



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 25 September 2003
DH-S-AC(2003)003

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

REPORT

10th meeting
Strasbourg, 17-19 September 2003

Introduction

1. The Group of Specialists on Access to Official Information (DH-S-AC) held its 10th meeting at Strasbourg, on 17-19 September 2003. Further to the taking up of new duties by Mrs Tonje MEINICH (Norway), titular chair of the DH-S-AC, the group appointed Mr Frankie SCHRAM (Belgium) as its Chair. The list of participants appears in Appendix I. The agenda, as adopted, appears in Appendix II.

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

2. See introduction.

Item 2: Seminar “What Access to Official Documents?” (27-29 November 2002)

3. The DH-S-AC welcomed the results of the Seminar “What access to official documents?”, which was held in Strasbourg on 27-29 November 2002. The representatives of the governments and civil society that participated in the Seminar, underlined the need to elaborate, in the framework of [the Council of Europe](#), a legally binding instrument on access to official documents. It was noted that at its 55th meeting (17-21 June 2003), [the CDDH](#) asked [the Committee of Ministers](#) to give it terms of reference to examine the appropriateness of elaborating such an instrument. The *ad hoc* terms of reference that it received on this issue from the Ministers’ Deputies on 3 September 2003 appear in Appendix III of this report (see below, item 4).

Item 3: Adoption of a booklet on access to official documents

4. The Chair recalled that the main goal of the meeting was that of finalising this booklet, which aims at facilitating a broad dissemination of the principles contained in [Recommendation Rec \(2002\)2](#) of the Committee of Ministers on access to official documents. The basis for discussion was the draft text prepared by the Secretariat ([DH-S-AC \(2003\) 001](#)), for which it is warmly thanked.

5. The draft booklet, as adopted by the DH-S-AC at the end of its work, appears in Appendix IV. This text is still subject to change that might arise from the last suggestions of the group of specialists, which should be sent up to the Secretariat by 10 October 2003. The final text, elaborated on this basis by the Secretariat, in consultation with the Chair, will be edited with illustrations with a view to making it even more accessible to the public at large. The final version with illustrations, will be submitted to the CDDH for examination and possible adoption at its 56th meeting (18-21 November 2003).

Item 4: Drafting of a legally binding instrument on access to official documents

6. The DH-S-AC noted that the *ad hoc* terms of reference that it received from the Ministers’ Deputies on 3 September 2003 (see Appendix III of this report) have the aim of evaluating “in the light of Recommendation Rec(2002)2 on access to official documents, the existing national legislations in this field with a view to examine the advisability of elaborating a legally binding instrument on access to official documents.”

7. The DH-S-AC considered that it is necessary to launch a consultation of all member States and also to gather information from organisations representing civil society. It was decided that the Secretariat would prepare a very brief questionnaire, requiring only very simple answers. The draft questionnaire will be sent to DH-S-AC members in October 2003 for approval and following that, to the CDDH experts for action before the end of 2003. A Secretariat document will present the replies received and, on that basis, the DH-S-AC will proceed with the establishment of a comprehensive overview at its next meeting (2nd semester of 2004).

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Appendix I**List of participants / Liste des participants****BELGIUM/BELGIQUE**

M. Frankie SCHRAM, Conseiller adjoint du Secrétariat de la Commission d'accès aux documents administratifs, Service Public fédéral "Intérieur" – Secrétariat CADA, Rue Royale 66, B-1000 BRUXELLES, Président du DH-S-AC, Chair of the DH-S-AC.

BULGARIA/BULGARIE

Ms Ludmila BOJKOVA, Head of the Department "Specialized Agencies of the UN and other International Organizations", Ministry of Foreign Affairs, 2 Alexander Zhendov, SOFIA 1040

FRANCE

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GERMANY/ALLEMAGNE

Mr Arne SCHLATMANN, Senior Principal Administrator, Federal Ministry of the Interior, Alt Moabit 101D, D-10559 BERLIN

ITALY/ITALIE

Apologised/Excusé

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RUSSIAN FEDERATION/FEDERATION DE RUSSIE

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TURKEY/TURQUIE

Mr Aykut KILIÇ, Judge, Deputy Director General of International Law and Foreign Relations, Ministry of Justice, Adalet Bakanligi, Uluslararası Hukuk ve Dis Iliskiler Genel Müdürlüğü, Müdafaa Cad. No. 22 Kat. 8
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* * *

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

Mme Teresa GÓRZYŃSKA, Maître de Conférence, Institut des Sciences Juridiques, Académie polonaise des Sciences, Nowy Świat 72, PL - VARSOVIE 00-330

Mr João Pedro CABRAL, Legal Adviser, GRIEC, Ministry of Justice, Bureau for International, European and Co-operation Affairs, R. Sousa Martins 21 - 7º, 1050-217 LISBON

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European Commission / Commission européenne

Apologised/Excusé

International Council of Archives / Conseil International des Archives (CIA)

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Article XIX / Article XIX

Apologised/Excusé

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Secretariat / Secrétariat

Directorate General of Human Rights / Direction Générale des Droits de l'Homme - DG II

Council of Europe/Conseil de l'Europe, F-67075 STRASBOURG Cedex

Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'homme

M. Alfonso DE SALAS, Head of the Division/Chef de la Division,

M. Mikaël POUTIERS, Administrator/Administrateur, Secretary of the DH-S-AC / Secrétaire du DH-S-AC

Mme Michèle COGNARD, Assistant/Assistante

Ms Dearbhal MURPHY, Trainee/stagiaire

* * *

Interpreters/Interprètes

Mme Corinne McGEORGE

Mme Martine CARALY

* * *

Appendix II**Agenda****Item 1: Opening of the meeting and adoption of the agenda**Working documents

- Report of the 9th meeting of the DH-S-AC (7-8 March 2002) [DH-S-AC\(2002\)004](#)
- Conclusions of the Seminar “What Access to Official Documents?” (27-29 November 2002) [Sem-AC\(2002\)009 def](#)

Item 2: Seminar “What Access to Official Documents (27-29 November 2002)Working document

- Conclusions of the Seminar “What Access to Official Documents?” (27-29 November 2002) [Sem-AC\(2002\)009 def](#)

Item 3: Adoption of a booklet on access to official documentsWorking document

- Draft booklet on access to official documents [DH-S-AC\(2003\)001](#)

Item 4: Drafting of a legally binding instrument on access to official documentsWorking documents

- Access to official documents: Interest of a legally binding instrument [CDDH\(2003\)013](#)
- Ad hoc terms of reference with a view to preparing a draft legally binding instrument on access to official documents [DH-S-AC\(2003\)002](#)

Item 5: Other business

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Appendix III

**Ad hoc terms of reference with a view to the elaboration of
a draft legally binding instrument
on access to official documents**

850th meeting – 3 September 2003

Item 4.3b

Steering Committee for Human Rights (CDDH)

b. Draft terms of reference to the Steering Committee for Human Rights (CDDH) with a view to the elaboration of a draft legally binding instrument on access to official documents
(CM(2003)96)

Decision

The Deputies adopted Decision No. CM/858/03092003 giving ad hoc terms of reference to [the Steering Committee for Human Rights \(CDDH\)](#) with a view to evaluating, in the light of [Recommendation Rec\(2002\)2](#) on access to official documents, the existing national legislations in this field and, on this basis, to examining the advisability of elaborating a draft legally binding instrument on access to official documents, as they appear at Appendix 2 to the present volume of Decisions.

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Appendix 2
(item 4.3b)

Decision No. CM/858/03092003

Ad hoc terms of reference with a view to drafting a legally binding instrument on access to official documents

1. Name of Committee:

Steering Committee for Human Rights (CDDH)

2. Source:

Committee of Ministers

3. Completion date:

These terms of reference shall expire on 31 December 2005.

4. Terms of reference:

To evaluate, in the light of Recommendation Rec(2002)2 on access to official documents, the existing national legislations in this field with a view to examine the advisability of elaborating a legally binding instrument on access to official documents, accompanied by an explanatory report.

When examining the advisability of elaborating such an instrument, the CDDH will take into account the need to ensure compatibility and coherence between any new instrument and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 (ETS No. 108). It will also take into account Recommendation No. Rec (2000) 13 of the Committee of Ministers to member states on a European policy on access to archives, adopted by the Committee of Ministers on 13 July 2000 at the 717th meeting of the Ministers' Deputies.

5. Committee(s) informed of the terms of reference for information:

- European Committee on Legal Co-operation (CDCJ)
- Steering Committee for Culture (CD-CULT)
- [Steering Committee on the Mass Media \(CDMM\)](#)

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Appendix IV**Draft booklet on access to official documents****Preliminary note**

This appendix contains the text, as adopted by the DH-S-AC at its 10th meeting (17-19 September 2003), subject to changes that might arise from the last suggestions of the group of specialists, which should be sent to the Secretariat by 10 October 2003. After this date, the final text, elaborated by the Secretariat, in consultation with the Chair, will be considered as completed and will be edited with illustrations with a view to making it even more accessible to the public at large. This final version with illustrations, will be submitted to the CDDH for examination and possible adoption at its 56th meeting (18-21 November 2003).

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Introduction

1. The main aim of this handbook is to bring to the attention of the general public and civil servants the principles set out in Recommendation (2002)2 on access to official documents, adopted by the Committee of Ministers of the Council of Europe on 21 February 2002 and addressed to the Council's 45 member States (see Appendix I below)¹. The Recommendation sets principles by which the European states should be guided in their law and practice in the field of access to official documents, it being understood that states are free to go beyond these, by adopting provisions granting a broader right of access to official documents.

2. The handbook first of all sets out the basic principle to be observed in this regard (I). It then highlights a series of practical questions (II) and points to the action that public authorities should be implementing in order to facilitate access (III).

3. Several appendices contain useful information (reference texts, glossary, lists of national and non-governmental bodies in the field of access to official documents). [to find out more, an Explanatory Memorandum, which is appended to the Recommendation, is available on request]²

I. The basic principle

4. The basic principle is that a broad right of access to official documents should be granted on the basis of equality and in application of clear rules, whilst refusal of access should be the exception and must be duly justified. It is not a question of recognising merely the freedom of the public to have access to information which the authorities wish to give

¹ The 45 member States of the Council of Europe are: Albania Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and United Kingdom.

² The request should be addressed to the Information and Publishing Support Unit of the Directorate General of Human Rights (DGII) of the Council of Europe. It should be noted that these texts are also available on the Internet at the following address: xxxxxxxxx

them, but rather to secure a genuine “right to know” for the public. States must ensure, with due regard for certain rules, that anyone may, upon request, have access to documents held by public authorities. The above-mentioned Recommendation (2002)² encourages the Council of Europe member States to acknowledge this right.

5. Access to official documents is important in a democratic, pluralist society. Indeed, such access:

- helps raise citizen awareness of “public affairs” and encourages their informed participation in the decision-making process in areas of common interest, by enabling them to form an opinion on the state of the society in which they live and on the authorities governing them. Such “citizen participation” is of benefit to all. An administrative authority which operates in a framework of openness will be significantly more efficient, as it knows that the results of its endeavours may be examined by all and, consequently, be better understood. It also realises that it will have to give account for its action if things go wrong;

- may help avoid any malpractices on the part of the authority, too often facilitated by what is known as a “culture of secrecy”. The latter should be replaced by a culture of openness, which is essential for asserting the legitimacy of the authority as a public service, developing a relationship of trust between public authorities and citizens and monitoring the integrity of civil servants by avoiding the risk of corruption.

6. The right of access to official documents is not an absolute right, but rather one which is balanced by limitations which are necessary in a democratic society and proportionate to the aim of protecting particular interests set down in law. There are a number of questions to which civil servants and the public will require answers in order to be aware of the circumstances in which they may provide or have access to such documents. This handbook seeks to offer clear answers to these questions.

Alternative Suggestion: The right of access to official documents is not an absolute right. There may be restrictions of access in order to protect other rights and legitimate interests. There are a number of questions to which civil servants and the public will require answers in order to be aware of the circumstances in which they may provide or have access to such documents. This handbook seeks to offer clear answers to these questions.

II. Questions / answers

(a) What is an “official document”?

7. Recommendation (2002)² defines “official documents” as follows: “*all information, recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation.*”

8. This handbook relates solely to official documents held by public authorities, i.e., essentially by the administration. However, member States were asked, in this Recommendation, to consider, in the light of their legislation and domestic practices, the extent to which the principles contained in it are applicable to information held by legislative bodies and judicial authorities.

Alternative suggestion: This handbook relates solely to official documents held by public authorities. Documents which are in the material possession of a private person or body, acting for a public authority, as a result of agreements passed between the public authority

and that person or body, are also considered to be official documents held by the public authority in question. This is also true of official documents which the public authority has already placed in a department of Archives.

9. A clear distinction must also be made between documents received by public authorities which relate to their functions and those received by officials as private individuals (for example, letters received by officials in their capacity as politicians or as holders of external posts). This latter category of documents is not encompassed in the definition of “official documents”.

(b.) What is the difference between “official document” and “official information”?

10. In practice, official documents are the material manifestation of official information on physical media on which official information is recorded. The definition of the word “document” as it is used here, is not restricted to only paper-based documents, but also extends to tape-recordings, sound or audio-visual, photographs, e-mails and information stored on an electronic media, in a retrievable form, such as databases.

(c.) From whom may an official document be requested?

11. A request for access to an official document may be submitted to any public authority (even if it is not the authority which is the source of the document). For reasons of efficiency, it is preferable for the applicant to try to submit their request for a document to the public authority which produced it. If the public authority to which request for access to an official document has been submitted has the document in question (the original or a copy), it should process the request and make the document available (subject to the restrictions set out below). It should not compel the applicant to submit a new request to the public authority which is the source of the requested document. However, if it does not have the document, it should do its utmost to refer the person in question to a public authority which has the document.

Alternative suggestion: A request for access to an official document may be submitted to any public authority, regardless of whose possession the document is in, even if it is not the authority which is the source of the document. If the public authority to which request for access to an official document has been submitted has the document in question, it should process the request and make the document available (subject to the restrictions set out below). However, if it does not have the document, it should do its utmost to refer the person in question to a public authority which has the document.

(d.) What is a “public authority”?

12. For the purposes of Recommendation (2002)2, the term “public authorities” covers two main categories:

- on the one hand, the government and all bodies belonging to the national, regional, or local administration (i.e., Administration with a capital “A”). In other words, governmental bodies (political and administrative) at the central, regional and local levels. In federal states, the authorities subordinated to the federated states and local authorities are also “public” authorities. The term also covers town councils or other local authority bodies, as well as the departments of Archives (without prejudice to the application of more specific rules adopted in this field). In contrast, the term “public authorities” does not cover legislative bodies and judicial authorities;

- on the other hand, private persons, companies or other bodies, insofar as they perform public functions or exercise administrative authority as provided for by national law. In certain countries, it also includes persons or entities, financed by public funds which fulfil functions normally falling to administrative authorities. It may also be the case that official documents are physically held by a private person or body on behalf of a public authority under arrangements made between the two parties. Accordingly, such documents may also be requested.

Alternative suggestion: For the purposes of Recommendation (2002)2, the term “public authorities” covers two main categories:

- on the one hand, the government and all bodies belonging to the national, regional, or local administration. In other words, governmental bodies (political and administrative) at the central, regional and local levels. In federal states, the authorities subordinated to the federated states and local authorities are also “public” authorities. In contrast, the term “public authorities” does not cover legislative bodies and judicial authorities;

The term also covers town councils or other local authority bodies, as well as the departments of Archives (without prejudice to the application of more specific rules adopted in this field).

- on the other hand, private persons, companies or other bodies, insofar as they perform public functions or exercise administrative authority as provided for by national law. It may also be the case that official documents are physically held a private person or body, on behalf of a public authority, under arrangements made between the two parties. Depending on national legislation, persons or entities, financed by public funds, which fulfil functions normally falling to administrative authorities, are also included in the term “public authorities.”

(e.) Who may request access to an official document?

13. Any person, without distinction, including on grounds of nationality, may have access to an official document. The public authority may not refuse access to a document on the grounds that the person requesting such access is a foreign national. In addition, a request may be submitted by an individual or a legal entity (company, association, etc).

(f.) Are there certain people who have easier right of access than others to official documents?

14. No. The underlying principle is equal access for everyone with regard to official documents. There must be no distinction between the different types of persons submitting requests (journalists, researchers, lawyers, trade unionists, private individuals, etc.) either advantageous or disadvantageous.

(g.) Is the applicant obliged to give reasons for his request for access to an official document?

15. No. The person requesting access to an official document should not be required to give reasons for his or her request.

(h.) What is the procedure for requesting access to an official document?

16. Each state is free to lay down its own procedure, but the aim is to keep formalities to a minimum. In some countries, requests must be submitted in writing (by letter, fax, e-mail, etc.). In other countries, it may be possible to submit certain requests orally (for example, in the premises of the public authority concerned, or by telephone).

17. Even though it should be possible, in some cases, to submit a request orally, it may be preferable for the request to be submitted in writing, so that there is some record of the request. This may prove to be of value subsequently, in particular in the event of no response to the request. A further advantage of written requests is that this lends itself more readily to producing statistics, which in turn can mean that the most frequently requested documents can be published in a proactive way. Moreover, in some countries, but not all, applicants are authorised to submit a request anonymously.

(i.) What assistance can be expected from the public authority to which a request for access to an official document has been made?

18. The underlying principle is that the public authority is there to serve the public and that it should therefore do its utmost to comply with their requests. To this end, the authority should seek to be efficient and deal with requests for access to official documents speedily and co-operatively, particularly where the handling of the request is complicated.

19. Where necessary, the public authority should help the applicant, as far as is reasonably possible, in formulating his or her request properly, in identifying the document requested, in identifying the competent authority and referring the applicant to that authority. Where the public authority does not hold the documents, it should, as far as possible, refer the applicant to the competent public authority. Lastly, if the request is too vague, the authority should at least inform the applicant of this to give him or her an opportunity to be more specific.

20. Public authorities should be particularly attentive to assist applicants in the most vulnerable situations: those with disabilities, the elderly, illiterate, the homeless, those on the fringes of society, foreigners with little or no knowledge of the language, etc. Public authorities have a certain margin of appreciation but should seek to be as helpful as possible. Where applicants are unable, without help, to obtain a basic understanding of the document in question, the authorities might envisage, as far as is possible and reasonable, helping them to secure such an understanding. This does not include an obligation to translate documents, nor to provide highly specialist technical (for example legal) advice.

(j.) What steps should be taken if the applicant is not sure exactly what document they need?

21. If the applicant is not sure exactly what document to ask for, he/she is advised to gather together as many details as possible before going to the public authority, with a view to helping the latter to pinpoint the most relevant document, for example, the subject, the name of the authority which may have published documents on that subject, the date when such documents may have been published, etc. In its turn, the public authority should make reasonable efforts to help the applicant narrow down the request if necessary and help identify the document or documents, which might be relevant. However, if despite this, the public authority is still unable to identify official documents, which could be of interest to the applicant, it is under no obligation to continue searching.

(k.) Can all official documents be accessed?

22. No, not necessarily. Access to a document may be refused if the disclosure of the information contained in the official document would, or would be likely to harm any of the interests mentioned below, unless there is an overriding public interest in disclosure

(1.) What are the interests that may justify restricting access to official documents?

23. Recommendation (2002)2 includes a list of these interests, which is exhaustive. This list includes ten categories of interests which might justify restricting access to documents, provided that such restriction is set down clearly in law, is necessary in a democratic society and proportionate to the aim of protecting one or more of these interests. These are described below.

(i) National security, defence and international relations

24. Clearly there are some documents which should not be disseminated to the public in sensitive areas such as national security, defence and international relations. Such documents generally become accessible after the period of confidentiality has expired. For example, it is unlikely that a public authority would agree to release documents containing plans for the development of sophisticated weapons or the names of the agents of its intelligence services! In addition, some states having regions with a large degree of autonomy may also have an interest in protecting correspondence between such regional authorities, or in federal states, between the federal government and regional authorities. There may also be provisions restricting access to documents concerning the Head of State.

(ii) Public safety

25. It is not difficult to understand why public authorities would decide to restrict access to a document containing, for example, information which might attract the public to a particularly dangerous area. For example, it would be legitimate to restrict access to a document containing details of crowd control at an upcoming sporting event or demonstration, as to do so would place their efficacy in jeopardy. The same is true of documents concerning the security systems of bridges, tunnels, etc.

(iii) The prevention, investigation and prosecution of criminal activities

26. Granting free access to such documents could, for example, facilitate a crime or be prejudicial to investigations under way and assist the disappearance of criminals being sought. Access to a document containing the details of the transfer of a prisoner might equally be refused, in order to prevent a possible attempt by his/her accomplices to set him/her free by force.

(iv) Privacy and other legitimate private interests

27. Official documents may contain personal or other private information, such as information protected by medical confidentiality. It should be recalled that Article 8 of the [European Convention on Human Rights](#) guarantees the right of respect for private and family life. Protecting these interests may take precedence over the interest in making the document in question available. It must be noted, though, that if officials act in their official capacity, they do not fall under this limitation.

28. In addition, access to official documents must not violate the rules set out in the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 (ETS No. 108) concerning the right to or limitations on access provided for in that Convention.

(v) *Commercial and other economic interests, both private or public*

29. The concept of "commercial and other economic interests" covers "trade secrets", which need to remain confidential for reasons of competition, for example, production procedures, trade strategies or lists of clients. The concept of "commercial and other economic interests" may also concern the limitation of access to documents, which public authorities use to prepare collective bargaining, in which they take part. It may also include information collected for the compilation of statistics.

30. For this category of interests, it must be borne in mind that the sensitive nature of the information may only be of limited duration. The restriction of access to these documents should therefore be considered on a case-by-case basis.

(vi) *The equality of parties concerning court proceedings*

31. This restriction seeks to protect the equality of parties concerning court proceedings in the aim of ensuring the right to a fair trial. Amongst other things, its purpose is to allow a public authority to refuse access to its own documents so as not to weaken its position during proceedings to which it is a party.

(vii) *Nature*

32. Restrictions on the disclosure of information relating to nature seek to allow public authorities to exercise effective protection policies in this domain. The aim of the restriction might be, for example, to prevent disclosure of the whereabouts of endangered fauna or flora, in order to protect them.

(viii) *Inspection, control and supervision by public authorities*

33. This restriction may, for example, protect the ability of a public authority to regulate effectively, investigate and audit, where appropriate through formal proceedings, other organisations or individuals, as well as their own internal rules and procedures. Possible examples are ongoing tax investigations or audits, as well as inspections of working conditions and investigations by social workers.

(ix) *The economic, monetary and exchange-rate policy of the state*

34. Information relating to certain aspects of the economic, monetary and exchange-rate policy of the State may be exempt from disclosure on request. If, for example, a plan to devalue the currency became known before the official announcement was made by the competent authorities, the usefulness of the measure would be considerably reduced.

(x) *The confidentiality of deliberations within or between public authorities during the internal preparation of a matter*

35. This restriction might concern in particular the disclosure of documents relating to the deliberations of the government. The term "matter" is broad enough to include all types of

cases, which are handled by the public authorities, i.e. both individual cases and policy-making procedures. Even though the Recommendation seeks to encourage public participation in the decision making process, this limitation aims at safeguarding the quality of the process of deciding policy, as well as the freedom of expression of officials, when participating in this process.

(m.) Can the public authority refuse to grant access to an official document even though it is in principle available?

36. Yes, if the request is manifestly unreasonable. For example, if the request requires a disproportionate amount of searching (which does not arise from a possible lack of organisation of the public authority), if it is too vague, if it covers too broad an area or too great a volume of documents.

37. A request may also be rejected if it is clearly vexatious – for example if it is one of many requests, which by their frequency or volume may hinder a department's proper functioning and which have the clear and express intention of trying the patience of the authorities responsible for providing documents. These are apparent attempts to harass the administration. A further example may be improper repeated requests for the same document by the same applicant.

38. Nonetheless, a public authority which refuses to grant access to a document should give the reasons why, except in exceptional cases where the reasons would reveal information that may be subject to the restrictions listed above. In addition, where access is not granted, the authority should also indicate the possibilities of appealing against the decision (see below).

(n.) Is it possible to have access to just part of a document?

39. The underlying principle is access to the whole of the document. However, in cases where access is restricted, authorities should, where practical, grant access to a part of the document with, for example, those parts of the document which must remain undisclosed being removed, rather than refuse access to the whole of the document. Where certain passages in the document need to remain confidential, they should be blanked out. However, there should be a clear indication of where and how much information has been deleted and which limitation justifies each deletion, insofar as this is possible. For example:

- if the document is on paper, deletions could be made on a copy, by blanking out the passages subject to restriction;
- if the original document is electronic, a new document or a paper copy should be provided, giving a clear indication of which parts have been deleted, for example by leaving the relevant sections blank.

40. Moreover, the release of part of the document should not be done in such a way that it would reveal information covered by the restriction.

41. Furthermore, if a partial version of the document requested would be misleading or meaningless, access may be refused. Lastly, if some of the information contained in this document cannot be disclosed, it could be conceivable, depending on national legislation, to provide a summary of the document. In that case, the public authority should ask the applicant whether he or she would prefer a partial version of the document or a summary.

(o.) How quickly should the applicant receive a reply to a request for access?

42. The rule is: as quickly as possible. Public authorities should always tell the applicant whether or not they hold the document in question and whether or not they have decided to release it. They should never fail to give a reply to a request for access to an official document. However, and in exceptional cases, where the protection of other legitimate interests takes precedence over disclosure, it may prove necessary for the authority to keep secret that the information exists. Confirming the existence of a specific document could amount to disclosure of the information, which the authority wishes to keep confidential by not releasing the document.

43. Lastly, where it is decided to release the document requested, the document in question should be made available without delay. Where a delay is nonetheless inevitable, the authorities should inform the applicant of this fact. The maximum time limit for reaching a decision, notifying the applicant and, if the decision is positive, making the document available, should be laid down and specified in advance (possibly in law). The applicant may refer the matter to the body responsible for reviewing access to official documents (see below). Lastly, just because a maximum time limit is specified should not mean that the authorities have to wait until it has elapsed before releasing the document requested. If they can handle the request more quickly, they should do so.

(p.) What is the next step if the public authority does not have the document requested?

44. As far as possible the public authority should do its utmost to refer the person in question to the public authority which holds the document. Nevertheless, the public authority to which the request was submitted cannot be blamed for not being able to find out which authority holds the document if it has done all it can to discover where it may be obtained.

(q.) Can the public authority suggest other documents besides those requested?

45. Of course. It may be that the public authority realises that it would be more helpful to the applicant to have access to a document or documents other than the one requested. It should then inform the applicant who can decide whether he or she wishes to request access to those other documents. However, the public authority should nonetheless provide the document initially requested unless the applicant changes his or her request following the advice given.

(r.) Can the public authority refer the applicant to alternative sources for the document requested?

46. Yes. It may be the case that the document can be easily consulted in another way (via Internet for example). In such cases, the public authority to which the request has been submitted may refer the applicant to these alternative sources, provided that these are easily accessible for the applicant. For example, if a document has been published on the Internet, the public authorities may suggest this avenue to the applicant, provided that he or she has easy access to the Internet. However the Internet network is not as widespread in all European countries to the same degree. This element needs to be taken into account.

(s.) What is meant by “easy access”?

47. There is no fixed definition. What may be accessible for one person will not necessarily be so for another. Accordingly, whether a document is easily accessible should be assessed on a case-by-case basis, taking account of the individual situation of the applicant, which may mean that requests may be dealt with differently, for example if the applicant is disabled, illiterate, homeless or lives a long way away from the public authority which holds the official document requested. The public authority should therefore be flexible and adapt to the personal situation of applicants, insofar as this is reasonable.

(t.) Can the applicant inspect the original document in all cases?

48. The public authority should take account of the preference stated by the applicant, but it may be impossible to do so in some cases, for example, it might be appropriate to refuse direct access to an original document on preservation grounds if it is physically fragile or in poor condition, or if its contents are partially or totally exempt.

49. An authority may be justified in refusing to provide a copy of the document if, for example, the technical facilities are not available (for audio, video or electronic copies), if this would entail unreasonable additional costs, or if intellectual property rights might be infringed. In this case, only an on the spot consultation is possible.

(u.) Is it always possible to inspect the document on the spot?

50. In principle, yes. It is important that public authorities have an open attitude in allowing the general public, where possible, onto their premises. However, a number of obstacles may arise from on the spot consultations such as opening hours, or several persons wanting the same document at the same time. Applicants must understand such possible limitations, provided that the public authority does not abuse them.

(v.) Is there a charge for having access to an official document?

51. In principle, on-site consultation should be free of charge. By exception, the public authority might charge the applicant for the cost of finding the actual documents if the research involves a large volume of documents, is complicated or takes a long time, or creates a large amount of work for the authority (which does not arise from a possible lack of organisation of the authority). The costs of providing a copy of the document (for example, photocopying costs) may also be charged to the applicant.

52. Nonetheless, the fees charged should be reasonable and kept to a minimum and should never exceed the actual costs incurred by the public authority. Public authorities should never make a profit from the fees charged. Moreover, where the costs incurred are minimal, it may be preferable for the authority to waive the charge (complications, additional costs).

53. The limitations on the fees that the public authorities are allowed to charge, relating to legislation on access to official documents, do not preclude public authorities from producing documents for commercial purposes and selling them at competitive rates.

(w.) What can the applicant do if there is a problem?

54. There may be several kinds of problem concerning a request for access to an official document. First and foremost, for example, the request may be rejected, partially or in its entirety, and the applicant may wish to challenge this. Or, it may not be dealt with within the prescribed time limits. There may in addition be irregularities in the way the request has been

handled. Applicants may be faced with a variety of situations leading them to conclude that their requests have not been dealt with satisfactorily.

(y.) Is there a review procedure? Is there a body responsible for monitoring access to official documents?

64. Yes. If the problem remains unresolved, the applicant must have access to an independent review procedure. This may be a court or another independent and impartial body established by law and responsible for monitoring access to official documents (for example, an ombudsman, mediator or mediation body, a special commission or parliamentary commissioner (see the examples of national bodies responsible for monitoring access to official documents in Appendix III).

65. In certain national systems an internal review procedure is seen as a compulsory intermediary step before a court of appeal or other independent complaints procedure.

66. The independent review procedure should be expeditious and inexpensive (preferably, free of charge). The review body will give an opinion on the challenged decision; if it finds that it did not comply with the legislation in force, it should then be possible for it to be changed.

67. Preferably, this review body should be able itself to change decisions taken by public authorities which it considers do not comply with the legislation in force.

68. It is essential that the public at large is made aware of these review procedures if they are to be effective (for example, the details of the review body should be given to the applicant when he or she submits the request for access to an official document).

(z.) What use may be made of the official documents obtained in this way?

69. There are no restrictions on the use of the documents obtained through this procedure, except, possibly those relating to intellectual property rights. The source of the information contained in these documents should be quoted (by making a detailed reference to the original document) if subsequent use is made of that information.

III. Actions that public authorities should take to facilitate public access to official documents

(i.) Ensure that the right of access to official documents is established in national law and practice and that it is used effectively

Why?

70. If a right may not be exercised in practise its mere existence is put in question.

How can this be done?

71. The internal organisation of an administration should allow for the right of access to official documents to be easily implemented.

72. The documents should be managed efficiently so that they are easily accessible.

73. Clear rules should be applied to preserve and to secure storage of originals as well as for the destruction of official documents: an efficient archives system must be implemented.

74. Public authorities must inform the public as best they can on the matters and activities for which they are responsible. A good practice in this regard is to set up lists or registers of the documents they hold that can be consulted by the public and to make these lists or registers accessible to the public. This will also facilitate the search for documents, by the public as well as by the public authorities. The work required in order to draw up and to update these lists and registers is rapidly compensated by timesavings and by an increased efficiency of the public authorities.

75. In each public authority or, preferably, in each department of this public authority, someone should be appointed as the person responsible for access to official documents detained by the public authority (or department) concerned in order to supervise and to improve the service given to the public. The physical absence of this person (due to, for instance, sickness or holidays) should never justify a refusal of access to an official document.

76. There should be, in each public authority premises, an area made available for the consultation of official documents, which the public could use to consult the requested documents in an appropriate manner. In order to allow easy access to official documents, the public authorities should provide the necessary consultation facilities (well-adapted premises notably with appropriate technical equipment, including the availability of new information and communication technology, and photocopiers to allow for a document to be easily copied).

(ii.) Widely inform the public about its right of access to official documents and how that right may be exercised

Why?

77. Because too often the public is not informed about its rights.

How can this be done?

78. By widely disseminating this booklet to the general public and by complementing it with a specific document on the national situation, including, where one exists, the law on access to official documents or on freedom of information.

79. By publishing this information electronically (web sites).

80. By setting up documentation centres.

81. By supporting and facilitating the work of those (governmental or non-governmental) bodies which are responsible for carrying out activities on the issue of access to official documents (a list of non-governmental organizations particularly active in the field appears in Appendix IV). The independent body, with the responsibility of monitoring access to official documents, should also be instructed to inform citizens about their rights in this field.

(iii.) Ensure that public officials are trained in their duties and obligations with respect to the public's right of access to official documents

Why?

82. Because public officials are the first to be in contact with the public when it requests access to certain official documents.

83. Because if public officials are not well trained they may not act in conformity with the principles mentioned in this booklet.

84. The training of public officials is therefore essential: they should all be aware that the basic principle is access to official documents and that non-dissemination is the exception.

How can this be done?

85. By widely disseminating this booklet to the public officials and by complementing it with a specific document presenting the national situation.

86. By providing for a specific course on access to official documents during the training of public officials, especially those who will be most often in contact with the public.

(iv.) Make as much information as possible, public and accessible proactively without waiting for the public to request it

Why?

87. It is in the interest of an open administration and of efficiency between administrations.

88. This also encourages enlightened public participation in general-interest issues (e.g. on administrative files concerning public works). This is an important factor for democracy and efficient administration.

89. The publication of information before it is requested also allows for public authorities' officials to save time because they no longer need to handle requests for that information, the information being henceforth available. Indeed, the time spent in publishing information and making it accessible is largely compensated for by the time saved through no longer having to treat individually requests for the same information.

How can this be done?

90. The public authorities are free to choose the most appropriate means of publishing information, depending on each case. The different suggestions below may be cumulated to reinforce the efficiency of the measures that have been taken.

91. Information may be published in official publications, on websites (if the addresses are widely diffused to the public) or on any other medium easily accessible to the public. The setting up of an Internet website is by far the most economical way for public authorities to have official documents made available to as many people as possible.

92. These documents can also be displayed in appropriate places, easily accessible to the public.

93. A criteria that public authorities may use in order to determine which official documents should be made public in a proactive way is that of the number of requests made

for (a) particular official document(s): if a document, or a kind of document, is frequently requested, it is in the interest of the public authority to make it easily available to the public. This, among other reasons, explains why the setting up of precise statistics on requests for official documents is important (for instance, the number of requests, the type of documents most often requested, the main reasons for refusal).

* * *

Appendix I**RECOMMENDATION REC (2002)2 OF THE COMMITTEE OF MINISTERS
TO MEMBER STATES ON ACCESS TO OFFICIAL DOCUMENTS**

*(Adopted by the Committee of Ministers on 21 February 2002
at the 784th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles, which are their common heritage;

Bearing in mind, in particular, Article 19 of the Universal Declaration of Human Rights, Articles 6, 8 and 10 of the European Convention on Human Rights and Fundamental Freedoms, the United Nations Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (adopted in Aarhus, Denmark, on 25 June 1998) and the Convention for 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 on 29 April 1982; as well as [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 and [Recommendation No. R \(2000\) 13](#) on a European policy on access to archives;

Considering the importance in a pluralistic, democratic society of transparency of public administration and of the ready availability of information on issues of public interest;

Considering that 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, whilst encouraging informed participation by the public in matters of common interest;
- fosters the efficiency and effectiveness of administrations and helps maintain their integrity by avoiding the risk of corruption;
- contributes to affirming the legitimacy of administrations as public services and to strengthening the public's confidence in public authorities;

Considering therefore that the utmost endeavour should be made by member states to ensure availability to the public of information contained in official documents, subject to the protection of other rights and legitimate interests;

Stressing that the principles set out hereafter constitute a minimum standard, and that they should be understood without prejudice to those domestic laws and regulations which already recognise a wider right of access to official documents;

Considering that, whereas this instrument concentrates on requests by individuals for access to official documents, public authorities should commit themselves to conducting an active communication policy, with the aim of making available to the public any information, which is deemed useful in a transparent democratic society,

Recommends the governments of member states to be guided in their law and practice by the principles set out in this recommendation.

I. Definitions

For the purposes of this recommendation:

"public authorities" shall mean:

- i. government and administration at national, regional or local level;
- ii. natural or legal persons insofar as they perform public functions or exercise administrative authority and as provided for by national law.

"official documents" shall mean all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation.

II. Scope

1. This recommendation concerns only official documents held by public authorities. However, 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 bodies and judicial authorities.

2. This recommendation does not affect the right of access or the limitations to access provided for in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

III. General principle on access to official documents

Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.

IV. Possible limitations to access to official documents

1. Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:

- i. national security, defence and international relations;
- ii. public safety;

- iii. the prevention, investigation and prosecution of criminal activities;
- iv. privacy and other legitimate private interests;
- v. commercial and other economic interests, be they private or public;
- vi. the equality of parties concerning court proceedings;
- vii. nature;
- viii. inspection, control and supervision by public authorities;
- ix. the economic, monetary and exchange rate policies of the state;
- x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

2. Access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.

3. Member states should consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply.

V. Requests for access to official documents

1. An applicant for an official document should not be obliged to give reasons for having access to the official document.

2. Formalities for requests should be kept to a minimum.

VI. Processing of requests for access to official documents

1. A request for access to an official document should be dealt with by any public authority holding the document.

2. Requests for access to official documents should be dealt with on an equal basis.

3. A request for access to an official document should be dealt with promptly. The decision should be reached, communicated and executed within any time limit which may have been specified beforehand.

4. If the public authority does not hold the requested official document it should, wherever possible, refer the applicant to the competent public authority.

5. The public authority should help the applicant, as far as possible, to identify the requested official document, but the public authority is not under a duty to comply with the request if it is a document which cannot be identified.

6. A request for access to an official document may be refused if the request is manifestly unreasonable.

A public authority refusing access to an official document wholly or in part should give the reasons for the refusal.

VII. Forms of access to official documents

1. When access to an official document is granted, the public authority should allow inspection of the original or provide a copy of it, taking into account, as far as possible, the preference expressed by the applicant.
2. If a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to the remainder of the information it contains. Any omissions should be clearly indicated. However, if the partial version of the document is misleading or meaningless, such access may be refused.
3. The public authority may give access to an official document by referring the applicant to easily accessible alternative sources.

VIII. Charges for access to official documents

1. Consultation of original official documents on the premises should, in principle, be free of charge.
2. A fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs incurred by the public authority.

IX. Review procedure

1. An applicant whose request for an official document has been refused, whether in part or in full, or dismissed, or has not been dealt with within the time limit mentioned in Principle VI.3 should have access to a review procedure before a court of law or another independent and impartial body established by law.
2. An applicant should always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review in accordance with paragraph 1 above.

X. Complementary measures

1. Member states should take the necessary measures to:
 - i. inform the public about its rights of access to official documents and how that right may be exercised;
 - ii. ensure that public officials are trained in their duties and obligations with respect to the implementation of this right;
 - iii. ensure that applicants can exercise their right.
2. To this end, public authorities should in particular:
 - i. manage their documents efficiently so that they are easily accessible;
 - ii. apply clear and established rules for the preservation and destruction of their documents;
 - iii. as far as possible, make available information on the matters or activities for which they are responsible, for example by drawing up lists or registers of the documents they hold.

XI. Information made public at the initiative of the public authorities

A public authority should, at its own initiative and where appropriate, take the necessary measures to make public information which it holds when the provision of such information is in the interest of promoting the transparency of public administration and efficiency within administrations or will encourage informed participation by the public in matters of public interest.

* * *

Appendix II**NATIONAL BODIES IN CHARGE OF THE CONTROL
OF ACCESS TO OFFICIAL DOCUMENTS**

(to be completed)

BELGIUM**Commission d'accès aux documents administratifs (Commission of access to
administrative documents)**Ministère de l'Intérieur,
rue Royale 66
B-1000 BRUXELLES**Commission de recours pour le droit d'accès à l'information (DGRNE)**Avenue Prince de Liège 15
5100 JAMBES**CANADA (QUEBEC)****Commission d'accès aux informations du Québec**575 rue St-Amable, bureau 1.10,
QUEBEC G1R 2G4
Canada**ESTONIA****Andmekaitse Inspektsioon (Data Protection Inspectorate)**Väike-Ameerika 19
Tallinn 10129**FRANCE****Commission d'accès aux documents administratifs (Commission of access to
administrative documents) (CADA)**35, rue Saint-Dominique
75 700 PARIS 07 SP**HUNGARY****Data protection ombudsman (Parliamentary Commissioner)****ICELAND****Information Committee****IRELAND****Office of Information Commissioner****PORTUGAL****Comissão de Acesso aos Documentos Administrativos (Commission of access to
administrative documents) (CADA)**Rua de S. Bento, n° 148-2°
1200-821 LISBOA**UNITED KINGDOM****Information Commissioner (Mr Graham SMITH)**

DH-S-AC(2003)003

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Wycliffe House
Water Lane
Wilmslow
CHESHIRE SK9 5AF

(...)

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Appendix III**PARTICULARLY ACTIVE NON-GOVERNMENTAL ORGANISATIONS**

(to be completed)

1. INTERNATIONAL NGOS**Article XIX**

Lancaster House
33 Islington High Street
LONDON N1 9LH
United Kingdom

World Association of Newspapers (WAN)

25 rue d'Astorg
75008 PARIS
France

Consumers' International

Office for Developed and Transition Economies
24 Highbury Crescent
LONDON N5 1RX
United Kingdom

European Federation of Journalists (EFJ)

Nuckarsv. 10
FIN-00730 HELSINKI
Finland

International Federation of Journalists (IFJ)

Residence Palace
Rue de la Loi 155
B-1040 BRUXELLES
Belgium

Open Society Justice Initiative

H-1397 BUDAPEST
P.O. Box 519
Hungary

Privacy International

2nd Floor, Lancaster House
33 Islington High Street
LONDON N1 9LH
United Kingdom

Statewatch

PO Box 1516
LONDON N16 0EW
United Kingdom

Transparency International

Otto-Suhr-Allee 97/99

10585 BERLIN

Germany

2. NATIONAL NGOS

BULGARIA

Access to Information Programme

120 Rakovsky Str., Entr.A, 4th Floor

1000 SOFIA

Bulgaria

CROATIA

Croatian Helsinki Committee for Human Rights

MONTENEGRO

Free Access Information Program – Montenegro (FAIP-MN)

Pariske Komune St. 7/29/7

81000 PODGORICA – Crna Gora

NORWAY

Norsk Presseforbund (Norwegian Press Association)

Rådhusgatan 17

Postboks 46 Sentrum

N-0101 OSLO

ROMANIA

Centrul Pentru Jurnalism Independent (Center for Independent Journalism)

Str. Bibescu Voda nr. 18, FT 2

Ap. 4-6, Sector 4

70528 BUCAREST

UNITED KINGDOM

The Campaign for Freedom of Information

Suite 102, 16 Baldwin Gardens

London EC1N 7RJ

(...)

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