



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 27 October 1998
DH-S-AC(1998)006

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**GROUP OF SPECIALISTS ON ACCESS TO OFFICIAL
INFORMATION (DH-S-AC)**

2nd meeting
Strasbourg, 21-23 October 1998

REPORT

Introduction

1. The Group of Specialists on access to official information (DH-S-AC) held its second meeting from 21-23 October 1998 at the Palais de l'Europe, Strasbourg, with Ms Helena JÄDERBLOM (Sweden) the Chair.
2. The list of participants is set out in Appendix I. The agenda as adopted appears in Appendix II, with references to the working documents.
3. During this meeting, the DH-S-AC in particular:
 - re-examined the basic elements identified during the 1st meeting (DH-S-AC (98) 3, Appendix IV), taking into account information or suggested changes submitted by the DH-S-AC experts (item 3 of the agenda);
 - further considered the draft recommendation on a European policy on access to archives, currently being prepared within the Culture Committee (CC-Cult) of the Council for Cultural Co-operation (CDCC), with a view to ultimately drawing up a draft opinion to be transmitted by the CDDH to the CDCC (item 5 of the agenda).

Item 1 of the agenda: Opening of the meeting and adoption of the agenda

4. See introduction.

Item 2 of the agenda: Election of the Chair

5. Following the move to a new post by the former Chair, Mr Charles RAMSDEN (United Kingdom), the DH-S-AC appointed Ms Helena JÄDERBLOM (Sweden) Chair of the Group. The DH-S-AC thanked Mr Ramsden warmly for the excellent manner in which he had conducted the Group's work and for the extremely useful information and written comments, which he had provided for the present meeting. The Group wished him every success in his new post.

Item 3 of the agenda: Re-examination of the basic elements identified during the 1st meeting (DH-S-AC (98) 3, Appendix IV), taking into account information or suggested changes submitted by the DH-S-AC experts

6. The DH-S-AC was continuing its efforts to compile a series of elements to serve as a basis for discussion in its future work. As decided by the DH-S-AC at its previous meeting (ch. DH-S-AC (98) 3, paragraph 12), these elements currently took the shape of a draft recommendation, but could form the basis of a binding instrument if the CDDH should so decide. In this respect, the expert from Germany stated that, at this stage, his authorities are not in a position to give an opinion on the content of a possible draft recommendation and that, moreover, they do not consider it necessary to draw up a binding legal instrument governing this area.

7. The text derived from the present meeting's discussions appears in Appendix IV.

8. On the basis of this text, and in the light of the decision on the new terms of reference and any guidelines which it might be given by the CDDH in November 1998, the DH-S-AC ought to continue its work in 1999 (March and October). In view of the amount of time which it must

devote to co-ordination with the Committee responsible for drawing up the draft Recommendation on access to archives, it felt that an additional meeting was essential. The Group would suggest to the CDDH to have either one additional meeting under 1999, or preferably, to decide that the two meetings foreseen for 1999 should each last four days, instead of three.

9. A number of points raised during the discussion are set out below.

Title of the instrument

10. The DH-S-AC felt that it was still too early to consider what the title of the instrument should be. In this context, it decided that, at this stage of the work, it ought to be concentrating on access to “official documents”, it being understood that this term would replace the expression “official information”.

Preamble

11. The DH-S-AC decided to add references to instruments already adopted by the Council of Europe which highlighted the importance of protecting other lawful rights and interests, in particular private and family life.

Definitions

12. The DH-S-AC considered that for the purposes of the recommendation, the term “public authorities” referred to the authorities at national, regional or local level. The explanatory memorandum would make it clear that this notion covered the government in the political and the administrative sense of the word. The DH-S-AC also intended that these terms should cover natural persons and legal entities that performed public service functions or functions in public administration insofar as they acted in this capacity or exercised administrative authority in accordance with national law. In this respect, one expert suggested adding that national law could exclude certain persons or institutions in order that their documents should not be subject to the rules on public access.

13. The DH-S-AC felt it was preferable to focus at this stage on the notion of “official documents” rather than the wider concept of official information. The background to the debate was whether the authorities were meant to communicate specific documents (and to make the necessary searches to this end) or whether they were merely supposed to communicate, in such manner as they deemed appropriate, information contained in the document, without necessarily being required to supply the documents in question.

14. With regard to the notion of “official documents”, the DH-S-AC decided to exclude documents which were incomplete or in preparation. Draft documents, insofar as they were only “drafts”, should not be accessible to the public. Opinions were divided, however, as to whether one ought to exclude documents that contributed to the discussion of subjects on which the authorities had not yet taken a final decision. E.g. in the case of the construction of a motorway, the various documents emanating from the ministries of the environment, transport, finance etc. According to some experts, such documents should remain confidential until a decision was taken. Other experts believed, on the contrary, that open government in a democratic society required the public to have access to documents reflecting differing views on matters of public interest. The DH-S-AC decided to discuss this point further.

15. Finally, the DH-S-AC acknowledged the distinction made in some member states between documents that contained facts and these which contained opinions expressed by persons representing the authorities.

Operative part

16. With regard to the operative part of the recommendation, the DH-S-AC examined in turn:

- - the scope of the instrument, which did not rise to any comments compared with the previous meeting;
- principle I, with regard to which the Group decided to make it clear in the explanatory memorandum that the right guaranteed by the member states applied to any person, i.e. natural persons and legal entities, on a non-discriminatory basis. This meant that foreigners also had a right of access to official documents. In this respect, the DH-S-AC decided to look more closely at the issue of cost principles in relation to access to official documents.
- principle II, with regard to which the Group decided to retain as a basis for discussion the list of possible restrictions on access which had been sent by the United Kingdom expert.

Item 4 of the agenda: Examination of the provision in Appendix III of document DH-S-AC (98) 3 which have not yet been discussed

17. Owing to lack of time, the DH-S-AC postponed the examination of the provisions not yet discussed, as featured in its previous meeting report (cf. DH-S-AC (98)3, Appendix III), until its next meeting. This being the case, it was stressed that the members of the DH-S-AC were free to make new proposals on this document.

Item 5 of the agenda: Further consideration of the draft Recommendation on a European policy on access to archives

18. Mr Charles KECSKEMETI, former Secretary General of the International Council on Archives and Mr Giuseppe VITIELLO, Special Advisor at the Directorate of Education, Culture and Sport, described the work under way within the Culture Committee (CC-Cult) with a view to preparing a draft recommendation on a European policy on access to archives (cf. Document cc/livre (97) rev. of 4 February 1998 and the CC-Cult Secretariat Memorandum containing suggested changes, dated 21 October 1998).

19. Mr Kecskemeti stressed that the purpose of the draft recommendation was to facilitate access to documents stored in public archives, documents which constituted an irreplaceable historical heritage and which enabled society to learn about its past. Such access was sometimes difficult and subject to arbitrary rules. The recommendation would aim to lay down guidelines for the member states in order that access should be restricted only in exceptional cases and in order that any such restrictions should be based on rules compatible with the requirements of a democratic society. The authors of the draft were eager to finalise this instrument as quickly as possible, given the problems currently encountered by historians and also by the public at large in certain member states. They were aware of the fact that the text had to be worded in such a way as to render it compatible with the work of the DH-S-AC.

20. The DH-S-AC thanked Mr Kecskemeti for these clarifications and said that it was willing to co-operate in order to have a final text produced soon. In this context, the Group considered it

important to point out that its role was merely to ensure compatibility between this text and its own work, and that it should not be supposed that in future the text would be the joint responsibility of the two bodies: The CC-Cult retained full control over the text. Accordingly, the DH-S-AC considered that the following procedure should be adopted:

- a revised version of the draft recommendation, incorporating the observations made during the present meeting, would be available by 31 November 1998 and sent to the members of the DH-S-AC for information;
- an informal working group will meet on 15 January 1999. Composed of Messrs Capcarrère, De Salas, Gounin, Kecskemeti, Vitiello and Zsassoursky, the group will be asked to examine this new version and to prepare a consolidated text on this basis;
- this text would be sent to the members of the DH-S-AC in good time for their next meeting (March 1999). During this meeting, the DH-S-AC would take its final decision on this draft recommendation and would consider its co-operation with the CC-Cult on this matter to be completed;
- the DH-S-AC's decision would be forwarded to the CDDH, which would prepare a formal opinion on the draft recommendation at its meeting in June 1999. This opinion will be sent to the CDCC.

Item 6 of the agenda: Date of next meeting

21. Subject to the decision of the CDDH (cf. paragraph 8 above), the DH-S-AC decided to hold its next meeting from [Tuesday 9] [Wednesday 10] to Friday 12 March 1999.

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Appendix I

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

BULGARIA/BULGARIE

Apologised/excusé

FRANCE

- M. Yves GOUNIN, Auditeur au Conseil d'Etat et rapporteur auprès de la Commission d'accès aux documents administratifs (CADA), 1, place du Palais Royal, 75001 PARIS

GERMANY/ALLEMAGNE

- Mr Roland DUBYK, Senior executive Officer Ministry of the Interior, Graurheindorferstr. 198, D-53117 BONN

NETHERLANDS/PAYS-BAS

- Ms Lucia LING, Legal adviser, Constitutional Legislative and International Affairs Division, Ministry of the Interior, P.O. 20011, 2500 EA THE HAGUE

- Mr G.P.I.M. WUISMAN, Advisor to the Prime Minister, Ministry for general Affairs, Postbus 20001, NL-2500 EA THE HAGUE

NORWAY/NORVEGE

- Ms Tonje MEINICH, Legal Adviser, Legislation Department, Ministry of Justice, Postbox 8005 Dep, N-0030 OSLO

POLAND/POLOGNE

- Mr Andrzej KALINSKI, Counsellor of Legal and Treaty Department, Ministry of Foreign Affairs, PL-02 078 WARSAW

- Mr Miroslaw LUCZKA, Deputy to the Permanent Representative of Poland to the Council of Europe, 2, rue Geiler, F-67000 STRASBOURG

RUSSIAN FEDERATION/FEDERATION DE RUSSIE

- Mr Jassen ZASSOURSKY, Dean of the Faculty of Journalism, State University, Ulitsa Mokhovaya 9, 103914 MOSCOW

SWEDEN/SUEDE

- Ms Helena JÄDERBLOM, Deputy Director, Division for Administrative and Constitutional Law, Ministry of Justice, S-10333 STOCKHOLM

TURKEY/TURQUIE

Apologised/excusé

UNITED KINGDOM/ROYAUME-UNI

- Ms Emma-Louise AVERY , Home Office, Freedom and Information Unit, Room 912A, 50, Queen Anne's Gate, LONDON SW1 9AT

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European Committee for Legal cooperation/
Comité européen de coopération juridique (CDCJ)

Mr Pekka NURMI, Director General, Ministry of Justice, PL 1, 00131 HELSINKI

M. Michel CAPCARRERE, Magistrat, Services du Premier Ministre, Commissaire du Gouvernement Adjoint auprès de la CNIL, 56 rue de Varenne, F-75700 PARIS

M. Luis SILVEIRA, Procureur Général adjoint, Procuradoria General da Republica, Palaccio Palmela, R. Escola Politecnica, LISBONNE

Steering Committee on Mass Media/
Comité directeur sur les moyens de communication de masse (CDMM)

Ms Renita PALECKIENÉ, Director of Program, Lithuanian Journalism Centre, 7 Maironio, VILNIUS 2600

Invited guest/Invité spécial

M. Charles KECSKEMETI, Ancien Secrétaire Général du Conseil international des Archives ; 60, rue des Francs-Bourgeois, 75003 PARIS

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Secretariat/Secrétariat

M. Alfonso DE SALAS, Principal Administrator/Administrateur Principal, Secretary to the Group of Specialists/Secrétaire du Groupe de Spécialistes

M. Giuseppe VITIELLO, Special Adviser, New Technologies (books and archives), Directorate of Education, Culture and Sport/Chargé de Mission, Nouvelles technologies (livres et archives), Direction de l'Enseignement, de la Culture et du Sport

Ms Johanna MÖLLERBERG, Trainee, Human Rights Section/Stagiaire, Section droits de l'Homme

Mme Michèle COGNARD, Administrative Assistant/Assistante administrative, Directorate of Human Rights/Direction des Droits de l'Homme

Interpreters/Interprètes

Mlle Zenobia IRANI
Mlle Rémy JAIN
Mr William VALK

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Appendix II**AGENDA**

- 1. Opening of the meeting and adoption of the agenda**
- 2. Election of a Chair**
- 3. Re-examination of the basic elements identified during the 1st meeting (DH-S-AC (98) 3, Appendix IV), taking into account information or suggested changes submitted by the experts of the DH-S-AC**
- 4. Examination of the provisions in Appendix III of document DH-S-AC (98) 3 which have not yet been discussed**
- 5. Further consideration of the draft recommendation on a European policy on access to archives**
- 6. Date of next meeting**

Working documents

- Report of the 1st meeting of the DH-S-AC
(4-6 March 1998)
DH-S-AC (98) 3
- Extracts of the report of the 51st meeting of the Bureau of the CDDH
(24 April 1998) and of the 44th meeting of the CDDH (8-12 June 1998)
DH-S-AC (98) 5
- Information /suggested changes submitted by experts of the DH-S-AC on
the basic elements identified during the 1st meeting (see Appendix IV of the
meeting report DH-S-AC (98) 3)
DH-S-AC (98) 4 rev.
- Draft Recommendation N° R (97) ... on a European policy on access to
Archives (last revision: Strasbourg, 4 February 1998), prepared by the
project "Electronic Publishing, Books and Archives" and the International
Council on Archives. Memorandum of the Secretariat of the CC-Cult,
(fax of 21 October 1998)
CC-LIVRE (97) 7 rev
- Comments by the experts of the DH-S-AC on the draft Recommendation
on archives
DH-S-AC (98)4rev
- Terms of reference of the Group of Specialists
(as approved by the Ministers' Deputies at their 613th meeting,
18-19 and 23 December 1997)
DH-S-AC (98) 1

Information documents

- Recommendation No R (81) 19 on the access to information held by public authorities
- Recommendation No R (91) 10 on the communication to third parties of personal data held by public bodies
- Collection of reports on official secrets law and free access to public records (reports prepared by national partners of the Programme on Security Services in a Constitutional Democracy) (Helsinki Foundation for Human Rights, December 1997)
DH-S-AC (98) 2 and Addendum
- Icelandic law on public access to information
MM-S-AC (97) 3
- Italian law on access to administrative documents
MM-S-AC (97) 4 (French only)
- The Swedish approach to the issue of access to public documents
MM-S-AC (97) 5

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Appendix III

PROPOSALS DISCUSSED BY
THE GROUP OF SPECIALISTS ON ACCESS TO OFFICIAL INFORMATION
(MM-S-AC) AT ITS 3RD MEETING (5-7 MAY 1997)

(document MM-S-AC (97) 6)

PRINCIPLE	PROPOSALS DISCUSSED
<p>Principle 1: Reasons for the preparation of a legal instrument on access to official information 1</p>	<p>The preamble of Recommendation No. R (81) 192 could be used as a basis for explaining why a legal instrument on access to information is deemed necessary. The reasons for the preparation of an instrument would, inter alia, be:</p> <ul style="list-style-type: none"> -the importance for the public in a democratic society to obtain adequate information on public issues; -access to information by the public is likely to strengthen confidence of the public in the administration; -efforts should be made to ensure the fullest possible availability to the public of information held by public authorities.
<p>Principle 2: Scope of a legal instrument</p>	<p>(i) Public authorities covered:</p> <ul style="list-style-type: none"> -The term public authorities would include national, regional and local level administration. The following definition of public bodies provided in Recommendation No. R (91) 103 could be used as a basis in this respect: <p>"Any administration, institution, establishment or other body which exercises public service or public interest functions as a consequence of it being attributed with public powers".</p> <ul style="list-style-type: none"> -Private bodies performing public functions or financed with public funds would therefore fall under

¹ Members of the MM-S-AC are invited to consider whether the term "public information" would be more suitable than "official information".

² Recommendation No. R (81) 19 of the Committee of Ministers to member States on the access to information held by public authorities

³ Recommendation No. R (91) 10 on the Communication to Third Parties of Personal Data held by Public Authorities.

	<p>the scope of application.</p> <p>-On the other hand, the principle of access would not apply to information held by parliaments and courts.</p> <p>(ii) Information covered:</p> <p>-The Group has not reached a final decision on the definition of the term "official information", but has agreed on what should be excluded from the notion:</p> <ul style="list-style-type: none"> -oral information (information on public matters which has no documentary basis, eg. information given in a television programme); -preparatory documents (administrative documents which are in a preparatory stage and are still subject to change); -non-administrative documents (for instance, documents concerning political or personal activities of public authorities);
	<p>-information held by public authorities concerning personal data of individuals, since access to this type of information is governed by rules on data protection. [The Group should discuss what would be applicable if the information requested concerns a public affair but also contains personal information].</p> <p>-The most suitable notion of "official information" seems to be the one which refers to "documents" or "materials" held by public authorities. Should the Group agree with this approach, it might wish to discuss the type of documents/material that the right of access applies to. For example, the right could apply to all "administrative documents related to public matters, such as reports, letters (incoming/outgoing mail), drawings, maps, microfilms, computer stored information, etc."</p> <p>-As regards inventories/registers/records of public documents, eg. records of incoming and outgoing mail, the Group has not yet decided whether such inventories should be covered by the concept of official information, and thus be made available to individuals upon request.</p> <p>-After the definition of official information, a clause</p>

	<p>stipulating that "other acts/regulations granting a more extensive right of access will remain in force" could be added.</p>
<p>Principle 3: Restrictions to the right of access to official information</p>	<p>-The Group discussed the advisability of placing the restriction clause after the provision granting the general right of access to public information, so as to highlight that limits to the right are also necessary.</p> <p>-A restriction clause based on principle V of Recommendation No. R (81) 19 could be included in an instrument along the following lines:</p> <p>"The right of access to information shall be subject to such limitations and restrictions as are necessary in a democratic society for the protection of legitimate public interests -such as national security, public safety, public order, the economic well-being of the country, the prevention of crime, or for preventing the disclosure of information received in confidence-, and for the protection of privacy and other legitimate private interests."</p> <p>-The Group discussed whether States should enjoy a degree of discretion to determine which documents/materials should be excluded from the right of access. The Group is invited to re-examine this issue.</p> <p>-A possibility could be to list certain types of documents/materials which would be excluded from the right of access, such as, for example: minutes of cabinet meetings, materials falling under secrecy or confidentiality acts, working documents prepared by a public authority for internal use only, etc.</p>
<p>Principle 4: Access after a specific period of time</p>	<p>-The Group could discuss the possibility of introducing a provision stipulating that after a specific period of time, certain materials which have been protected by a limitation clause would also become accessible.</p>
<p>Principle 5: Beneficiaries of the right of access to official information</p>	<p>-The Group has agreed that the right of access to documents/materials should be applicable to all persons, irrespective of their nationality, citizenship, place of residence, etc, given that any other approach would be discriminatory and difficult to enforce in practice.</p> <p>-On the other hand, the Group was against granting the media a privileged right of access to official information. However, if a general right of access is</p>

	<p>recognised, it would also apply to media professionals [Remark: in practice, in countries where legislation on access to information already exists, it is generally the media that make use of this right, as compared to individual requests for information].</p> <p>-Special arrangements for media access to public meetings/events organised by public authorities might be considered. This could include free supply of documents or advance distribution of "embargoed" documents to the media. The Group is invited to discuss whether any provisions should be included in this respect in a legal instrument.</p>
<p>Principle 6: Disclosure of official information</p>	<p>-Access to information should be provided on the basis of a request from an individual.</p> <p>-The disclosure of information on official initiative of public authorities could be included in a legal instrument, but such an approach should be complementary to the individual right of access (if the disclosure of information was left to the official initiative of public authorities only, the whole principle of access would be questioned and subject to administrative discretion).</p>
<p>Principle 7: The exercise of the right of access to official information</p>	<p>-The Group agreed that requests for information should meet certain minimum procedural requirements. Some standards discussed were:</p> <ul style="list-style-type: none"> -the request should be made in writing or by electronic means (oral requests for information would be denied); -the request should not be anonymous; -the request for information should specify the materials/documents to be examined (to be discussed by Group); -the person requesting information should state/prove a legitimate interest (to be discussed by Group).
<p>Principle 8: Forms of access to official information</p>	<p>-The Group should discuss the nature of the right of access, ie, whether it confers the right to inspect the original documents, to inspect and photocopy these or only to obtain copies of the original documents. The means of accessing materials other than documents (drawings, maps, pictures, microfilms, computer stored information, etc.) would also have to be examined.</p>

<p>Principle 9: Cost of access to official information</p>	<p>-The Group agreed that the fundamental principle should be to provide access to official documents/materials free of charge. If the right of access confers the right to photocopy documents, and a large number of documents were concerned, the Group should discuss whether the requesting party should pay the copying costs involved.</p>
<p>Principle 10: Time-limits for dealing with requests of access to information</p>	<p>-The Group discussed whether a specific time-limit would have to be indicated in the possible instrument. A possibility could be to provide that requests for access to information should be answered by the relevant public body "as quickly as possible" or "within a reasonable time".</p>
<p>Principle 11: Decision refusing access to information</p>	<p>-The Group discussed the possibility of a provision stipulating that negative replies to a request for information should be given in "an appropriate form" by the public authority concerned. The Group is invited to re-examine this issue and to decide whether:</p> <ul style="list-style-type: none"> -public authorities could be obliged to give their refusal in writing or by electronic means (depending on how the request was made); -the decision should provide the reasons for the refusal and indicate any appeals/remedies available; -a provision prohibiting "administrative silence" (public authorities not taking a decision) would be convenient.
<p>Principle 12: Appeal against refusal of access</p>	<p>-The Group agreed that a provision ensuring a right of appeal against the refusal of a public authority to grant access to information could be included in an instrument.</p> <p>-The Group considered that the appeal body should be independent, but not necessarily a court.</p>
<p>Principle 13: Access to archives</p>	<p>-The Group decided that a separate provision for archives would not be necessary. General access rules should apply to archives, and information held in these should not be more difficult to access than other materials held by public authorities.</p>

Appendix IV

ELEMENTS IDENTIFIED BY THE DH-S-AC TO PROVIDE A BASIS FOR DISCUSSION
ON THE FUTURE WORK OF THE GROUP OF SPECIALISTS

Introduction

This appendix lists a number of elements, which emerged from discussions of the Group of Specialists on access to official information (DH-S-AC), during its first and second meetings (4-6 March 1998 and 21-23 October¹⁹⁹⁸).

For practical reasons, the elements are set out in the form of a draft recommendation. However, the DH-S-AC has not taken a position on the final legal form to be taken by the instrument that is in preparation. In particular, it has not ruled out the possibility of moving, at a later stage, towards drafting a binding instrument such as a convention. It is awaiting guidance from the CDDH on this point.

* * *

Preamble⁴

- i. Considering the importance in a pluralistic, democratic society of adequate information for the public on issues of common interest;
- ii. [Considering that the public's right of access to official information should be analysed in human rights terms, particularly in the light of Articles 8 and 10 of [the Convention for the Protection of Human Rights and Fundamental Freedoms](#) and the case-law pertaining thereto];⁵
- iiibis. Considering the importance of transparency in public administration;
- iii. Considering the wide access to official documents, on a basis of equality and in accordance with clear rules:
 - allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, encourages responsible participation by the public in matters of common interest;
 - encourages internal control within administrations and helps maintain its integrity by avoiding the risk of corruption;
 - contributes to affirming the legitimacy of administrations as public services and to reinforcing citizens' confidence in public authorities;

⁴ A reference in the preamble shall be made to certain key legal instruments adopted by the Council of Ministers in the field of information policy; namely: The Convention on the protection of individuals with regard to automatic processing of personal data of 28 January 1981 (ETS no 108); The Declaration on the freedom of expression and information adopted by the Committee of Ministers on the 29 April 1982; Recommendation No. R (81) 19 on the access to information held by public authorities; Recommendation No. R (91) 10 on the communication to third parties of personal data held by public bodies; Recommendation No. R (97) 18 concerning the protection of personal data collected and processed for statistical purposes.

⁵ A study of the relevant case-law concerning Article 10 and 8 has to be made before deciding whether this text should be deleted or not

- iv. Considering therefore that the utmost endeavour should be made to ensure the fullest possible availability to the public, subject to the protection of other legitimate rights and interests, of documents;
- v. Stressing that the principles set out hereafter constitute a minimum base, and that they should be understood without prejudice to domestic laws and regulations which already recognise a wider right of access to official documents;

Definitions

For the purposes of this recommendation:

- "public authorities" shall mean:⁶
 - i. national, regional or local administration;⁷
 - ii. natural or legal persons performing public functions or public administrative functions insofar as they perform on this capacity or exercise administrative authority under national law; [unless excluded by national law]⁸
- "official documents" shall mean all information recorded in any form, held by public authorities and linked to any public function, with the exception of documents under preparation;⁹

Scope

This recommendation concerns official documents held by public authorities. However, the member states should examine, in the light of their domestic law and practice, to what extent the principles of this recommendation could be applied to information held by legislative and judicial authorities.

Principle 1

The member states should guarantee the right of everyone to obtain, on request, official documents held by public authorities.¹⁰

Principle 2

1. Member states may derogate from the right of access to official documents. Limitations or restrictions must be set down precisely in the law, be necessary in a democratic society and be proportionate to the aim of protecting¹¹:

⁶ Concerning the definition of "public authorities" the group decided to consult other Council of Europe instruments. The term will be further elaborated in the Explanatory memorandum

⁷ It was decided to explore the concept of "governments", both in its political and administrative notion, in the Explanatory memorandum

⁸ It was decided to develop this principle further in the Explanatory memorandum

⁹ Private letters and letters to officials in their political capacity are excepted. Any further exceptions are to be discussed.

¹⁰ At this stage the DH-S-AC decided to limit the scope to documents that are requested for. The group will further examine whether the scope shall be extended to cover also the individuals right to receive public information

¹¹ The DH-S-AC is working towards the preparation of an exhaustive list. For the moment, the list of elements in Principle 2 is intended to be provisional, as a basis for discussion.

- i. national security, defence and international relations;
- ii. prevention, investigation and prosecution of criminal activities;
- iii. equality of parties concerning court proceedings;
- iii. inspection, control and supervision by public authorities;
- iv. personal privacy;
- v. commercial and other economic interests ;
- [vii. personal, public and environmental safety;]
- [viii. information supplied to public authorities in confidence;]
- [ix. decision-making and advice processes in government;]
- [x. manifestly unseasonable requests, or those that can only be met at excessive cost.]

2. While enjoying a certain measure of discretion in determining the circumstances in which the right of access to official information should be subject to limitations or restrictions, the member states [shall respect] [should respect] the principle of proportionality, according to which any limiting or restrictive measure should be in proportion to the aim invoked by the public authority. In particular,

- i. in regard to documents classified as confidential, the public authorities should ensure that they are made accessible as soon as circumstances permit or, if the law sets a time limit on confidentiality, as soon as that limit is reached;
- ii. in regard to registers or inventories of documents, the public authorities should ensure that they are always made available, this being a prerequisite for the exercise of the right of access to official information. It is, however, open to public authorities to determine the type of information to be included in such registers or inventories, with the aim of protecting legitimate interest and, in particular, respect for private life.

* * *

Draft explanatory memorandum

[...] The concept of "official information" (informations publiques) covers all recorded information held by the various public authorities. Essentially this means documents in the broad sense: printed documents, computerised documents in a retrievable form, documents recorded on audio or video tape, etc. The documents may contain texts, images etc.

For obvious reasons, certain categories of document, such as [...], have been explicitly excluded from the scope of the recommendation.