of the challenges that journalists face nowadays is lacking the skills that would allow them to find, process and analyse data, or basically to tell a story based on the available data. Since data journalism is quite a new practice for Moldova, there is a need of rising awareness but also to empower the journalists' with different techniques such as data visualization, data analysis. This would help them to build stronger grounds for their articles or investigations.

3. Access to paid data

A lot of stated owned public data is currently released based on fees or individual contracts. Public institutions are selling valuable data such as company records and land ownership. Thus, this creates additional costs for the investigations that the journalists are undertaking.

***What is the average impact of investigations in Moldova concerning FOI / legal changes?***

Generally speaking, investigative journalism has been widely recognized as an anticorruption tool. As in other regions of the world, the main value of investigative journalism for Moldova is to contribute to political accountability but also to fight corruption. Investigative journalists address different corruption cases and seek reaction from law enforcement authorities, but also monitor the efficiency of the actions that follow. Investigations make political elites sensitive to news, especially to "bad" news that often causes a public agitation.<sup>4</sup>

As a consequence, public institutions tend to become more unresponsive to the FOI requests, unwilling to expose data, disclosing less valuable information for the journalists, citing legal provisions related to personal data protection or state secret. This phenomenon is generated by the fear of being publically

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<sup>4</sup> Waisbord S. (2001). Why democracy needs investigative journalism.

exposed, and the illegalities taking place in public institutions becoming subjects of public interest and discussions within society, especially on social media. In order to avoid this kind of public appearance, institutions often choose to be more secretive while processing FOI requests or publishing databases, thus limiting access to information of public interest.

***In Moldova, what can be done to improve***

***a. the impact of investigations in general***

The publication of news about political and economic wrongdoing should ideally trigger judicial investigations. However, there is no guarantee that investigations will result in prosecuting those responsible for wrongdoing. Nonetheless, continuous press attention should remind policy makers, agenda-setting powers and citizens about the existence of certain issues. Thus, in cases where public authorities fail to conduct further investigations, it is the role of civil society, citizens and media to keep monitoring the efficiency of public authorities while governing. For example, independent experts could support investigations with recommendations, solutions, policy briefs that would result in follow-ups to the journalistic investigations. Cooperation between civil society, local experts, journalists, developers' community could lead to better investigations with higher impact and follow up.

***b. the legal situation for FOI / the legal security of the investigations***

According to different reports addressing legal framework for FOI but also judging by the opinion of different journalists from Moldova, the national Access to information Law requires changes and adjustments. During a public debate organized by The Center for Independent Journalism in 2015<sup>5</sup> on the actuality of Moldova FOI Law, journalists came up with recommendations that were mainly directed towards adjusting the current law. For instance, at the moment there is no mechanism to sanction public institutions for failure to comply with the Law on Access to Information. Such a mechanism, supported by best practice guides for public servants could indirectly increase the access to information of public interest.

***Please name three main FOI / legal obstacles for investigations in Moldova.***

- Limited access to public records and information of public interest
- Paid data, often too expensive
- Lack of clarity within legal framework regulating different aspects that can occur during an investigation

***Is there any point / field / issue that you don't have any hope for change within the next 5 years in terms of FOI / media law? Why do you think so?***

One of the major challenges that there is no hope to be solved soon is access to paid data, which is often highly used by journalists. There is a business-model built around this data by state owned enterprises that use public information as an income source. On one side, this is a phenomenon deeply rooted in the public sector of Moldova since the independence, as state owned enterprises were created to help the state in fulfilling its responsibilities. There are internal regulations that establish the mandate of such institutions, including allowing them to commercialize data. On the other side, speaking from an

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<sup>5</sup> <http://media-azi.md/ro/stiri/legea-cu-privire-la-accesul-la-informa%C8%9Bie-trebuie-ajustat%C4%83-la-necesit%C4%83%C8%9Bile-timpului>

economical point of view, in the case of releasing this data for free, institutions should identify additional budgetary sources to cover the costs to ensure the maintenance and proper function of such data registries. Thus, there is a need of strong political will to undertake such a reform, but also to find a solution of compromise for data suppliers and consumers.

***Do you see any benefit in professional FOI / media law exchange on a transnational level? Please explain your answer.***

Due to globalization, the world became highly interconnected and different phenomena that are taking place in one country can significantly affect the life of citizens in other countries. Or, as in the case of Moldova, the disappearance of one billion dollars from the banking system would not be possible without the implication of citizens and organizations from neighboring countries such as Ukraine, or more remote ones such as Russia, Latvia, etc. A local problem that is a big hole in the budget affecting the life of Moldovan citizens instantly became subject of transnational interest and investigation. In this case, exchanges of practices, knowledge, etc. at a transnational level including access to information practices are indispensable for tracking, monitoring different phenomena taking place at a regional or even international level.

Also, the necessity of having transnational exchange is reasoned from a legal point of view. For example, the Moldovan FOI Law sets legal backgrounds for accessing information only for its citizens, excluding foreigners or foreigners living currently in Moldova. As a consequence, sometimes, accessing data for journalists outside of Moldova could be a challenge without the help of a local journalist, since there is no local legal provision regulating these cases, except from the cases where Moldova is part of international conventions, such as for example the Aarhus Convention on access to environment data.

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*This report has been completed with the support of [n-vestigate](#), an investigative network by n-ost and four partners from Eastern Europe that implements cooperative, which more deeply anchors investigative journalism within each country's respective society.*