

Access to official documents

Guide

Directorate General of Human Rights
Integrated project "Making democratic institutions work"
Council of Europe

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Group of Specialists on Access
to Official Information (DH-S-AC)
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Introduction

The aim of this guide is to bring to the attention of the general public and civil servants the principles set out in Recommendation Rec(2002)2 on access to official documents (reproduced in Appendix I of the present document), adopted by the Committee of Ministers of the Council of Europe on 21 February 2002 and addressed to the Council's 45 member states.¹

The Recommendation sets principles which the European states are invited to use as a guide in their law and practice in the field of access to official documents, it being understood that they are free to go beyond these, by adopting provisions granting a broader right of access.

The present guide concerns only official documents held by public authorities, but the Recommendation invites member states to consider, in the light of their national law and internal practices, to what degree the principles which it contains might be applied to information held by legislative bodies and judicial authorities.

This guide first of all sets out the basic principle to be followed in this regard (I). It then highlights a series of practical questions (II) and points to the action that public authorities may take in order to facilitate access (III).

Several appendices contain useful information (text of the Recommendation Rec(2002)2, lists of national and non-governmental bodies in the field of access to official documents). For further information on the Recommendation, an Explanatory Memorandum, which is appended to the Recommendation, is available on request.²

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 Info Point of the Conseil de l'Europe, 67075 Strasbourg Cedex, France (Tel: +33 3 88 41 20 33; Fax: +33 3 88 41 27 45; E-mail: infopoint@coe.int). These texts are also available at the following website: [http://www.coe.int/T/E/Human_rights/rec\(2002\)2_eng.pdf](http://www.coe.int/T/E/Human_rights/rec(2002)2_eng.pdf)

I. The basic principle

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 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 Rec(2002)2 encourages the Council of Europe member states to acknowledge this right.

Access to official documents is important in a democratic, pluralist society. Indeed, this 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.

The right of access to official documents is not absolute. Like most other rights, it is balanced by limitations, necessary in a democratic society and proportionate to the aim of protecting other legitimate rights and interests set down in law. Thus, 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 documents. This guide seeks to offer clear answers to these questions.

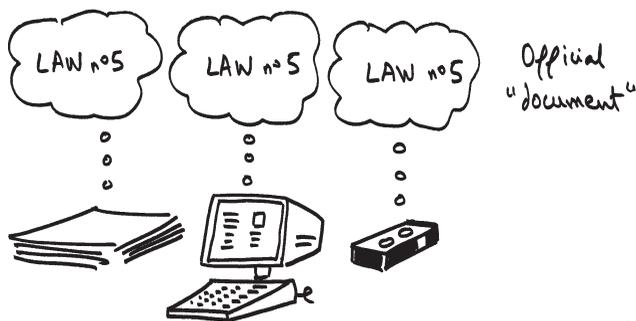
II. Questions / answers

a What is an “official document”?

Recommendation Rec(2002)2 defines “official documents” as: “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.”

This guide relates solely to official documents held by public authorities. This also covers documents 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. This is also true of official documents which the public authority has already placed in a public or private Archives service.

A clear distinction must be made between documents received by public authorities which relate to their administrative 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”.



In practice, official documents are the material manifestation of official information on physical media held by a public authority. The term “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.

b *From whom may an official document be requested?*

A request for access may be submitted to any public authority in possession of it, even if it is not the authority which is the source of the document. If the public authority has the document in question, it should process the request and make the document available to the applicant, subject to the limitations set out below. However, if it does not have the document, it should, as far as is reasonable, seek to refer the applicant to a public authority which has the document.



c *What is a “public authority”?*

For the purposes of Recommendation Rec(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 national, regional and local levels. The term covers town councils or other local authority bodies, police, education and health public authorities, as well as the departments of Archives (without prejudice to the application of more specific rules adopted in this field³). In federal states, the authorities subordinated to the federated states and local authorities are also “public” authorities. In contrast, the term 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. Indeed, according to the legislation in many states, persons or bodies, financed by public funds and which fulfil functions normally falling to administrative authorities, may also be included in the term “public authorities.”



3 In application of Recommendation Rec(2000)13 of the Committee of Ministers of the Council of Europe to member states on a European policy on access to archives.

d *Who may request access to an official document?*

Any person, without distinction (including on grounds of nationality), may have access to an official document. In addition, a request may be submitted by an individual or a legal entity (company, association, etc) as well as by a group of individuals who do not constitute a legal entity.

e *Are there certain people who have an easier right of access than others to official documents?*

No. The underlying principle is equal access for everyone with regard to official documents. There must be no distinction between the different types of applicants, e.g. journalists, researchers, lawyers, trade unionists, private individuals, etc.



An equal right of access for all

f *Are applicants obliged to give reasons for their request for access to an official document?*

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



g *What is the procedure for requesting access to an official document?*

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).

Even in the countries where it is possible to submit a request orally, it may be preferable for the request to be submitted in writing, so that there is some record of it. This may prove to be of value subsequently, in particular in the event of there being no response to the request. A further advantage of written requests is that this lends itself more readily to producing statistics, thus permitting the proactive publication of the most frequently requested documents. Finally, it should be noted that in some countries, but not all, applicants are authorised to submit a request anonymously.

h *What assistance can be expected from the public authority to which a request for access to an official document has been made?*

The underlying principle is that the public authority is there to serve the public and that it should therefore do as much as possible to comply with its requests. To this end, the authority should seek to be efficient and deal with requests for access speedily and co-operatively.

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. 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. Lastly, where the public authority does not hold the documents, it should, as far as it is reasonable, refer the applicant to the relevant public authority.



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. This does not include an obligation to translate documents, nor to provide highly specialist technical (for example legal) advice.

i **What steps should be taken if the applicants are not sure exactly what documents they need?**

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 public authority 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.

j **Can all official documents be accessed?**

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 protected interests, unless there is an overriding public interest in disclosure.

The ability of public authorities to place limitations on disclosure must be clearly defined in law and be necessary in a democratic society as limited exceptions to the right of access, designed to protect particular interests. These limitations should be framed in such a way as to require the public authority to demonstrate that harm to a particular interest would occur, if the information were disclosed. The legislature of each member state should consider how to give effect to this principle when framing its legislation on access to official documents. In some cases, the legislature may decide, when considering the law, that harm will always occur when information of a certain type is disclosed. The harm test and the balancing of interests may be carried out for each individual case, but there may also be rules set down by the legislature: for example, a presumption for or against secrecy or unconditional secrecy for extremely sensitive information.

k *What are the interests that may justify restricting access to official documents?*

Recommendation Rec(2002)2 includes a list of ten categories of interests which might justify restricting access to documents, provided that such limitation 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. For these categories of interests, it must be borne in mind that the sensitive nature of the information may only be of limited duration. The limitation of access to these documents should therefore be considered on a case-by-case basis. The categories are described below.



(i) National security, defence and international relations

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. 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

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. In the same way, 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

Granting free access to such documents could, for example, facilitate a crime or be prejudicial to investigations under way and assist the disappearance of elements of proof, or even, perhaps, the disappearance of the 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.

(iv) Privacy and other legitimate private interests

Official documents may contain personal or other private information, protected, for example, 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, in principle, fall under this limitation.

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 both the right to, and the limitations on, access provided for in that Convention.

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

The concept of "commercial and other economic interests" covers "trade secrets", which need to remain confidential for reasons of competition or production procedures, trade strategies or lists of clients. It may also concern the

limitation of access to documents, which public authorities use to prepare collective bargaining, in which they take part. It may equally be aimed at information collected for the compilation of statistics.

(vi) The equality of parties concerning court proceedings

This limitation seeks to protect the equality of parties concerning court proceedings in the aim of ensuring the right to a fair trial. Amongst other things, it may, for example, 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

Limitations 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 limitation 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

This limitation 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 labour inspections, inspection by the social services and inspection of the environment.

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

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

This limitation 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.

l *Can the public authority refuse to grant access to an official document even though it is in principle available?*

Yes, if the request is manifestly unreasonable. This would be the case, 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), or if it is too vague, or if it covers too broad an area or too great a volume of documents.

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 obvious attempts to harass the administration. A further example may be improper repeated requests for the same document by the same applicant.

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 limitations listed above. In addition, where access is not granted, the authority should indicate to the applicant the possibilities of appealing against the decision (see below).

m *Is it possible to have access to just part of a document?*

The underlying principle is access to the whole of the document. However, in cases where access is restricted, it is desirable that authorities should, where practical, grant access to a part of the document, (for example, with those parts of the document which must remain undisclosed being removed), rather than refuse access to the whole of the document. Confidential passages should be blanked out. However, as a general rule, there should be a clear indication of where and how much information has been deleted. For example:

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

As far as possible, it should also be indicated which limitation justifies each deletion.

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

Furthermore, if a partial version of the document requested would be misleading or meaningless, access may be refused. Lastly, if some of the infor-

mation 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.



n How quickly should the applicant receive a reply to a request for access?

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 not to disclose the existence of the document. Confirming the existence of a specific document could, in certain cases, amount to disclosure of the information, which the authority wishes to keep confidential.

When the response to the request is positive, the document in question should be immediately made available to the applicant. 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. Lastly, just because a maximum time limit is specified, this 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.

o *What is the next step if the public authority does not have the document requested?*

The public authority shall refer the person in question to the public authority which holds the document, provided that it has knowledge about what public authority this is. Nevertheless, the public authority to which the request was submitted has not an obligation to find out what public authority is in possession of the document, when it has not any knowledge about what public authority this might be.

p *Can the public authority suggest other documents besides those requested?*

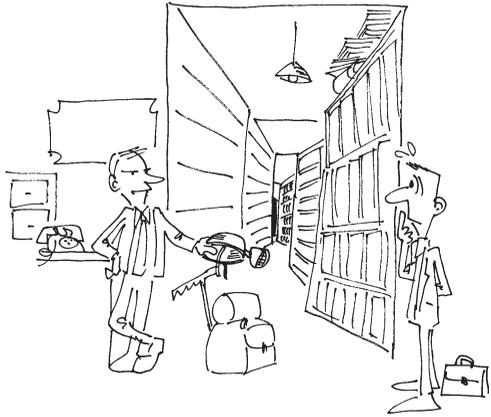
Of course. It may be that the public authority realises that it would be more helpful to the applicant to have access to one or several other documents. It should then inform the applicant of this fact. The applicant can decide whether or not he or she wishes to request access to those other documents, as well as, or instead of, the document initially requested.

q *Can the public authority refer the applicant to alternative sources for the document requested?*

Yes, but on certain conditions. 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 may refer the applicant to these alternative sources, provided that these are easily accessible for the applicant. In the case of access via Internet for example, it would have to be borne in mind that the network is not widespread in all European countries to the same degree. This element needs to be taken into account.

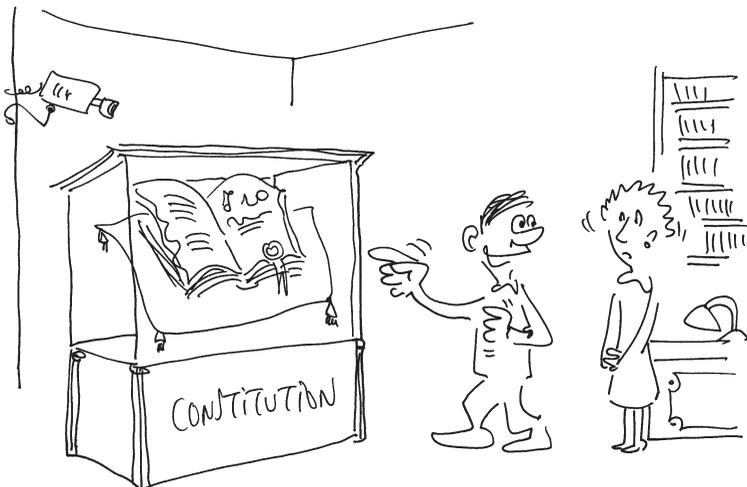
r What is meant by “easy access”?

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, 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, as far as is reasonable, be flexible and adapt to the personal situation of applicants.



s Can the applicant inspect the original document in all cases?

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 if it is physically fragile or in poor condition, or if its contents are partially or totally exempt.



t Can the applicant expect a copy of the document in all cases?

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, according to the national legislation, 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?

In principle, yes. It is important that public authorities demonstrate an open attitude, for example, by 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 exploit them.

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

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, or is complicated or takes a long time, or otherwise creates a large amount of work for the authority (work which does not arise from a lack of organisation). The costs of providing a copy of the document (for example, photocopying costs) may also be charged to the applicant.

Nonetheless, the fees charged should be reasonable and kept to a minimum and should never exceed the actual costs incurred by the public authority. Moreover, where the costs incurred are minimal, it may be preferable for the authority to waive the charge.

The limitations on the fees that 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?**

There may be several kinds of problem concerning a request for access to an official document. 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.

x **Is there a review procedure? Is there a body responsible for monitoring or supervising access to official documents?**

Yes. In most states there is an internal revision procedure, which is observed prior to having recourse to the law. The applicant must then have access to an independent review procedure: a court or another independent and impartial body established by law and responsible for monitoring or supervising access to official documents (for example, an ombudsman, mediator or mediation body, a special commission or parliamentary commissioner; see Appendix II for examples of national bodies responsible for monitoring or supervising access to official documents).

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

The independent review mechanism should be expeditious and inexpensive. The public at large should be made aware of the existence of these review procedures. In some countries, this review body is able, either itself to change decisions taken by public authorities which it considers do not comply with the legislation in force, or to ask the public authority in question to reconsider its position. The review body may give an opinion on the challenged decision. If the review body finds that the challenged decision did not comply with the legislation in force, the decision should be changed in accordance with national law.

III. Actions which may be taken by public authorities to facilitate public access to official documents

This section contains examples drawn from the practice of certain countries and which may be useful to others.

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

Why?

If a right may not be exercised in practice its very existence is placed in question. The provision of broad access to official documents, on the basis of equality and through the application of clearly-defined rules:

- allows the public to gain a clear perspective concerning the state of the society in which it is living and the authorities governing it, and to form a critical opinion on this basis, which favours the informed participation of the public in matters of common interest;
- favours the efficiency of the administration and helps to maintain its integrity by avoiding the risk of corruption;

How can this be done?

The internal organisation of an administration should be arranged in such a way as to allow easy access to documents.

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

Clear rules should be followed for the preservation and physical security of originals as well as for the destruction of official documents: an efficient system of archives management should be implemented. The lack of an archives management system shall not be used to justify delay or refusal of a request for access.

Public authorities should inform the public as best they can on the matters and activities for which they are responsible. A good practice in this regard could be 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 would 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.

Within each public authority or, preferably, in each of the departments of a public authority, someone could be appointed as the person responsible for access to official documents held by the authority or department concerned in order to supervise and to improve the service given to the public. The physical

absence of this person (for instance, due to sickness or holidays) should never justify a refusal of access.

For example, there could be an area made available, in each public authority premises 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 consider providing the necessary consultation facilities.

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

Why?

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

How can this be done?

There are many possibilities, for example:

- By widely disseminating this guide 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;
- By publishing this information electronically (web sites);
- By setting up documentation centres.

A non-exhaustive list of non-governmental organizations particularly active in the field of access to official documents appears in Appendix III. The independent body, responsible for monitoring or supervising access to official documents, could also 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*

Public officials should have appropriate training on their duties and obligations in the area of access to official documents. This does not place any additional obligations on public authorities concerning the training of their agents, but rather should encourage them to implement the measures outlined above.

Why?

Public officials are the first to be in contact with the public when it requests access to certain documents. It is important, therefore, that they be informed regarding their duties and how to fulfil them.

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?

One might, for example, envisage:

- wide dissemination of this guide to public officials, complementing it with a document presenting the national situation;
- specific education on this question within the framework of the training of public officials (for example through classes, traineeships or relevant publications), especially for 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?

It is in the interest of an open and efficient administration.

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

The publication of information before it is requested also allows for public officials to save time because they no longer need to handle requests for that information, the information being henceforth available.

How can this be done?

The public authorities are obviously free to choose the most appropriate means of publishing information, depending on each case:

- publishing of information in official publications, on websites 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;
- displaying documents in appropriate places, easily accessible to the public.

A criteria that public authorities may use in order to determine which are the documents to be made public in a proactive way is that of the number of requests made for particular document. 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 access 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.
7. 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

Some examples of national bodies particularly competent in the field of access to official documents

This appendix is not intended as a complete list. Furthermore, the fact that there may be no specific national entity responsible for access to official documents in a given country does not mean that no recourse to a review procedure is available regarding access to official documents in that country.

Belgium

Commission d'accès aux documents administratifs (Commission on access to administrative documents)
Ministère de l'Intérieur
Rue de Louvain, 1
B-1000 Brussels
Tel: +32 2 50 02 548

There are other access commissions and administrative appeals bodies in Belgium on the regional and municipal levels, which the present Guide cannot present in detail.

Bosnia Herzegovina

Institucija Ombudsmana
Valtera Perica 15
71000 Sarajevo
Tel: +387 33 211-392; 211-393
Fax: +387 33 653-461
E-mail: ombudfbh@bih.net.ba

Croatia

Office of Ombudsman
Ante Klarić
Opatička 4/II
HR-10 000 Zagreb
Tel: +385 1 48 51 855
Fax: +385 1 63 03 014
E-mail: ombucman@zg.hinet.hr

Czech Republic

Kancelar veřejného ochránce práv (The Public Guardian of Rights Office)
Udolní 39
602 00 Brno
Tel: +420 542 542 111
Fax: +420 542 542 112
E-mail: kancelar@ochrance.cz

Estonia

Andmekaitse Inspektsioon (Data Protection Inspectorate)
Väike-Ameerika 19
Tallinn 10129
Tel: +372 62 74 135
Fax: +372 62 74 137
E-mail: info@dp.gov.ee
Web site: www.dp.gov.ee

France

Commission d'accès aux documents administratifs (Commission of access to administrative documents) (CADA)
35, rue Saint-Dominique
75700 Paris 07 SP
Tel: +33 1 42 75 79 99
Fax: +33 1 42 75 80 70
E-mail: cada@cada.fr
Web site: www.cada.fr/

Germany

Berlin

Berliner Beauftragter für Datenschutz und Informationsfreiheit (Commissioner for Data Protection and Freedom of Information, State of Berlin)

An der Urania 4-10

D-10787 Berlin

Tel: +49 30 13889 0

Fax: +49 30 215 50 50

E-mail:

mailbox@datenschutz-berlin.de

Web site:

www.informationsfreiheit.de/

www.datenschutz-berlin.de/

Brandenburg

Landesbeauftragte für den Datenschutz und für das Recht auf Akteneinsicht (Commissioner for Data Protection and Access to Information, State of Brandenburg)

Stahnsdorfer Damm 77, Haus 2

D-14532 Kleinmachnow

Tel: +49 (0)33203 356 20

Fax: +49 (0)33203 356 49

E-mail: poststelle@lda.brandenburg.de

Web site: www.lda.brandenburg.de/

Schleswig-Holstein

Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein (Independent Center for Privacy Protection, State of Schleswig-Holstein)

Holstenstr. 98

D-24103 Kiel

Postfach 71 16, 24171 Kiel

Tel: +49 (0)431 988 1200

Fax: +49 (0)431 988 1223

E-mail: mail@datenschutzzentrum.de

Web site:

www.datenschutzzentrum.de/

informationsfreiheit/

North Rhine-Westphalia

Landesbeauftragte für Datenschutz und Informationsfreiheit

Nordrhein-Westfalen

(Commissioner for Data Protection and Freedom of Information, State of North Rhine-Westphalia)

Reichsstr. 43

D-40217 Düsseldorf

Postfach 20 04 44, 40102 Düsseldorf

Tel: +49 (0)211 38424 0

Fax: +49 (0)211 38424 10

E-mail: poststelle@ldi.nrw.de

Web site: www.ldi.nrw.de/

Hungary

Adatvédelmi Biztos (Parliamentary Commissioner for Data Protection and Freedom of Information)

Nádor u. 22

1051 Budapest

Tel: +36 1 47 57 186

Fax: +36 1 269 3541

E-mail: adatved@obh.hu

Web site:

www.obh.hu/adatved/indexek/

Iceland

Úrskurdarnefnd um upplýsingamál (Information Committee)

Prime Minister's Office

IS-150 Reykjavík

Tel : +354 545 8400

Fax : +354 562 4014

Web site: <http://forsaetisraduneyti.is/interpro/for/for.nsf/pages/ursk0001/>

Ireland

Office of the Information Commissioner

18 Lower Leeson Street

Dublin 2

Tel: +353 1 6395689

Fax: +353 1 6610570

Tel: +353 1 639 56 89

E-mail: foi@ombudsman.gov.ie

Web site: www.oic.ie/

Lithuania

Vyriausioji administracinių ginčų komisija (The Chief Administrative Disputes Commission)
Vilnius st. 27
Tel: +370 5 2684 050
Fax: +370 5 2684051
E-mail: info@vagk.lt
Web site: www.vagk.lt/

Moldova

Centre for Human Rights
(Ombudsman's Office)
Str. Sfatul Tarii nr.16
MD-2012 Chisinau
Tel: +37322 234 800; 245 094
Fax: +37322 225 442
E-mail: cpdom@moldova.md

Norway

Stortingets Ombudsman for
Forvaltningen (Sivilombudsmannen)
(The Parliamentary Ombudsman for
Public Administration)
P.O. Box 3 Sentrum
N - 0101 Oslo
Tel: +47 22 82 85 00
Or: +47 800 80 039 (Freephone)
Fax: +47 22 82 85 11
E-mail:
post@sivilombudsmannen.no
Web site:
[www.sivilombudsmannen.no/
sivilombudsmannen.html/](http://www.sivilombudsmannen.no/sivilombudsmannen.html/)

Portugal

Comissão de Acesso aos
Documentos Administrativos
(Commission of access to adminis-
trative documents) (CADA)
Rua de S. Bento, n° 148-2º
1200-821 Lisboa
Tel: +351 213 933 570
Fax: + 351 213 955 383
E-mail: cada@mail.telepac.pt
Web site: www.cadad.pt/

Russian Federation

Ombudsman Secretariat
Mysnitskaya st. 47
Moscow 103084
Tel: +95 207 39 86 / 207 3969
Fax: +95 207 39 77
Web site: [www.ombudsman.gov.ru/
office/office.htm/](http://www.ombudsman.gov.ru/office/office.htm/)

United Kingdom

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel: +44 1625 545 745
Fax: +44 1625 524 510
E-mail: mail@ico.gsi.gov.uk
Web site:
www.informationcommissioner.gov.uk/

Scottish Information Officer
Kinburn Castle
Doubledykes Road
St. Andrews
Fife,
KY16 9DS
Tel: +44 1334 464 610
Fax: +44 1334 464 611
E-mail:
enquiries@itspublicknowledge.info
Web site: www.itspublicknowledge.info

* * *

Canada (Quebec)

Commission d'accès aux informa-
tions du Québec (Commission of
Access to Information of Quebec)
575 rue St-Amable, bureau 1.10
Quebec G1R 2G4
Tel: +1 (418) 528 7741
Fax: +1 (418) 529 7741
Web site: www.cai.gouv.qc.ca/

Appendix III

Some examples of non-governmental organisations active in the field of access to official documents

1. International NGOs

Article XIX

Lancaster House
33 Islington High Street
London N1 9LH
United Kingdom
Tel: +44 20 7278 9292
Fax: +44 20 7713 1356
Web site: www.article19.org/

Consumers' International Office for Developed and Transition Economies

24 Highbury Crescent
London N5 1RX
United Kingdom
Tel: +44 207 226 6663
Fax: +44 207 354 0607
E-mail: consint@consint.org
Web site:
www.consumersinternational.org

European Federation of Journalists (EFJ)

Nuckarsv. 10
FIN-00730 Helsinki
Finland
Tel: +358 9 12531
Fax: +358 9 642930
E-mail: efj@ifj.org
Web site: www.ifj-europe.org/

International Federation of Journalists (IFJ)

Residence Palace
Rue de la Loi 155
B-1040 Bruxelles
Belgium
Tel: +32 2 235 22 00
Fax: +32 2 235 22 19
E-mail: ifj@ifj.org
Web site: www.ifj.org/

Open Society Justice Initiative

H-1397 Budapest
P.O. Box 519
Hungary
Tel.: +36 1 327 3102; +36 1 327 3113
Fax: +36 1 327 3103
E-mail: justiceinitiative@sorosny.org
Web site: www.justiceinitiative.org/

Privacy International

2nd Floor, Lancaster House
33 Islington High Street
London N1 9LH
United Kingdom
Tel.: +44 7947 778 247
E-mail: privacyint@privacy.org
Web site:
www.privacyinternational.org/

Statewatch

PO Box 1516
London N16 0EW
United Kingdom
Tel: +44 208 802 1882
Fax: +44 208 880 1727
E-mail: office@statewatch.org
Web site: www.statewatch.org/

Transparency International
Otto-Suhr-Allee 97/99
10585 Berlin
Germany
Tel: +49 30 343 8200
Fax: +49 30 3470 3912
E-mail: ti@transparency.org
Web site: www.transparency.org/

**World Association of Newspapers
(WAN)**
25 rue d'Astorg
75008 Paris
France
Tel: +33 1 47 42 85 00
Fax: +33 1 47 42 49 48
E-mail: secretariat@wan.asso.fr
Web site: www.wan-press.org/

2. National NGOs

Armenia

Civil Society Institute, Armenia
15 Papazyan str., 46
Yerevan, 375012
Tel: +374 9 40 36 09
E-mail: csdu@csdu.am
Web site: www.csi.am/

Freedom of Information Center
2 Mashtots Ave., Apt. 40
Yerevan
Tel: +374 1 523571
Mobile: +374 9 407836
E-mail: shushan@hetq.am
Web site: www.hetq.am/

Bosnia and Herzegovina

**Centar za Slobodan pristup
informacijama**
Ferhadija 27/11
71000 Sarajevo
Tel: +387 033 238 651
Fax: +387 033 238 652
E-mail: ltilney@ceeli.ba;
akrehic@team.ba

Bulgaria

Access to Information Programme
120 Rakovsky Str., Entr. A, 4th Floor
1000 Sofia
Tel: +359 2 986 77 09; 988 50 62
Fax: +359 2 989 34 26
E-mail: office@aip-bg.org
Web site: www.aip-bg.org/

Czech Republic

**Otevrena společnost, o.p.s – Open
society, b.a.**
Seifertova 47, 130 00
Praha 3
Tel: +420-2 22 54 09 79
Fax: +420-2 22 54 09 78
E-mail: informace@otevrete.cz
Web site: www.otevrete.cz/

"The Former Yugoslav Republic of Macedonia"

Pro Media
ul. "8-mi mart" br. 13.
1000 Skopje
Tel/Fax: +389 2 221 633
E-mail: mmbklime@ukim.edu.mk

Georgia

Liberty Institute
Griboedov Str. # 23
Tbilisi 0146
Tel: +995 32 936615; 939154;
936784
E-mail: levanrami@liberty.ge

Latvia

Transparency International (Delna)
Gertrudes street 34-5
Riga, LV-1011
Tel: +371 750 64 54
Fax: +371 750 64 55
Mobile: +371 928 47 07
E-mail: TI@delna.lv
Web site: www.delna.lv/

Moldova

Freedom of Expression and Access to Information Promotion Centre
Box. Nr. 255 Chisinau MD 2012
Tel/Fax: +373 2 27 81 55
Mobile: +373 2 91 678 20
E-mail: acces@moldtelecom.md
Web site: www.acces-info.org.md/
www.lexacces.org.md/

Independent Journalism Center (IJC)
Str. Sciusev #53, MD-2012 Chisinau
Tel. +373 2 213652; 227539
Fax: +373 2 226681
E-mail: ijcnnews@ijc.iatp.md
Web site : ijc.iatp.md/

Norway

**Norsk Presseforbund
(Norwegian Press Association)**
Rådhusgatan 17
Postboks 46 Sentrum
N-0101 Oslo
Tel: +47 22 40 50 40
Fax: +47 22 40 50 55
E-mail: presseforbundet@np-nr.no

Romania

**Centrul Pentru Jurnalism Independent
(Center for Independent Journalism)**
Str. Bibescu Voda nr. 18, FT 2
Ap. 4-6, Sector 4
70528 Bucarest
Tel: +4021 335 62 00; 335 62 25
Fax: +4021 335 62 97

Russian Federation

**Transparency International –
Russia, Centre for Anti-corruption
Research and Initiative**
Moscow 109189
6 Nickoloyamskaya st.
E-mail: foi@transparency.org.ru

Serbia and Montenegro

**Lawyers' Committee for Human
Rights – YUCOM**
Tel: +381 11 3244540;
+381 11 3245960
Fax: +381 11 3344235
E-mail: yulaw03@eunet.yu
Web site: www.yucom.org.yu/

**Free Access Information Program –
Montenegro (FAIP-MN)**
Pariske Komune St. 7/29/7
81000 Podgorica – Crna Gora
Tel: +381 69 064 555
Fax: +381 81 241 235
E-mail: faip@cg.yu
Web site: www.faipmn.org/

Slovakia

Citizen and Democracy Association
Obcan a demokracia
Dobrovicova 13
811 09 Bratislava
Tel: +421 2 5292 0426
Fax +421 2 5292 5568
E-mail: wilfling@changenet.sk
Web site: www.changenet.sk/mrgs

United Kingdom

**The Campaign for Freedom of
Information**
Suite 102, 16 Baldwin Gardens
London EC1N 7RJ
Tel: +44 20 7831 7477
Fax: +44 20 7831 7461
E-mail: admin@cfoi.demon.co.uk
Web site: www.cfoi.org.uk/

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