

1. Development of access to public information in Slovenia

The right to freedom of speech and access to public documents was laid down by the Constitution in 1991, when Slovenia was established as a new independent country. The right to access to public information is governed by Article 39 of the Constitution under the chapter on human rights and basic freedoms. This right, which reflects the essence of democracy, enables the citizens to gain insight into the work of state bodies by enabling supervision over their activities. Access to public information is regulated by the Access to Public Information Act, which was adopted in 2003 in order to ensure that the work of the public sector is public and open and that everyone has free access to public information. The implementation of the law was entrusted to an independent state body, i.e. the Commissioner for Access to Public Information. In 2005, the Public Information Act was amended by introducing the public interest test. This was a significant step forward in limiting the possibility of unjust withholding of information. In this way Slovenia joined other democratic countries in endeavours to treat the exemptions with reservation for the benefit of protecting public interests.

2. Novelties in the field of access to public information in Slovenia

The amended Public Information Act (ZDIJZ), which came into force on 15 July, 2005, introduces a number of novelties: re-use of information, the powers of administrative inspection in implementing this Act, and the public interest test. The latter has greatly contributed to the openness and transparency of the public sector's work. The majority of exemptions, where the public interest test cannot be exercised, have become relative and only five exemptions remained absolute.

With the passing of the Act on Information Commissioner, which came into force on the beginning of 2006, the powers of the body, responsible for the implementation of access to public information, have been extended also to the protection of personal data. The Commissioner for Access to Public Information has become Information Commissioner and has the power to process appeals against decisions of other bodies which have denied access to public information. In accordance with the Personal Data Protection Act the Commissioner has assumed the function of chief national supervisor, surveying the legality of personal data processing, taking measures for their

protection and implementing procedures for protecting these. The Commissioner supervises the implementation of the legal provisions governing the catalogue of personal databases, register of personal data collections, which is also maintained by the Commissioner, and registering personal data supply to the users of personal data. The Commissioner also supervises the implementation of the provisions of the law on supplying data to a third country and supply of information to other users of personal data.

3. Exemptions – when caution in disclosing information is necessary and when the applicants can expect that the request for access to information might be denied.

The amended Access to Public Information Act enumerates 11 exemptions where an authorised body may deny access to information. These are:

1. classified information;
2. business secret;
3. protected personal data;
4. data, entrusted for processing to the Statistical Office of the Republic Slovenia;
5. breaching confidentiality of data from tax proceedings or tax secrets;
6. data on criminal prosecutions or proceedings dealing with violations, the disclosure of which might harm such procedures;
7. data related to administrative proceedings the disclosure of which might harm their implementation;
8. data related to judicial proceedings the disclosure of which might harm their implementation;
9. data from an uncompleted document, the disclosure of which might cause misinterpretation of its contents;
10. data which protects the natural or cultural heritage;

11. internal documents of a body, the disclosure of which might disrupt its work.

However, the above mentioned exemptions may never be reason for denying access if the following types of data are in question:

1. public funds expenditures, performing public functions, employment relationship of civil servants, except in rare exemptions, defined by ZDIJZ;
2. information on environmental pollution.

Access to the requested information may be granted if public interest prevails over legally set limitations. The public interest test cannot be implemented if the following data are in question:

1. data labelled as »top secret« and »secret«;
2. tax secrets of physical entities;
3. statistically confidential data;
4. confidential information of other countries or international organisations;
5. tax data supplied to Slovenian bodies by other countries.

However, even in the cases mentioned above, the Information Commissioner can examine such documents and alert the authorities about possible abuse of such documents.



6 4. Public Interest Test

The Public Interest Test is the highest form of judgement a country may utilise in issues of access to public information. However, it needs to be noted that the public interest test is an exemption above all exemptions and needs to be applied with caution and only in cases when the case refers to disclosure of facts which would enhance better understanding of something that has significant relevance to the broader public.

Public interest test: what is?

Public interest test is the so called balance test, used by officials, by the Commissioner as an appeal body, and by courts in administrative dispute proceedings to weigh whether the right of the broader public to know prevails over other rights, or exemptions laid down by Article 6 of the ZDIJZ. In particular it is necessary to weigh between the negative and positive effects of disclosing information, and whether the right to know (i.e. public interest), or one of the exemptions from ZDIJZ prevails. As the UK Commissioner noted, a crucial factor in judgements when the public interest test is applied should be: what is interesting for the public is not necessarily also in the public interest.

7 5. Who is responsible for implementing the public interest test and the time frame?

When in doubt as to whether public interest in the disclosure of information is stronger than the public interest for limiting access to the information, the following bodies are liable to take the final decision based on the opinion of a body:

- the Government of the Republic of Slovenia, if the authorised institutions are state administrative bodies, state attorney or prosecutor, public powers holders, performers of public services and entities of public law established by the state;
- the Supreme court if the authorised institutions are courts;
- self-governing local community councils if the authorised institutions are self-governing local communities, public powers holders, performers of public services at the local community level.

In such cases the institution responsible needs to submit to the competent body a proposed decision within 15 working days from receipt of the request. The competent body needs to bring a decision within 15 days.

Contacts

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REPUBLIC OF SLOVENIA
MINISTRY OF PUBLIC ADMINISTRATION

Tržaška cesta 21
1000 Ljubljana

Telephone: +386 (01) 478 8330
e-mail: gp.mju@gov.si
<http://www.mju.gov.si>



INFORMATION
COMMISSIONER



REPUBLIC OF SLOVENIA

Kržičeva 9
p. p. 78
1001 Ljubljana

Telephone: +386 (01) 280 77 00
Telefax: +386 (01) 280 77 10
e-mail: gp.pdijz@gov.si
<http://www.accesstoinformation.si>

Access to Public Information in Slovenia

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