TC-CP(2025)11
30/09/2025

Council of Europe Convention on Access to Official Documents (CETS No. 205)

Consultation of the Parties

Comments of Sweden on the conclusions and recommendations of the Consultation of the Parties on the implementation of the Council of Europe Convention on Access to Official Documents by Sweden

The Government of Sweden has been requested to report to the Consultation of the Parties on the measures taken to improve the implementation of the Council of Europe Convention on Access to Official Documents (CETS No. 205) ('the Convention') pursuant to point 2 of the conclusions of the Consultation of the Parties on 3 October 2024 (TC-CP(2024)10).

The Consultation of the Parties has in its conclusions and recommendations recommended that Sweden takes the following measures identified on the basis of a report from the Access Info Group;

- include in the Appendix to the Public Access to Information and Secrecy Act all state-owned companies or private bodies which exercise administrative authority in order to ensure compliance with Article 1, paragraph 2, sub-paragraph a, i, 3, of the Convention (paragraphs 9-10, 65 of the AIG report);

- include in its legislation the overriding public interest principle in full compliance with Article 3, paragraph 2, of the Convention (paragraphs 27,29, 68 of the AIG report);

- enshrine the right of the applicant to choose the form of access, unless the choice is unreasonable, in its legislation in compliance with 2 (4) Article 6, paragraph 1, of the Convention (paragraphs 46 and 70 of the AIG report);

- reconsider its reservation in relation to Article 8, paragraph 1, of the Convention in respect of decisions taken by the Government, ministers and the Parliamentary Ombudsmen (paragraphs 53-57 and 72 of the AIG report).

The comments below focus on the recommendations that the Consultation of the Parties has given following the measures it has identified on the basis of the report from the Access Info Group Draft Report.

Article 1, paragraph 2, sub-paragraph a, i, 3 – General Provisions

The Appendix of the Public Access to Information and Secrecy Act is by no means static. According to the legislative history of the Act, when a body is tasked with duties of administrative authority, it is also considered whether the right of access to information should apply when the body performs such duties (Govt Bill 1986/87:151). If this is found to be the case, the Appendix should be amended.

When considering which bodies should be included in the Appendix, the specific circumstances must be carefully taken into consideration. A natural starting point when a body has been tasked to exercise administrative authority is that the same right of access to information should apply as it would if a public authority had handled the same function. However, extending the right of access to information to natural or legal persons who exercise administrative authority has practical and principal implementations. For example, these could be to do with the reasons for the function being run by a legal person, or the need for secrecy for certain kinds of information.

Hence, the Appendix is a non-static legislative document that is continuously being amended as needed. A public authority may also at any given time initiate an amendment of the Appendix by submitting a request to the Government Offices of Sweden if the authority for example decides to task a private body with administrative duties.

Article 3, paragraph 2 – Possible limitations to access to official documents

Even though the Public Access to Information and Secrecy Act contains very few secrecy provisions which include an explicit overriding public interest test, the interest of the public to access the information is always taken into account when considering a specific provision on secrecy. As mentioned in the Swedish report, the legislator is meticulous when formulating new secrecy provisions. When considering new or altered provisions on secrecy the public interest in gaining access the type of information in question is a circumstance of significant importance in the assessment of whether there is a need for secrecy.

A vital part of the Swedish legislative process is circulating legislative products for consultation. A product containing suggestions of regulations on secrecy is circulated to consultation bodies that guard matters of transparency. As well as the Chancellor of Justice and the Parliamentary Ombudsmen, the perspective of the media is usually a necessity. Examples of consultation with bodies representing this perspective are the Swedish Union of Journalists and the Swedish Media Publishers' Association. The consultation responses are taken into careful consideration in the legislative process. Hence, the concern of overriding public interest is sufficiently regarded and assessed in the Swedish legislative process in regard to each specific provision of Secrecy. This provides for a transparent and consistent application on the laws regarding access to information.

A regulation which would enable an authority to disclose secret information to the public when it is obvious that the public interest of disclosure overrules the interest of secrecy would therefor mean that a public official would be able to re-examine the assessment of the balance of interests already made by the legislator.

Article 6, paragraph 1 – Forms of access to official documents

As a general rule, Swedish authorities are not obliged to disclose an official document in electronic form, but they are nevertheless often able to give the public such access in many cases, where appropriate. Official documents are therefore often provided in electronic form when this is requested. In some cases sectoral legislation can also provide an obligation to do so.

Access to information in electronic form is of value for the public to have insight into the activities of authorities, as well as for the possibility of re-using the information for different purposes, e.g. for creating innovation for new products and services. When disclosing a document in electronic form however, there are often consequences both in terms of the personal integrity and aspects of security on a societal level. Processing of personal data must comply with regulations, principally the General Data Protection Regulation[1]. There is extensive national law complementing the Regulation, primarily regarding the processing of personal data by public authorities. A public authority must consider any legal implications that prohibit such a disclosure before disclosing a document in electronic form. There may also be practical difficulties to consider when documents aren't readily available in electronic form. Legal and practical implications may give a ground for public authorities to not disclose specific documents in electronic form.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

Article 8, paragraph 1 – Review procedure

The Government of Sweden has reconsidered its reservation in relation to Article 8, paragraph 1, of the Convention, on access to a review procedure before a court or another independent and impartial body established by law, as regards decisions taken by the Government, ministers and the Parliamentary Ombudsmen, and concluded that it does not wish to make any amendments in regards to this reservation.