



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

Strasbourg 17 March 1998  
DH-S-AC(1998)003

STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)

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

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1st meeting  
Strasbourg, 4-6 March 1998

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**REPORT**

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## Introduction

1. The Group of Specialists on access to official information (DH-S-AC) held its first meeting from 4-6 March 1998 at the Palais de l'Europe, Strasbourg, with Mr Charles RAMSDEN (United Kingdom) in the Chair.
2. The list of participants is set out in Appendix I. The agenda as adopted appears in Appendix II, with references to the working documents.
3. During this meeting, the DH-S-AC in particular:
  - i. conducted an in-depth exchange of views on the terms of reference received from [the Steering Committee for Human Rights \(CDDH\)](#) and, on this basis, considered the options for preparing a legally binding instrument on access to official information;
  - ii. drew up an initial list of starting-points for discussion at its next meeting, particularly bearing in mind the elements identified by the Group of Specialists previously working under the authority of [the Steering Committee on the Mass Media \(CDMM\)](#); (see Appendices III and IV);
  - iii. exchanged views on the current work of other [Council of Europe](#) bodies in relation to a draft recommendation on a European policy on access to archives;
  - iv. structured its working methods.

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

4. See introduction.

## **Item 2 of the agenda: Election of a Chair**

5. Mr Charles RAMSDEN (United Kingdom), former Chair of the Group of Specialists previously working under the authority of the CDMM (MM-S-AC), was elected to chair the DH-S-AC. The Group of Specialists emphasised the importance it attached to maintaining continuity with the work done under the auspices of the CDMM.

6. The Chair welcomed a number of experts who had taken part in the work of the MM-S-AC, three representatives of the European Committee on Legal Co-operation (CDCJ) and one representative of the CDMM. He pointed out that the composition of the group reflected the Council of Europe's wish to take a broad, multidisciplinary approach to the question of access to official information, and to avoid duplication with other work being done inside the Organisation.

## **Item 3 of the agenda: Exchange of views on the terms of reference of the DH-S-AC**

7. The DH-S-AC examined the terms of reference given to it by the CDDH, as approved by the Ministers' Deputies at their 613th meeting (18-19 and 23 December 1997; document [DH-S-AC \(98\) 1](#)).

## Substantive issues

8. The DH-S-AC noted that it was required to examine, under the authority of the CDDH, options for preparing a binding legal instrument or other measures embodying basic principles on the right of access of the public to information held by public authorities and that it was asked, in its terms of reference, to consider the arguments for and against various options.

9. The DH-S-AC agreed that its work would have to take particular account of:

- the principles contained in [Recommendation No. R \(81\) 19](#) of the Committee of Ministers on access to information held by public authorities;
- any legal developments in the field of access to information, both in the member States of the Council of Europe and at European level;
- the work previously done by the MM-S-AC.

#### Questions of form

10. The DH-S-AC noted that the CDDH had asked it:

- to submit a *final report* containing conclusions and proposals for appropriate action;
- to draw up (if the DH-S-AC considered it appropriate to opt for a legal instrument) a *draft text, with an explanatory memorandum* setting out the reasons for its choice and the substance of the proposed instrument.

11. The experts discussed this last point in depth. From sounding opinions around the table, it was clear that a majority were already willing to think in terms of drafting a binding instrument. However, given the difficulties faced by other experts, they were prepared to accept that the group's immediate aim should be to draft a recommendation, provided the option of reconsidering a convention at a later date was left open.

12. The DH-S-AC decided, at this stage, to confine itself to identifying the potential elements of a recommendation, while bearing in mind that these could form the basis for drafting a binding instrument if the CDDH so decided.

13. From this perspective, the group examined in detail - and thoroughly approved - the elements identified by the Group of Specialists previously working under the aegis of the CDMM (MM-S-AC). These are set out in [Appendix III](#).

14. In the light of these texts and proposals made by the experts at the meeting, the DH-S-AC identified the following as a basis for its future work (see [Appendix IV](#)):

- a number of recitals for inclusion in the *introduction* to the recommendation;
- two *definitions*, concerning respectively the terms "public authority" and "official information"; with regard to the latter (which should be understood in the sense of the French "informations publiques", rather than "official" as opposed to "unofficial" information), the DH-S-AC decided to give additional clarification in the explanatory memorandum to be appended to the instrument;
- a provision indicating that the *scope* of the instrument would be confined to official information held by public authorities; notwithstanding which, member states might

examine how far the principles contained in the instrument could be applied by analogy to information held by national legislative and judicial authorities;

- a number of *substantive provisions*. The DH-S-AC confined itself, at this stage, to drafting a principle setting out the general rule, and another listing possible exceptions to it:

- . in the view of the DH-S-AC, the general rule should be that member states recognise the right of everyone within their jurisdiction to obtain, on request, official information held by a public authority;

- . by way of exception, member states might depart from the principle of right of access, *inter alia* by imposing limitations or restrictions.

15. The DH-S-AC examined in detail the possible exceptions to the rule. In particular, it considered whether the instrument ought to set out an exhaustive list of reasons why a member state might limit the right of access or whether, the list should merely be indicative. After a discussion, the DH-S-AC came down in favour of an exhaustive list, in order to prevent the general rule of right of access being undermined by too many limitations. In this connection, a number of experts referred to existing provisions in their own countries for lists of justified restrictions on the right of access. Among the provisions mentioned were those of France, Iceland, Italy, the Netherlands and the United Kingdom.

16. With a view to drawing up an exhaustive list for inclusion in the instrument, the DH-S-AC decided that the experts will send the Secretariat any relevant information about existing lists in their own countries and any comments on, or suggested changes to, the wording of the other elements in Appendix III, by 30 April 1998.

17. The DH-S-AC instructed the Secretariat to draft a document containing the information submitted by the experts. The document and the present report would be sent to the CDDH for information, in time for its meeting in June 1998, with a reminder that the various elements included were, at this stage, simply a basis for discussion.

18. The DH-S-AC decided to devote its next meeting (in September 1998) to further examining these texts and the other elements identified by the MM-S-AC (see Appendix IV). At the same meeting, it would also prepare a questionnaire about national provisions for a number of justified restrictions on the right of access. The questionnaire would be sent to those members of the CDDH not represented on the DH-S-AC, so as to give the group a full overview of the issue.

#### **Item 4 of the agenda: Examination of the draft recommendation on a European policy on access to archives**

19. The DH-S-AC noted the work going on in the Council of Europe towards preparing a Committee of Ministers recommendation on a European policy on access to archives. A draft recommendation had been prepared in close collaboration between the International Council on Archives and the relevant secretariat within the Council's Directorate of Education, Culture and Sport - namely the secretariat of the Culture Committee (CC-Cult), which reported to the Council for Cultural Co-operation (CDCC).

20. The DH-S-AC observed that this work was at a very advanced stage and had some bearing on the terms of reference of the Group of Specialists. Official information often took the form of documents many of which would sooner or later end up in public archives.

21. That being the case, several experts felt that the work should be delayed in order to allow the DH-S-AC to move further towards implementing its own terms of reference, and to avoid any risk of the two projects reaching different conclusions. Notwithstanding, the DH-S-AC was aware that the CDCC urgently wished to conclude its work, which had begun in 1995. It also noted that the CDCC's work related essentially to the specific issue of access by historians to archives recognised as being of an historic nature, whereas the DH-S-AC was dealing with access at a much broader level, covering all official information emanating from public authorities.

22. The DH-S-AC took note that the draft recommendation envisaged by the CC-Cult was part of the project entitled "Democratisation of access to archives", one strand of the CDCC's "Electronic Publishing, Books and Archives" project. The draft recommendation was based on the premise that archives do play a fundamental role in the democratic life of the States, since they are an assurance of memory, of law and of citizens' identity and cultures. However, each country has differing rules to which this memory is committed. Sometimes, access to archives is limited: the CC-Cult stressed that, it was not so long ago that access to archives in several member States was only authorised to "reliable" person.

23. The DH-S-AC decided that the best approach for ensuring effective co-ordination of the two efforts would be to participate, with observer status, in forthcoming CDCC meetings to complete the draft recommendation. To this end, the DH-S-AC instructed the Secretariat to make the necessary arrangements with the relevant CDCC Secretariat for a DH-S-AC observer and a member of the group's secretariat to take part in the CDCC work.

24. The DH-S-AC appointed Mr Yves GOUNIN (France) to represent the Group of Specialists at meetings of the bodies in charge of the draft recommendation. In particular, he was asked to contact Mr Charles KECSKEMETI, Secretary General of the International Council on Archives (Paris), who had been actively involved in preparing the draft instrument. Mr Gounin was also instructed to outline the DH-S-AC's approach at the next meeting of the Culture Committee (CC-Cult) (Strasbourg, from 13-15 October 1998), and at the meeting of the CDCC in January 1999.

25. Noting that the CDDH had received a request for an opinion on the draft recommendation, the DH-S-AC also instructed the Secretariat, in consultation with the Chair, to draw up a draft opinion for consideration and possible adoption by the Bureau of the CDDH at its meeting on 24 April 1998. The DH-S-AC felt that the draft opinion should point out that while the CDDH welcomed the initiative taken within the CDCC to draw up a recommendation in this important area, it believed there was a need for close co-ordination between this work and that being done by the DH-S-AC, in order to assure that the two efforts were compatible and complementary.

#### **Item 5 of the agenda: Date of the next meeting and organisation of future work**

26. The DH-S-AC decided to hold its next meeting from Wednesday 7 - Friday 9 October 1998. As indicated above, the group wished the agenda for the next meeting to include the following:

- i. re-examination of the basic elements identified in Appendix IV, taking into account information or suggested changes submitted by the experts before 30 April 1998, and bearing in mind any guidelines which might be given to the group by the CDDH in June 1998;

- ii. examination of the provisions in Appendix III not yet discussed.
- iii. preparation of a questionnaire for circulation to members of the CDDH not represented within the group - concerning lists of restrictions on the right of access to official information either existing in, or acceptable to, each member state;
- iv. further consideration of the draft recommendation on a European policy on access to archives.

**Item 6 of the agenda: Other business**

None.

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**Appendix I****LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS****BULGARIA/BULGARIE**

- Mr Zlatko DIMITROFF, Ministry of Foreign Affairs, Department of democratic institutions, humanitarian issues and human rights, ul. Alexander Zhendov 2, 1113 SOFIA

**FRANCE**

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

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

**RUSSIAN FEDERATION/FEDERATION DE RUSSIE**

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

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**TURKEY/TURQUIE**

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**UNITED KINGDOM/ROYAUME-UNI**

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**European Committee for Legal cooperation/  
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M. Michel CAPCARRERE, Magistrat, Services du Premier Ministre, Commissaire du Gouvernement Adjoint auprès de la CNIL, 56 rue de Varenne, F-75700 PARIS

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

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

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**Secretariat/Secrétariat**

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

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

**Interpreters/Interprètes**

Mme Danielle HEYSCH  
M. Roland HERMANN  
M. Robert VAN MICHEL

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## Appendix II

### AGENDA

1. Opening of the meeting and adoption of the agenda
2. Election of a Chair
3. Exchange of views on the terms of reference of the DH-S-AC
4. Examination of the draft recommendation on a European policy on access to archives
5. Date of next meeting and organisation of future work
6. Other business

#### Working documents

- Extract of the report of the 43rd meeting of the CDDH (21-24 October 1997)  
[CDDH \(97\) 41](#), item 9
- Terms of reference of the Group of Specialists (as approved by the Ministers' Deputies at their 613th meeting, 18-19 and 23 December 1997)  
[DH-S-AC \(98\) 1](#)
- Synoptic table on substantive issues which could be addressed in a legal instrument on access to official information  
MM-S-AC (97) 2
- Consultant study on access to official information  
CDMM (95) 15 Def.
- Report of the 3rd meeting of the Group of Specialists on access to official information (MM-S-AC) (5-7 May 1997)  
MM-S-AC (97) 6
- Draft Recommendation No. R (97) ... on a European Policy on Access to Archives (latest revision: Strasbourg, 28 February 1998), prepared by the "Electronic Publishing, Books and Archives" Project and the International Council on Archives  
CC/livre (97) 7 rev.

#### Information documents

- [Recommendation No R \(81\) 19](#) on the access to information held by public authorities
- [Recommendation No R \(91\) 10](#) on the communication to third parties of personal data held by public bodies
- Collection of reports on official secrets law and free access to public records (reports prepared by national partners of the Programme on Security Services in a Constitutional Democracy) (Helsinki Foundation for Human Rights, December 1997)  
DH-S-AC (98) 2 and Addendum (English only)

- Icelandic law on public access to information  
MM-S-AC (97) 3 (English only)
  
- Italian law on access to administrative documents  
MM-S-AC (97) 4 (French only)
  
- The Swedish approach to the issue of access to public documents  
MM-S-AC (97) 5 (English only)

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**Appendix III**

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

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

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

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

<sup>2</sup> [Recommendation No. R \(81\) 19](#) of the [Committee of Ministers](#) to member States on the access to information held by public authorities

<sup>3</sup> [Recommendation No. R \(91\) 10](#) on the Communication to Third Parties of Personal Data held by Public Authorities.

	<p>-On the other hand, the principle of access would not apply to information held by parliaments and courts.</p> <p>(ii) Information covered:</p> <p>-The Group has not reached a final decision on the definition of the term "official information", but has agreed on what should be excluded from the notion:</p> <ul style="list-style-type: none"> <li>-oral information (information on public matters which has no documentary basis, eg. information given in a television programme);</li> <li>-preparatory documents (administrative documents which are in a preparatory stage and are still subject to change);</li> <li>-non-administrative documents (for instance, documents concerning political or personal activities of public authorities);</li> </ul>
	<p>-information held by public authorities concerning personal data of individuals, since access to this type of information is governed by rules on data protection. [The Group should discuss what would be applicable if the information requested concerns a public affair but also contains personal information].</p> <p>-The most suitable notion of "official information" seems to be the one which refers to "documents" or "materials" held by public authorities. Should the Group agree with this approach, it might wish to discuss the type of documents/material that the right of access applies to. For example, the right could apply to all "administrative documents related to public matters, such as reports, letters (incoming/outgoing mail), drawings, maps, microfilms, computer stored information, etc."</p> <p>-As regards inventories/registers/records of public documents, eg. records of incoming and outgoing mail, the Group has not yet decided whether such inventories should be covered by the concept of official information, and thus be made available to individuals upon request.</p> <p>-After the definition of official information, a clause stipulating that "other acts/regulations granting a more extensive right of access will remain in force" could be added.</p>
<p>Principle 3: Restrictions to the right of access</p>	<p>-The Group discussed the advisability of placing the restriction clause after the provision granting the general right</p>

to official information	<p>of access to public information, so as to highlight that limits to the right are also necessary.</p> <p>-A restriction clause based on principle V of Recommendation No. R (81) 19 could be included in an instrument along the following lines:</p> <p>"The right of access to information shall be subject to such limitations and restrictions as are necessary in a democratic society for the protection of legitimate public interests -such as national security, public safety, public order, the economic well-being of the country, the prevention of crime, or for preventing the disclosure of information received in confidence-, and for the protection of privacy and other legitimate private interests."</p> <p>-The Group discussed whether States should enjoy a degree of discretion to determine which documents/materials should be excluded from the right of access. The Group is invited to re-examine this issue.</p> <p>-A possibility could be to list certain types of documents/materials which would be excluded from the right of access, such as, for example: minutes of cabinet meetings, materials falling under secrecy or confidentiality acts, working documents prepared by a public authority for internal use only, etc.</p>
Principle 4: Access after a specific period of time	<p>-The Group could discuss the possibility of introducing a provision stipulating that after a specific period of time, certain materials which have been protected by a limitation clause would also become accessible.</p>
Principle 5: Beneficiaries of the right of access to official information	<p>-The Group has agreed that the right of access to documents/materials should be applicable to all persons, irrespective of their nationality, citizenship, place of residence, etc, given that any other approach would be discriminatory and difficult to enforce in practice.</p> <p>-On the other hand, the Group was against granting the media a privileged right of access to official information. However, if a general right of access is recognised, it would also apply to media professionals [Remark: in practice, in countries where legislation on access to information already exists, it is generally the media that make use of this right, as compared to individual requests for information].</p> <p>-Special arrangements for media access to public meetings/events organised by public authorities might be considered. This could include free supply of documents or advance distribution of "embargoed" documents to the media. The Group is invited to discuss whether any provisions</p>

	should be included in this respect in a legal instrument.
Principle 6: Disclosure of official information	<p>-Access to information should be provided on the basis of a request from an individual.</p> <p>-The disclosure of information on official initiative of public authorities could be included in a legal instrument, but such an approach should be complementary to the individual right of access (if the disclosure of information was left to the official initiative of public authorities only, the whole principle of access would be questioned and subject to administrative discretion).</p>
Principle 7: The exercise of the right of access to official information	<p>-The Group agreed that requests for information should meet certain minimum procedural requirements. Some standards discussed were:</p> <ul style="list-style-type: none"> <li>-the request should be made in writing or by electronic means (oral requests for information would be denied);</li> <li>-the request should not be anonymous;</li> <li>-the request for information should specify the materials/documents to be examined (to be discussed by Group);</li> <li>-the person requesting information should state/prove a legitimate interest (to be discussed by Group).</li> </ul>
Principle 8: Forms of access to official information	<p>-The Group should discuss the nature of the right of access, ie, whether it confers the right to inspect the original documents, to inspect and photocopy these or only to obtain copies of the original documents. The means of accessing materials other than documents (drawings, maps, pictures, microfilms, computer stored information, etc.) would also have to be examined.</p>
Principle 9: Cost of access to official information	<p>-The Group agreed that the fundamental principle should be to provide access to official documents/materials free of charge. If the right of access confers the right to photocopy documents, and a large number of documents were concerned, the Group should discuss whether the requesting party should pay the copying costs involved.</p>
Principle 10: Time-limits for dealing with requests of access to information	<p>-The Group discussed whether a specific time-limit would have to be indicated in the possible instrument. A possibility could be to provide that requests for access to information should be answered by the relevant public body "as quickly as possible" or "within a reasonable time".</p>

<p>Principle 11: Decision refusing access to information</p>	<p>-The Group discussed the possibility of a provision stipulating that negative replies to a request for information should be given in "an appropriate form" by the public authority concerned. The Group is invited to re-examine this issue and to decide whether:</p> <ul style="list-style-type: none"> <li>-public authorities could be obliged to give their refusal in writing or by electronic means (depending on how the request was made);</li> <li>-the decision should provide the reasons for the refusal and indicate any appeals/remedies available;</li> <li>-a provision prohibiting "administrative silence" (public authorities not taking a decision) would be convenient.</li> </ul>
<p>Principle 12: Appeal against refusal of access</p>	<p>-The Group agreed that a provision ensuring a right of appeal against the refusal of a public authority to grant access to information could be included in an instrument.</p> <p>-The Group considered that the appeal body should be independent, but not necessarily a court.</p>
<p>Principle 13: Access to archives</p>	<p>-The Group decided that a separate provision for archives would not be necessary. General access rules should apply to archives, and information held in these should not be more difficult to access than other materials held by public authorities.</p>

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**Appendix IV****ELEMENTS IDENTIFIED BY THE DH-S-AC AT ITS 1st MEETING  
(4-6 MARCH 1998) TO PROVIDE A BASIS FOR DISCUSSION  
ON THE FUTURE WORK OF THE GROUP OF SPECIALISTS****Introduction**

This appendix lists a number of elements which emerged from discussions at the first meeting of the Group of Specialists on access to official information (DH-S-AC), held in Strasbourg from 4-6 March 1998.

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

The DH-S-AC has asked its members to send any comments on this appendix, or proposed changes of wording, to the secretariat before 30 April 1998.

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**Preamble**

- i. Considering the importance in a pluralistic, democratic society of adequate information for the public on issues of common interest;
- ii. [Considering that the public's right of access to official information should be analysed in human rights terms, particularly in the light of Articles 8 and 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law pertaining thereto];
- iii. Considering that wide access to official information, on a basis of equality and in accordance with clear rules:
  - encourages internal control within administrations and helps avoid the risk of corruption;
  - contributes to affirming the legitimacy of administrations as public services and to reinforcing citizens' confidence in public authorities;
  - allows individuals to have an adequate view of, and to form a critical opinion on, the state of the society in which they live [and the authorities that govern them];
  - encourages responsible participation by the public in matters of common interest;
- iv. Considering that the public authorities of the member states of the Council of Europe should do their utmost to make the information they hold available to the public, out of concern for transparency in public administration;



- v. Stressing that the principles set out hereafter constitute a minimum base, and that they should be understood without prejudice to domestic laws and regulations which already recognise a wider right of access to official information;

[...]

## Definitions

For the purposes of this recommendation:

- "public authority" shall mean:
  - i. government at national, regional or other level;
  - ii. natural or legal persons performing public administrative functions under national law;
- "official information" shall denote all information recorded in any form, held by public authorities [and linked to any public service function], with the exception of:
  - i. oral information (information on public matters which is not recorded in any form);
  - ii. preparatory documents (administrative documents which are in a preparatory stage and still subject to change);
  - iii. non-administrative documents (for example, documents concerning political or personal activities of public authorities);

[...]

## Scope

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

### Principle 1

The member states [recognise] [should recognise] the right of everyone within their jurisdiction to obtain, on request, official information held by a public authority.

### Principle 2

1. Member states may derogate from the right of access to official information. When derogation takes the form of limitations or restrictions, these must be set down precisely and exhaustively in the law, be necessary in a democratic society and, in particular, be proportionate to the aim of protecting<sup>4</sup>:

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<sup>4</sup> The DH-S-AC is working towards the preparation of an exhaustive list. For the moment, the list of elements in Principle 2 is intended to be provisional, as a basis for discussion. The final contents of the list will be decided at a later stage, specifically in the light of information to be provided by the members of the DH-S-

- [i. national security;
- ii. territorial integrity or public safety;
- iii. society against crime, in particular organised crime;
- iv. health;
- v. respect for privacy and personal data;
- vi. the confidentiality of certain information emanating from a public authority or entrusted to it confidentially;
- vii. the authority and impartiality of the judiciary.]

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

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

\* \* \*

#### Draft explanatory memorandum

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

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