

THE SILENT STATE

Access to information in Italy

Results and recommendations
from first national monitoring

Diritto Di Sapere
Access-Info Europe

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This report and its recommendations are based on the findings of the monitoring study conducted in Italy and jointly coordinated by Diritto Di Sapere and Access-Info Europe.

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1. EXECUTIVE SUMMARY

This report presents the results of the first ever conducted monitoring study testing access to government held information in Italy. Thirtythree representatives of civil society organizations, journalists and other members of the public participated in the testing exercise by submitting 300 requests of information to public authorities across nine thematic areas, namely: environment, human rights, justice, public spending, education, social services, government performances, financial investments and health.

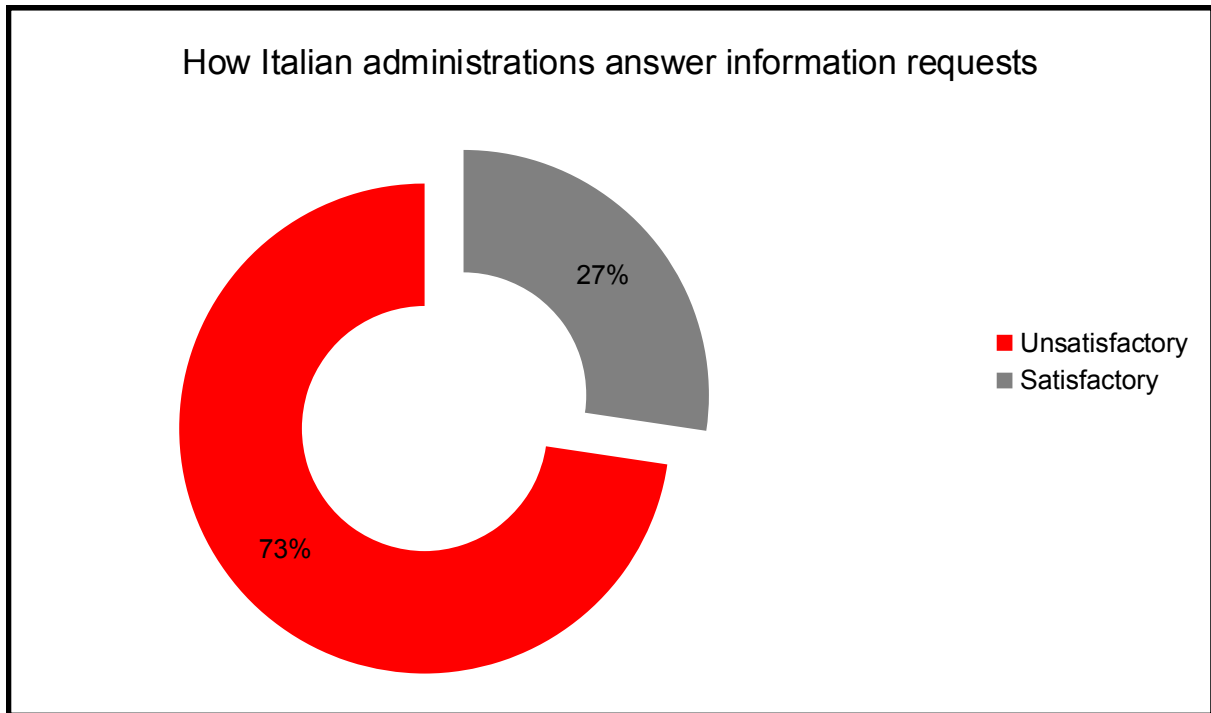


Fig. 1. The combined results of the monitoring study

A key finding is that less than one quarter of the requests resulted in information being provided to the requester. Only 27% of requests led to fully satisfactory information being provided whereas 73% of all responses was not compliant with right to information international standards. The level of administrative silence (complete lack of response from the public authorities after 30 calendar days) was extremely high, representing 65% of all requests.

The overall outcomes of this monitoring study reveal extremely low levels of compliance with international standards. The results are particularly disappointing in the context of this exercise in which the questions were deliberately and carefully selected so as to be related to important issues of public interest, but also avoiding any controversial request which could potentially meet legal exemptions to the right of access.

Moreover, a recent Italian legislative initiative¹ adopted in favour of proactive transparency does not guarantee a more solid access to information, as it fails to introduce effective rules and to empower the citizens to enforce the right to information in practice. The data gathered for this report constitute unequivocal empirical evidence that Italy urgently needs a more comprehensive and consistent legal and institutional framework on access to government held information, if it wants to provide its citizens with a right of access to information in line with international standards.

¹.Italy recently passed a new transparency law (33/2013). Presented as an "Italian Foia", in fact it only prescribes more measures for proactive disclosure, leaving the current access regulation untouched.

2. INTRODUCTION

This report presents the results of a monitoring study completed between January and March 2013 by Diritto di Sapere and a group of contributors, to explore how access to government information works in practice in Italy. The report starts by briefly introducing the right of access to information and the international standards on which we aim to assess the current Italian legal framework. After describing the methodology and providing a general overview of the main results, it analyses the responses through various filters and indicates a series of recommendations.

The scope of this work is to assess the effectiveness of the Italian legal framework and practice, and to compare it with the international standards of the right to access. This monitoring is the largest ever national-wide access to information study conducted in Italy. It comprises 300 requests submitted to more than 100 public bodies by 33 persons. These results provide an empirical assessment of the access to information regime currently in practice. Our aim is to advocate for the adoption of a proper Access to Information Law in Italy.

The testing exercise generated two different types of information. First, it tested the responsiveness of public authorities to citizens' requests. Secondly, it provided a series of comparable data in response to the specific questions in nine thematic areas.

The questions were specifically designed to be uncontroversial in the sense that they did not raise issues regarding exceptions to the right of access. The testing was conducted with rigorous controls and designed to ensure maximum comparability of results. Given the online tailor-made tracking system used, it generated a series of empirical data about how access to information works in Italy: type of requests, responsiveness rates, response times, attitude of public officials towards RTI, openness and transparency.

THE IMPORTANCE OF ACCESS TO INFORMATION

The right to access has become so much of a benchmark for open democracies to be recently recognized as a fundamental human right, linked to the freedom of expression of any individual, regardless of their citizen status. This is stated by several international covenants and declarations on human rights² and ruled by the Inter-American Court of Human Rights (2006) and the European Court of Human Rights (2009)³.

Accessing information and data on the workings of government is instrumental for citizens to fully participate in the public decision-making process and to hold governments responsible for their actions, as transparency directly increases the accountability of public officials.

Originally developed in the Nordic European countries, the right to access then spread in the new democracies of the rest of Europe and to other continents. Today, constitutions, national laws on freedom of information (FOI) or access to information and jurisprudence of more than 90 countries provide people with mechanisms to request and obtain information from governments. Almost all national laws recognize access to information as a fundamental civil right.

2. Art. 19 of The Universal Declaration of Human Rights adopted in 1948 by the United Nations.

3. The key ruling of the Inter-American Court of Human Rights 19 September 2006 is *Claude Reyes and others v. Chile*, Series C No. 151 <http://www.corteidh.or.cr/casos.cfm?idCaso=245&CFID=525202&CFTOKEN=97319768>. The decision of the European Court of Human Rights of 14 April 2009 is that brought by the Hungarian Civil Liberties Union, *Társaság a Szabadságjogokért v. Hungary* (App no 37374/05), ECHR, see <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=849278&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

Access to information is also widely considered instrumental in the fight against corruption as it empowers a wide range of stakeholders, including public officials, prosecutors, civil society, media and the wider public, to scrutinize the activities of governments.

The UN Convention against Corruption and other anti-corruption treaties therefore include an obligation for States to provide effective access to information, so as to promote civil society participation in the prevention of and fight against corruption.

The 2009 Council of Europe Convention on Access to Official Documents⁴ is the first international treaty to introduce a general right of access to documents held by public authorities. The treaty is currently open for signature by member States and for recognition by non-member States and by any international organization. It will come into force after being ratified by 10 member States. At the time of writing, Italy has not signed the treaty yet.

THE RIGHT OF ACCESS TO INFORMATION

The right of access to information is a fundamental right recognized internationally as such. Because of the representative nature of democratic governments, it is a right essential to promote transparency of public institutions and to encourage public participation in decision-making.

The right of access includes two elements (proactive and reactive) generating different, yet complementary, obligations by the public authorities:

Proactive Disclosure: the obligation of public bodies to provide, publish and disseminate information about their activities, budgets and policies in a way that allows the public to use it easily.

Reactive Disclosure: the right of all persons to ask public officials for any information held by public authorities, and the right to receive a response.

4. <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=205&CM=1&CL=ENG>

THE STATE OF ACCESS TO INFORMATION IN ITALY

Italy has joined the Open Government Partnership in 2010 and has taken important steps over the last year to improve its transparency standards.

However, Italy still lacks a proper Freedom of Information Act, and its legal framework on access to information is considered by international experts and organizations to be among the most restrictive in Europe. Law 241/1990⁵ (The Administrative Procedure Act) remains the cornerstone of the current regulations of access, according to which⁶:

1. right of access shall mean the right of interested parties to inspect and take copies of administrative documents;
2. interested parties shall mean all private parties (including those having interests that are public or diffuse) who have a direct, concrete and currently existing interest, corresponding to a legally protected situation that is linked to the document to which access is requested;
3. requests of access made with the aim of generally monitoring the work of public authorities shall not be admissible;
4. public bodies must respond to requests within 30 days, but can withhold information related to security, national defense and international relations, public order and monetary and foreign exchange policy.

Since 2009, a series of different regulations (Legge 15/2009⁷; Law 150/2009⁸; Law 183/2010⁹; Decreto Crescita 2.0 - Agenda digitale¹⁰; Decreto Legge n. 83/2012¹¹; Decreto Trasparenza 33/2013¹²) have introduced in the Italian legal system principles such as the full disclosure of all information regarding the activities of public institutions and the total accessibility, also by electronic means, of all public data and information.

These new regulations have added several proactive elements of disclosure with the potential to improve the overall transparency and facilitate access to information. However, no measures on proactive disclosure have been introduced, as law 241/90 has remained untouched. Therefore, Italy is still lacking a proper Freedom of Information Act.

Moreover, recent work from Agorà Digitale¹³, an organization working on transparency and digital rights, has shown that Italian Administrations often do not abide even the proactive disclosure regulations, effective since January 2013. In this perspective, a strong and efficient access to information system is even more important to ensuring a real and effective democratic participation of citizens to public life.

5. <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1990-08-07;241!vig=>

6. from Section 22 - Definitions and Principles regarding Access

7. <http://www.camera.it/parlam/leggi/090151.htm>

8. <http://www.camera.it/parlam/leggi/deleghe/09150dl.htm>

9. <http://normativo.inail.it/bdninternet/docs/L1832010.htm>

10. <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto-legge:2012-10-18;179>

11. <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2012-06-22;83>

12. http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2013-04-05&atto.codiceRedazionale=13G00076&elenco30giorni=false

13. <http://www.eradellatrasparenza.it/>

3. METHODOLOGY

The methodology applied in collecting data for this report makes its findings comparable to similar studies conducted in other countries in Europe and elsewhere. We recruited 40 monitors from 35 different organizations. Of the initial group, 33 people from 32 organizations submitted 300 questions to different branches and levels of the Italian public administration.

The monitors' information requests, mostly suggested by the monitors themselves, covered the whole spectrum of the public administration activities and were sent between January 9th and February 24th, 2013.

All monitors are Italian citizens, coming either from the media community (staff journalists as well as freelancers) or from civil society organizations¹⁴.

Questions were submitted directly by monitors using their email accounts, in two different templates:

1) International: in accordance with international access standards, requests were filed without stating the motivation of the submitter, neither giving details on her affiliation nor providing personal details, apart from the information that were strictly necessary to reply.

2) Italian: requests were filed taking into account the current Italian access law (L. 241/1990) that requires submitters to provide a copy of their ID document and to justify their legitimate interest in accessing the requested information. For this format, when possible, monitors also used PEC accounts (certified electronic mail), which assured the same traceability of traditional registered mail. Some of the journalists involved have also filed requests stating their profession, and thus providing another internal measure of the Italian system between access for the media and laymen.

This methodology allows us to draw the first on-the-ground assessment on two fronts. The first one is a comparison with the right to information and access procedures on the international level, therefore allowing a evaluate differences between Italy and countries with different RTI regulations - and, namely, with a Foia law. The second assessment we are able to make is on the efficacy and efficiency of Italian access to information procedures. This assessment is based on data gathered in the field and is a welcome novelty since all previous studies have so far been conducted by evaluating Italian access laws exclusively on paper.

According to the Italian law, institutions should answer requests within 30 days from submission. We considered a wider timeframe and tracked answers up to 60 days. After this period, we marked the answer as "mute refusal".

Data produced from the filings were gathered through our online platform ReqTrack¹⁵, where monitors entered data for each of their requests and the relative outcomes.

Two rounds of recalls (by email and phone) were conducted by Diritto di Sapere to gather and proofread the collected data. Elaboration and analysis of the data were conducted internally by Diritto Di Sapere.

14. Requesters collaborating to this report are affiliate of or collaborate with the following organizations: ActionAid, Avviso Pubblico, DataJournalism.it, Dire donne in rete contro la violenza, F5, Formicablu, FramesOnline, L'Espresso, Centro Hermes, IRPI, La 7 - In Onda, La Nuova Ecologia - Legambiente, La Stampa, ORF, PersonalDemocracyMedia, Radio Città del Capo, Radio3 Scienza, La Repubblica, Il Sole 24ore, Techpresident, Transparency International Italia, Wired, World Economic Forum - Global Shapers Community.

15. <http://echo720.server4you.net/>

3.1. The classification of outcomes used in the monitoring study

Information Received (COMPLIANT OUTCOME): The requested information is provided, in written or oral form. The information answers the question asked and is complete.

Partial access (COMPLIANT OUTCOME): Documents are delivered with blackened out or deleted sections, the information is otherwise incomplete on grounds provided for by law. As long as the authority clearly states the grounds for withholding some information, partial access is considered a satisfactory response compliant with the right of access.

Inadequate answer (NON COMPLIANT OUTCOME): Information provided is unsatisfactory as it is largely incomplete, minimal, irrelevant, or in some other way unsatisfactory, demonstrating a disregard for the right of access to information. For example, “inadequate answer” was recorded in the case of a series of documents that did not include any relevant answer to a very specific question asked, or if a requester was directed to a website which did not contain the requested information.

Mute Refusal (NON COMPLIANT OUTCOME): No response at all from the contacted authorities. There is no formal refusal, but no information is provided. This outcome constitutes "administrative silence" and was recorded after the 30 days timeframe for answering requests expired. In Italy, administrative silence allows appealing after 30 days, but the process is extremely long, thus often discouraging citizens and reporters.

Written refusal (COMPLIANT OUTCOME): Requested information is denied with an explicit answer stating the grounds for withholding information. Written refusals provide a basis for appealing decisions, and so are useful even when non compliant (for example, when the grounds for refusal are inadequate or unstated). For this study, we generally assumed written refusals to be compliant, except in cases where they clearly were not, such as, for example, when two similar requests were treated differently.

4. MAIN FINDINGS

A. Silence is the norm: extremely high levels of no response at all

No information of overall satisfactory level was provided in response to 73% of the requests and 65% were met with “mute refusal”. In this study, a “mute refusal” is a failure by a government body to respond in any way to a request for information within 30 days. Requesters who took part in this monitoring study received mute refusals for 196 out of 300 (65%) of their requests.

The failure to respond to an access to information request is in itself a violation of the right of access and is inconsistent with the spirit of democracy: whether or not the government body holds the information, and whether or not that information falls under a legitimate exception which may justify not releasing it, there is always an obligation to respond to the requester. Mute refusals effectively alienate citizens from government, limiting their ability to effectively and meaningfully participate in public decision-making.

B. Extremely low level of written refusals

Only 4% of the refusals were written and motivated. This clearly reflects a widespread lack of access to information culture within the public administration which is supposed to work on behalf of the taxpayers. Despite few exceptions, this reveals that public servants are generally reluctant to engage with citizens' requests which are not part of their ordinary procedure. Among other factors, this attitude concurs to produce public mistrust in the government.

C. Low level of satisfactory rate of responses

Positive responses are those providing adequate or partly, yet satisfactory, information. Overall, 13% of answers (a total of 40 out of 300) provided fully satisfactory information, meaning the answers can be considered useful or actionable, whereas 10% (29) are only partially satisfactory.

That only 13% of answers were complete and provided all the information which had been requested is an extremely low rate of response, given how difficult and rare it is to get an answer. Even when requesters were fully compliant with the strict requirements of the current legal framework, the quality of the response was significantly poor.

5. ANALYSIS

What would you like to know about your government workings, both at the local and at the national level? We offered our monitors some suggestions coming from our personal experience as well as from previous monitoring works on access to information done elsewhere in Europe. However, most of the questions were spontaneously generated by the participants to the monitoring exercise.

We have splitted up the outcomes by institutions but also by format, thus producing two different sets of indicators of access to information in Italy: one set allowing us to compare our results at the international level and another one to evaluate the efficiency of the current Italian regulations.

In addition, we also looked at differences in outcomes between requests filed by both citizens' and civil society organizations and those submitted by journalists stating their media affiliation.

5.1. The requests

Unsurprisingly, most requests addressed public expenditure of different levels of the government (45% of total), followed by health and justice, but overall the monitoring covered the full spectrum of government activities. Recent regulations force Public Administrations to publish all their expense data but often this comes in aggregated figures which don't allow the necessary transparency.

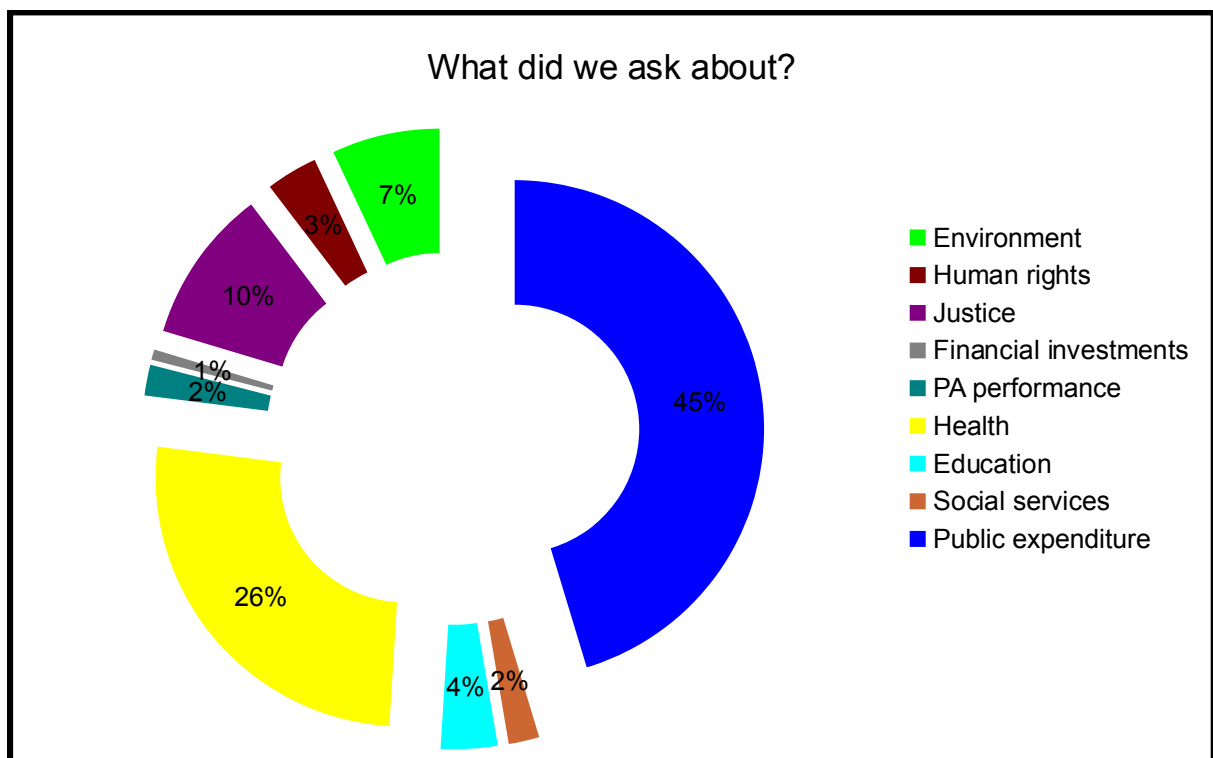


Fig. 2. The areas covered by the requests

5.2. The addressees

While requests were addressed to all levels of the government, the largest slice of inquiries involved three subjects. Municipalities and regions are pretty straightforward for the importance and reach of their competences on the life of citizens. The third major subject addressed by monitors (marked as "other") were police forces, namely Carabinieri and Prefettura. The first ones were asked about health inspections in restaurants, while the latter were addressed concerning public expenditure on immigrant temporary hosting centers.

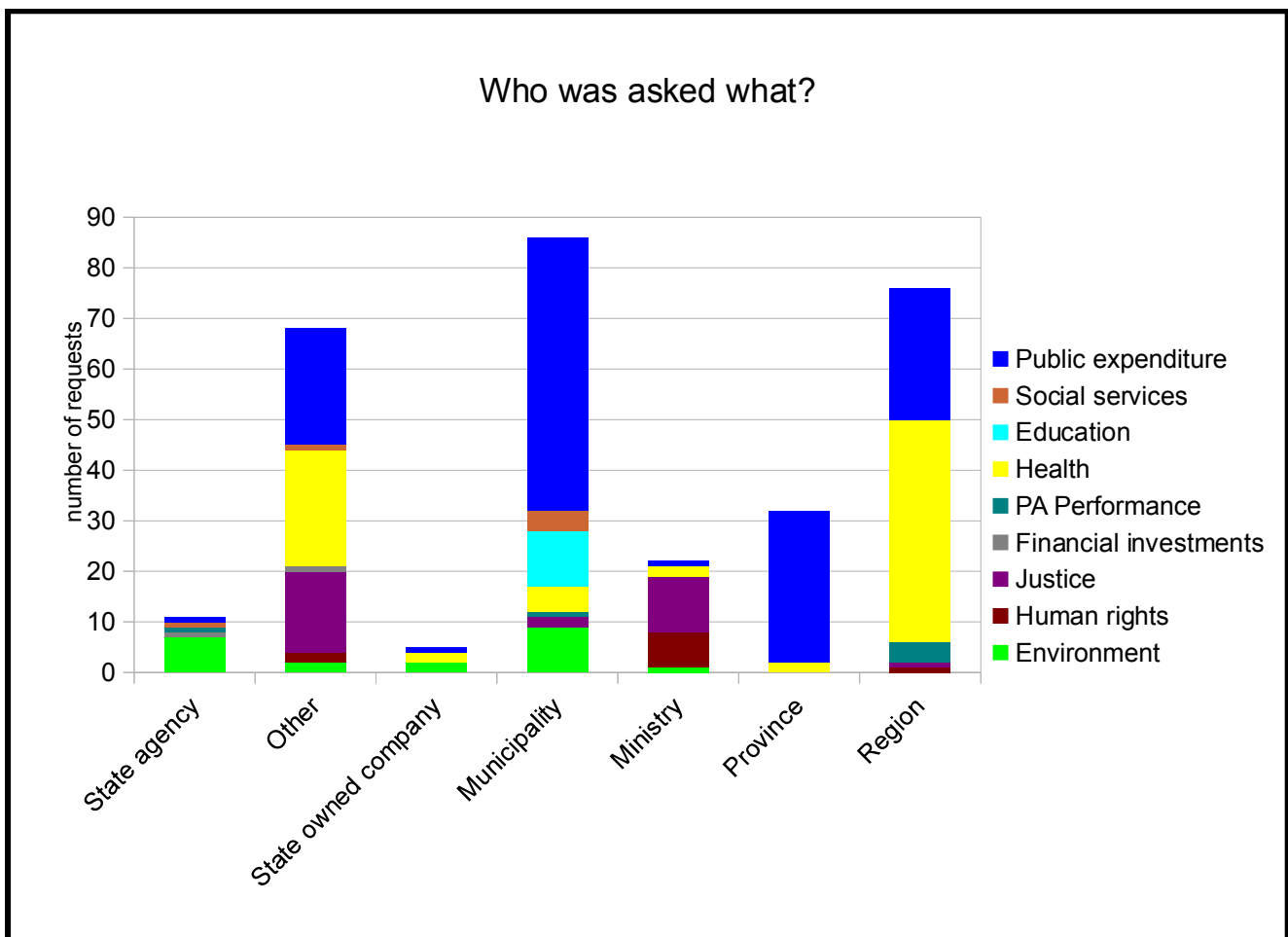


Fig. 3. The requests by area and addressee

5.3. The main outcomes

By and large, Italians perceive their government as a remote entity from which answers come rarely and unsatisfactorily. Sadly enough, our experimental inquiry actually confirms what otherwise might sound a commonplace description of Italian institutions. Except for a few cases of excellence (see further on the data about the response time), requests have largely been met with mute refusal (technically no answer from the institution after 30 days, but we counted until 60).

The most unpleasant and worrying outcome is the overall failure rate of information requests. Little more than one request out of ten (13%) receives a satisfactory answer and, summing all the different reasons for failure, in almost three cases out of four (73%), the requester doesn't receive the information he asked for.

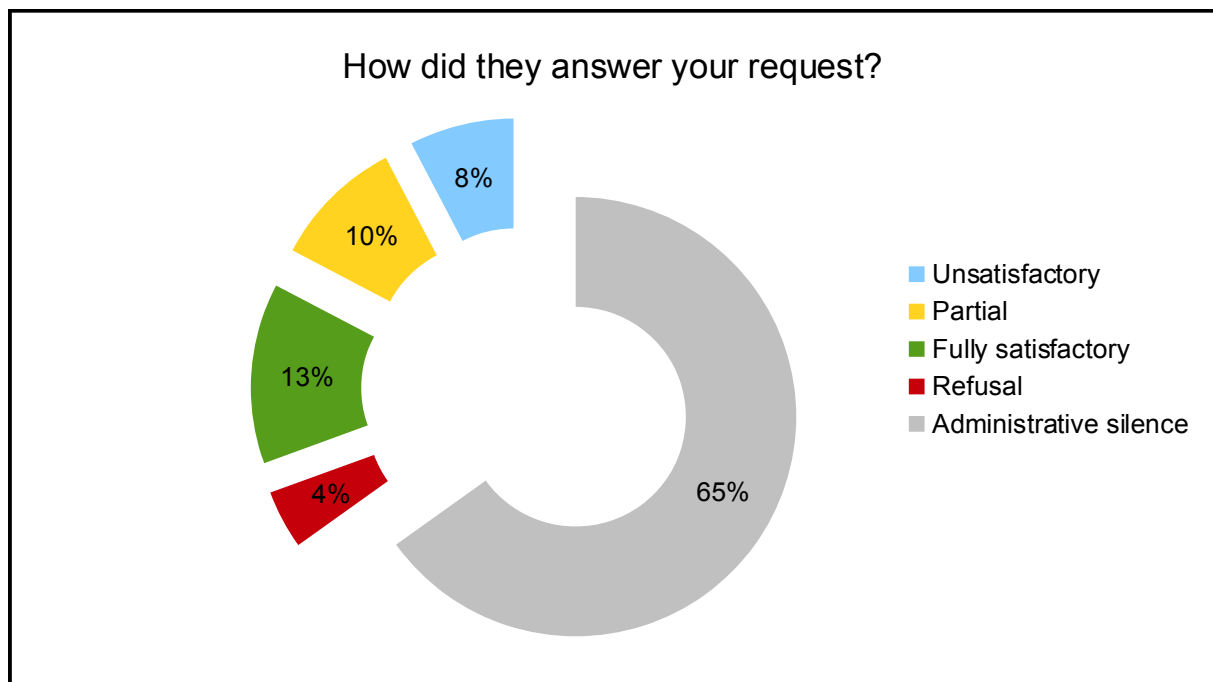


Fig. 4. The answers to the requests

5.4. Answer-parsimonious administrators

In general, Italian public administrators don't seem very keen on providing information to citizens who request it. Municipalities are the sorest point with the highest ratio of written refusals (62%), second highest for mute refusals (24%) and a moderate success rate of requests (28%). Regions, while showing a similar score in terms of mute refusal, fare much better in terms of reactive disclosure (43% of answers came from those institutions).

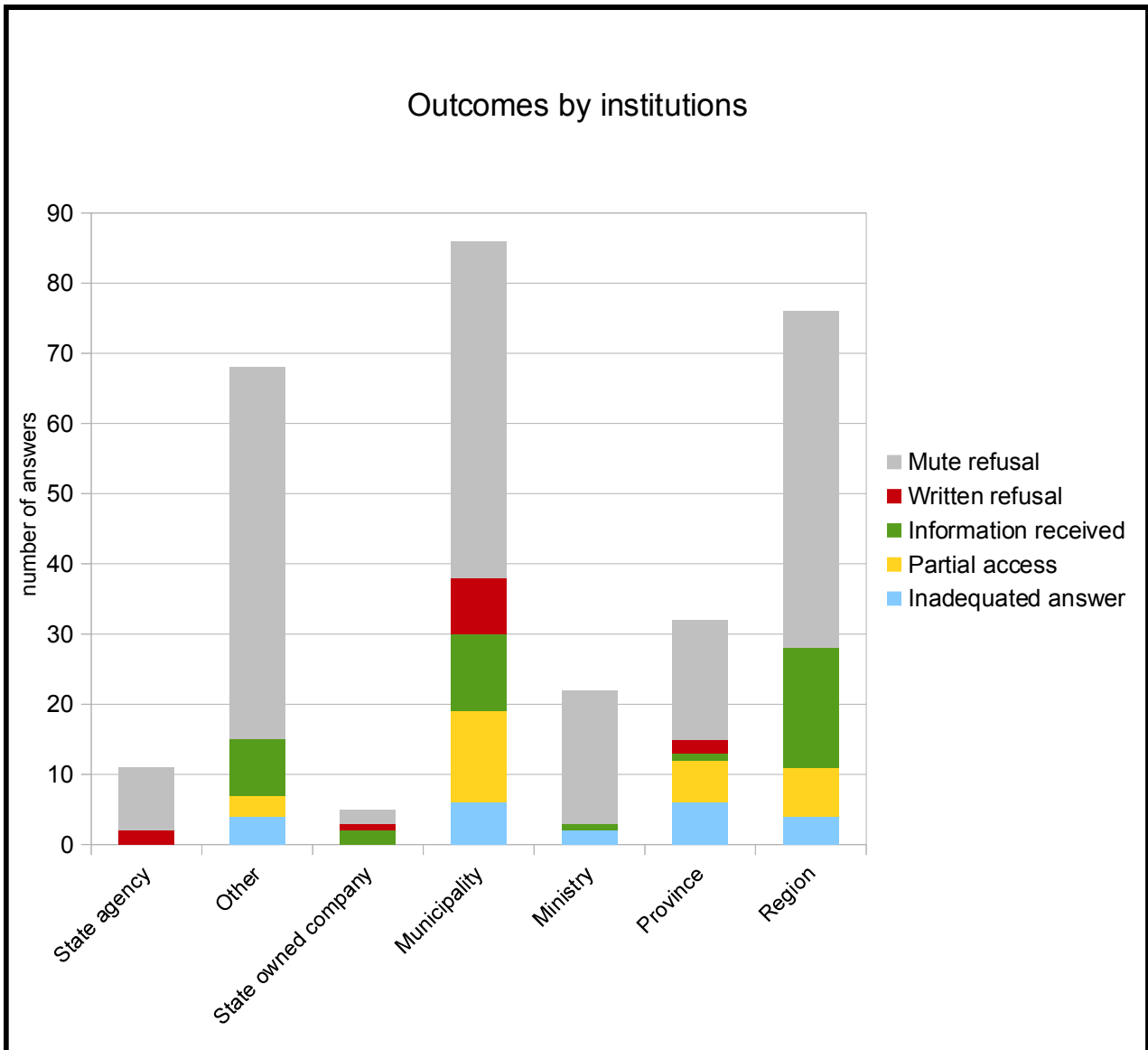


Fig. 5. The answers by responder

5.5. Response time

In Europe, the average time limit for answering information requests is 14 days, while in Italy it is 30. Our data show that, in spite of the huge slice of requests they meet with mute refusal (more than 50% of what they receive), when they do answer Municipalities score very well in terms of response time, with an average of two weeks. Larger or more peripheral institutions and State agencies, Ministries and Regions tend instead to exceed the 30 days prescribed by Italian law with an average response time ranging from 37 to 46 days.

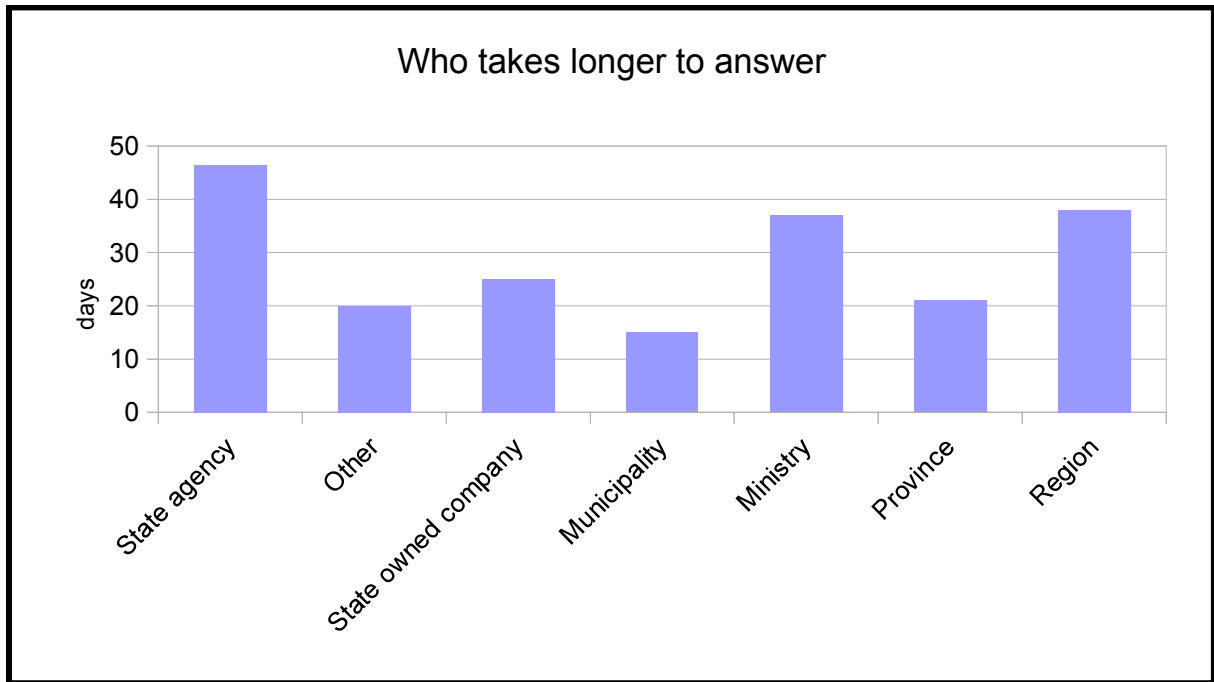


Fig. 6. The response times by administration

5.6. The format

According to Italian law, the format of your request is crucial if you want it to be taken into consideration. The Italian access law requires you provide copies of your ID, and state the reasons of your legitimate interest in the information you are asking for. This procedure is very different from regulations in other countries, both in Europe and elsewhere, in which you are usually required to simply file your request without detailing the reasons behind your interest. In fact, the Italian system clearly clashes with Art. 4 of the Convention of the Council of Europe¹⁶ stating that for requests for access to official documents:

- 1) An applicant for an official document shall not be obliged to give reasons for having access to the document.
- 2) Parties may give applicants the right to remain anonymous except when disclosure of identity is essential in order to process the request.
- 3) Formalities for requests shall not exceed what is essential in order to process the request.

We therefore designed the monitoring in order to take into account both request formats, Italian and International, and make our data useful for comparing Italy to the rest of the world as well as to gain an internal measure of the system.

The data we gathered shows the outcome of the requests seems fairly independent from the format used. Monitors filing their requests in the International format (email, not stating their legitimate interest nor providing copies of their IDs) received slightly more written refusals but overall seem to end better off than those using the Italian format. It should be noted different institutions have different standards. Police and Ministry of Justice, for instance, seem to strictly require the Italian format, while Municipalities accept the International format more often.

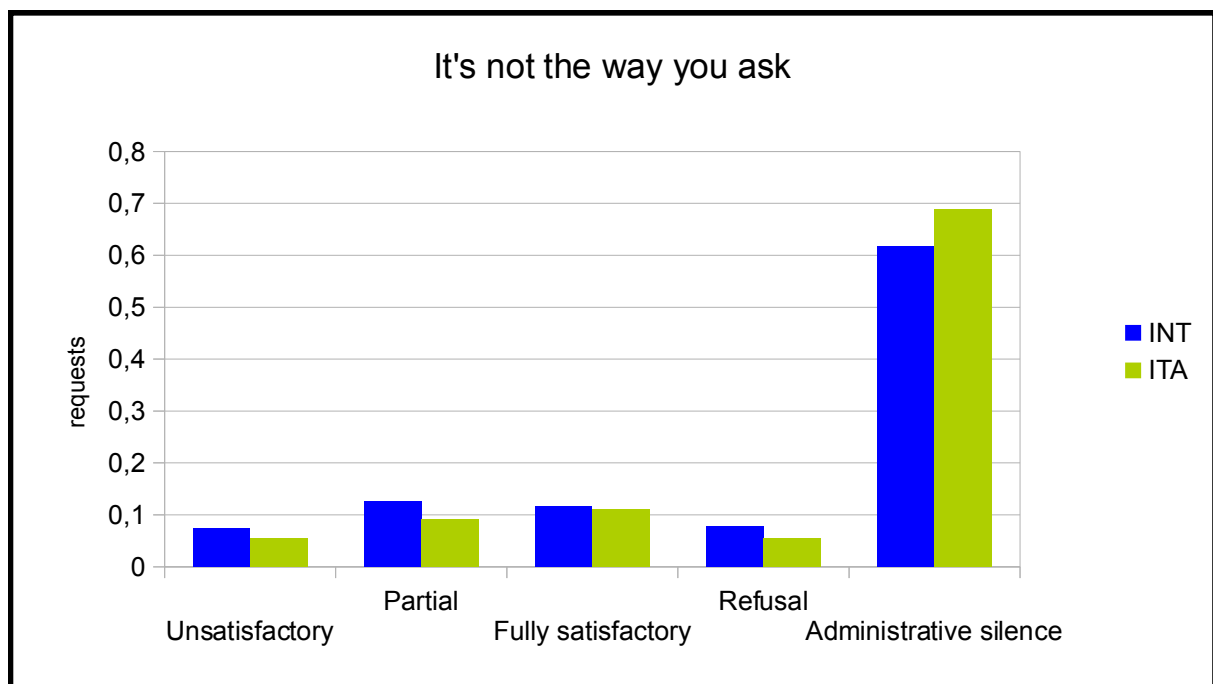


Fig. 7. Outcomes by request format

16. http://www.access-info.org/documents/Access_Docs/Thinking/Principles/Council_of_Europe_Convention_on_Access_to_Official_Documents.pdf

5.7. No media privileges

How well do Italian citizens and media fare in accessing information from their government? We have evaluated this question in the most analytical way and, with data collected by tracking the requests of our monitors, here is the first on-the-ground mapping of access to information in Italy.

Our analysis shows Italian media, often regarded as a caste with unique privileges and preferential access to institutions and decision makers, is not, in fact, significantly more successful than the average citizen when uses the Italian access law to request information. This happens in spite of a regulation that, at least on paper, would seem to grant access to media professionals as representatives of the general public interest, and thus not obliged to justify in detail their legitimate interest in the information they request.

Media professionals seem to benefit from a little more attention among those who do get answers, but in the end hit the same wall of mute refusal experienced by individual citizens and civil society organisations.

This result means that requesting information through conventional access to information channels is a very inefficient approach for the media as the odds of actually obtaining what you need for a story and in reasonable time are very low. Several journalists participating in this monitoring work reported having their requests transferred to the press office rather than dealt by the office in charge of information requests.

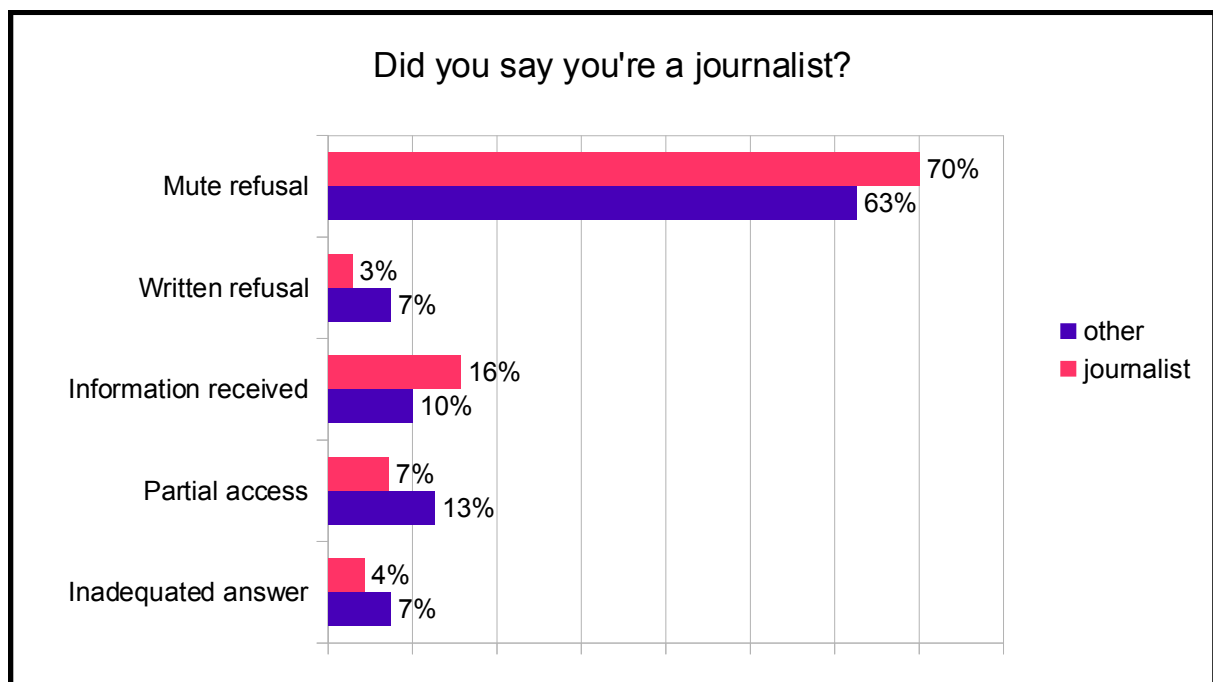


Fig. 8. Outcomes for media and non media requesters

4. RECOMMENDATIONS

Based on the evidence gathered through this monitoring, Diritto Di Sapere, together with its national and international partners, urge the Italian government to take a number of actions as follows:

- 1) Reform Law 241/1990 and adopt, without delay, a comprehensive and consistent law on access to information, ensuring that the right to information meets international standards. In doing so, it should open the policymaking process to civil society organizations.
- 2) In order to set up a more effective legal framework, consider the individual right of access to information as the cornerstone of any legislative initiative regarding transparency and accountability.
- 3) Establish accountability and transparency as key priorities to regain public trust in its work.
- 4) Train public officials on the international standards of the right to access to information in order to ignite a culture of openness within the public administration, and make sure the Open Government Partnership action plan includes strong measures on transparency.

On their side, Civil Society Organizations and journalists should:

- 1) Advocate for the immediate adoption and implementation of an access to information law.
- 2) Ask the government to be consulted in the policymaking process since the first stage.
- 3) Make use of public information requests as part of their modus operandi.
- 4) Systematically gather data on access to information requests and their eventual outcomes, in order to build a database of information. This resource can be helpful in highlighting problems and systemic failures to respect the right to information.
- 5) Ask the government to proactively publish public-interest information and data in a open and machine readable format.
- 6) Advocate for adequate data collection, compilation and publication by government as a basis for adequate policymaking.