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General information

This report has been prepared by the Government Offices of Sweden, Ministry of Justice.

Article 1 – General provisions

According to the Freedom of the Press Act, FPA, an “official document” is a document held by a public authority that has been received by or drawn up by a public authority (Chapter 2, Section 4). According to the FPA a document is a presentation in writing or images but also a recording that one can read, listen to or comprehend in another way only by means of technical aids (Chapter 2, Section 3). The word ‘document’ consequently refers not only to paper and writing or images but also, for example, to a tape recording or a recording for automatic data processing. This for example includes information that occurs in e-mails, text messages in message services such as SMS, or information that is made available on websites.

A document has been “received” by a public authority when the document has arrived at the authority or is in the hands of a competent official (Chapter 2, Section 9 of the FPA). The document does not need to be registered in order to be an official document. When a document is digitally transferred to a public authority, it is generally considered to be received when the content can be perceived by the authority, for example when an e-mail can be read.

The FPA contains special provisions concerning letters and other messages that are not addressed to the authority directly but to one of the officers of the authority. If such a message relates to the authorities’ activities, it is generally an official document even though it has been addressed to a specific person at the authority (Chapter 2, Section 8).

The FPA contains several rules relating to when a document is considered to have been “drawn up” by a public authority (Chapter 2, Section 10). A document is considered to be drawn up when an authority dispatches it to an external recipient. A document which is not dispatched is drawn up when the matter to which it relates is finally settled by the authority. If the document does not relate to any specific matter, it is drawn up when it has been finally checked and approved by the authority or has otherwise received its final form.

For certain kinds of documents, other rules apply concerning when they are drawn up. For example, a day book, a journal or similar document that is kept on an ongoing basis, are considered to be drawn up as soon as the document is ready for notation or entry. Judgments and other decisions, with associated records, are drawn up when the ruling or decision has been pronounced or dispatched. Other records and similar documents are generally drawn up when the authority has finally checked and approved the document, or the document has otherwise received its final form.

Preliminary outlines and drafts and memoranda are not considered to have been drawn up, unless they have been retained for filing (Chapter 2, Section 12 of the FPA). Hence, they are normally not considered official documents. “Memorandum” is an aide-mémoire or other notation made solely for the preparation of a case or matter and which has not introduced any new factual information. To the extent such a document contains new factual information on the matter, it is considered in that part to be drawn up. If a memorandum is dispatched, however, it will be considered as an official document in its entirety.

There is no definition of “public authority” in the FPA. According to the legislative history of the Act, the expression public authority should correspond with the equivalent expression used in the Instrument of Government, the fundamental law also known as the Swedish Constitution (prop. 1975/76:160 p. 134). According to the legislative history of the Instrument of Government, the expression public authority refers to bodies that are part of the state and

municipal organisation under public law (prop. 1973:90 p. 232 and 233). Such bodies are the Government, the courts and state and local administrative authorities. According to the FPA, the Parliament (Riksdag) and decision-making municipal assemblies on local and regional level are equated with public authorities regarding access to official documents (Chapter 2, Section 5).

In addition to public authorities, the Parliament and decision-making municipal assemblies, the right of access to official documents is extended to limited companies, trading companies, for-profit associations and foundations where municipalities or county councils exercise legally decisive influence. This is regulated in the Public Access to Information and Secrecy Act (2009:400), Chapter 2, Section 3.

Regarding a state-owned company, for-profit association or foundation or a private body, such bodies are only liable to apply the right of access to official documents, if the body in question has been listed in the Appendix to the Public Access to Information and Secrecy Act (Chapter 2, Section 4). One reason for including a state-owned company or a private body in the Appendix may be that the body in question engages in the exercise of authority in relation to private parties. However not all state-owned companies or private bodies with such rights have been listed in the Appendix.

Article 2 – Right of access to official documents

The fundamental rules on public access to official documents are found in the FPA, one of the four fundamental laws of Sweden. The FPA stipulates that each and everyone has the right to access official document (Chapter 2, Section 1). The Act thus gives everyone, regardless of citizenship, a right to official documents. Legal persons governed by private law are also considered to have the right to access official documents. Public authorities themselves do not have such a right that is constitutionally established, but the Public Access to Information and Secrecy Act provides the authorities with a corresponding right to receive information. In general, the FPA guarantees the right of access to official documents irrespective of the intended use of the information by the requestors of access.

Regarding foreign citizens and stateless persons, the right to access official documents may, according to the FPA, be restricted by law (Chapter 14, Section 5). There is currently no such law.

According to the Public Access to Information and Secrecy Act a public authority may in certain cases provide a person with an official document by making a reservation. Such a reservation means that the individual recipient cannot freely use the information. For example, he or she may be prohibited from publishing the information or using it for anything other than research purposes. A private party who makes use of information in violation of a reservation may be subject to a penalty for breach of confidentiality (Chapter 20, Section 3 of the Penal Code). A person who requests to obtain an official document need not be satisfied with receiving the document subject to a reservation, but can appeal and have the reservation considered by a superior instance.

Article 3 – Possible limitations to access to official documents

The FPA lists the interests that may be protected by keeping official documents secret (Chapter 2, Section 2):

1. national security or Sweden’s relations with a foreign state or an international organisation;
2. the central financial policy, the monetary policy, or the national foreign exchange policy;

3. the inspection, control or other supervisory activities of a public authority;
4. the interest of preventing or prosecuting crime;
5. the public economic interest;
6. the protection of the personal or economic circumstances of private subjects; or
7. the preservation of animal or plant species.

Official documents may not be kept secret in order to protect interests other than those listed above.

The cases in which official documents are secret must according to the FPA be carefully specified in a special statute. This statute is the Public Access to Information and Secrecy Act. However, it is permitted to include provisions concerning secrecy in other statues, provided that the Public Access to Information and Secrecy Act makes reference to them. In other words, the Public Access to Information and Secrecy Act must indicate all the instances when official documents are secret. The right to decide on which documents are secret is exclusive to the Parliament. However, in a number of provisions of the Public Access to Information and Secrecy Act, the Government is empowered to make supplementary regulations. The Government's provisions are contained in the Public Access to Information and Secrecy Ordinance.

As a result of the provisions in the FPA that the cases of secrecy must be carefully specified, the Public Access to Information and Secrecy Act contains numerous sections with provisions on secrecy. Currently the latter Act contains 28 chapters with provisions on secrecy, with over 450 sections. In addition, the Public Access to Information and Secrecy Ordinance contains 14 sections, and an Appendix with 166 provisions. As mentioned above, it is permitted to include provisions concerning secrecy in other enactments, provided that the Public Access to Information and Secrecy Act makes reference to them. For example, such reference is today made to the special code on penalties for market abuse in markets in financial instruments, special code on defense inventions, special code on criminal records and in the Protective Security Act.

The Committee on the Constitution, the body of the Parliament responsible for preparing matters concerning the fundamental laws and has the task of scrutinising the work of the Government and its ministers, has stressed that new provisions on secrecy may only be introduced after careful consideration and that those considerations should be reported in the legislative history of the new provision. In such considerations a balance between the interest in transparency and the interest in secrecy is required.

If secrecy applies to information according to the provisions of the Public Access to Information and Secrecy Act or any other statute that Act refers to, then the information must not be disclosed. However, the secrecy provisions are seldom absolute. The vast majority of secrecy provisions require that certain legal prerequisites be fulfilled in order for secrecy to apply in an individual case. Each provision applies in regard to certain specially designated kinds of information and in circumstances carefully laid down in the provision.

When it comes to when the secrecy shall be applied, it is usually stated that the information should be found in some special context, for example, in certain matters, in certain operations or at certain authorities, which are described with varying levels of detail by the provisions. When it comes to what information the specific provision can be applied to, the information is always described in detail and of some definite kind, for example, 'Sweden's relations with another State' or 'the personal circumstances of a private party'.

Regarding the applicability of secrecy, a small number of secrecy provisions do not lay down any special conditions. These provisions are referred to as being 'absolute'. However, as mentioned, the majority of secrecy provisions are subject to prerequisites regarding their

applicability, which require that certain specific conditions are met. The condition is usually formulated as a ‘requirement of damage or harm’. Such a requirement means that secrecy applies provided that some stated risk of damage or harm arises if the information is disclosed.

There are two main types of requirement of damage or harm: ’straight’ and ‘reverse’. When a secrecy provision contains a straight requirement of damage or harm, there is a legal presumption that the information may be disclosed. In that case the authority needs some kind of positive indication to infer that the disclosure might in fact result in damage or harm to the interest that it is set to protect in order to withhold the information from public insight. In case of a reversed requirement, on the other hand, there is a legal presumption laid down in the provision that presupposes harm to the interest that the provision on secrecy is set to protect if the information is disclosed. The information may be disclosed only if the authority essentially is able to rule out any possibility of damage or harm. The legislator is meticulous when formulating new secrecy provisions, including the requirement of damage or harm. There is a strong tradition and endeavor to retain openness to the largest extent possible, without risking the interests that the secrecy provisions are set out to protect. When considering new regulations on secrecy, the public interest in the type of information in question is a vital circumstance of the assessment.

Article 4 – Requests for access to official documents

According to the FPA, a public authority may not investigate who the person requesting access to an official document is or what purpose they have with their request to a greater extent than is necessary for the authority to be able to examine whether there are obstacles to disclose the document (Chapter 2, Section 18). As a general rule, anyone who requests access to an official document in principle has the right to remain anonymous. An authority may thus not, generally, request that an applicant share information about his or her identity. Nor does the applicant normally need to state the purpose of his or her request. Under certain circumstances however, authorities are allowed to or even required to inquire about the identity of the individual or the purpose of the request. This may be the case if the authority has to assess the applicability of a secrecy provision containing a condition that requires certain damage or harm to occur in case of disclosure. For instance, in a case where the applicant’s identity is pertinent to the assessment of the risk of damage or harm, the authority is usually allowed to ask for such information from the applicant. In this situation, the person requesting the document can choose between disclosing who he or she is and what the document is to be used for or refrain from taking part of the requested document.

No specific public authority has been given a specific mandate to assess and give information on public access to official documents. However, the Parliamentary Ombudsmen (JO) are specifically tasked with ensuring that public authorities and courts abide by the provisions of the Instrument of Government concerning impartiality and objectivity, and that the public sector does not infringe on the basic freedoms and rights of the citizens, including the right of access to official documents. The ombudsmen's supervision includes ensuring that public authorities deal with their cases and in general carry out their tasks in accordance with existing legislation. The ombudsmen's enquiries are prompted both by complaints filed by the public or initiated by the ombudsmen themselves. Inspections are regularly made of various public authorities and courts of Sweden.

Article 5 – Processing of requests for access to official documents

According to the FPA, a request to access an official document is made to the authority that holds the document (Chapter 2, Section 17). An official document that may be disclosed must be made available to the applicant, immediately or as soon as possible. If the document cannot be read or comprehended in any way without using technical aids, the authority must make

such equipment available, for example, a tape-recorder in the case of a tape-recording. A document may also be transcribed, photographed, or recorded. If a document cannot be provided unless a part of the document that may not be disclosed is disclosed, the document shall be made available to the applicant in transcript or copy in the other parts (Chapter 2, Section 15).

Those who wish to obtain official documents need not describe the document precisely, for example, state a date or registration number. But on the other hand, authorities are not liable to make extensive inquiries in order to obtain the document for the applicant when he or she cannot provide the authority with further details of the document.

There are no fixed time limits for public authorities to reach a decision on a request for access to official document. However, a request to obtain an official document must, in accordance with the FPA, be considered speedily by the authority (Chapter 2, Section 16). An official currently working with the document need not release it immediately but unnecessary delay is not permitted. One reason for a slight delay in allowing access to an official document may be that the authority must consider whether the information contained in the document is secret.

Sometimes it is an authority other than the one where the document is held that must determine the issue of secrecy. In that event, the request to access the document should be submitted at once to the authority that will decide on the matter.

As a general rule, a public authority must give reasons in cases of refusal of access to official documents. According to the Administrative Procedure Act (2017:900), a decision that can be expected to affect someone's situation in a not insignificant way shall contain a clarifying statement of reasons if this is not obviously unnecessary. The statement of reasons shall contain information about what provisions have been applied and what circumstances have been decisive for the position taken by the authority. In some cases, a statement of reasons may be wholly or partly omitted, for example if it is necessary in view of national security, the protection of private persons' personal or financial circumstances or some other comparable circumstance (Section 32).

The Administrative Procedure Act also states that an authority shall ensure that contacts with private persons are smooth and simple. The authority shall give private persons the assistance they need to look after their interests (duty of service). The assistance shall be given to the extent that is deemed appropriate with regard to the nature of the question, the private person's need of assistance and the activities of the authority. It shall be given without unnecessary delay (Section 6). This duty of service ensures assistance for people who wish to access official documents.

Article 6 – Forms of access to official documents

According to the FPA there is a right to read an official document on the premises of the public authority, free of charge. If the document cannot be read or comprehended in some other way without using technical aids, the authority must make such equipment available. For example, this could mean a media player, if the document is a digital sound recording. A public document may be transcribed, photographed or recorded (Chapter 2, Section 15).

If the provision of an official document on the premises causes "serious difficulty", the authority need not provide access to the document in such manners. The same goes for a recording that can be read, listened to or comprehended in another way only by means of technical aids, if the applicant could access the recording without considerable inconvenience at a nearby authority (Chapter 2, Section 15 of the FPA).

As a general rule, authorities are not obliged to disclose an official document in electronic form, but they are nevertheless often able to do so as a service, where appropriate.

If some information in a document is classified as secret, the parts of the document that do not contain such information must still be disclosed. If the document cannot be provided without disclosing classified information, it must be made accessible through a transcript or copy. The authority must inform the person who has requested access to the document that parts of the document have been deemed secret and cannot be disclosed, and of his or her right to appeal this decision.

Article 7 – Charges for access to official document

Access to official documents on the premises of a public authority for examination purposes is ensured free of charge under the FPA. Those wishing to access official documents are also entitled to receive a transcript or a copy of the document, in return of a fixed fee (Chapter 2, Section 16).

For courts and central government administrative authorities, fees for copies and transcripts are regulated by the Fee Ordinance (1992:191). According to the Ordinance, no fee is to be charged if the request covers less than 10 pages. A request for 10 pages is charged with SEK 50, and an additional fee of SEK 2 is charged for every additional page thereafter. If there are special reasons, an authority may decide on exceptions to the fixed fees (Section 16). For example, if the same person repeatedly requests copies of nine or fewer pages, when this suitably could have been done in one single request, the separate requests could be regarded as a whole in terms of charging a fee.

Municipalities and county councils may charge fees for copies or transcripts of official documents only if the decision-making assembly has decided on a tariff. The rate may not exceed full cost coverage, and the cost may not include the cost of considering whether the information contained in the document is secret. Companies over which a municipality or county council exercises legally decisive influence are also obliged to decide on a tariff in advance to be able to charge for copies or transcripts. These companies must also not exceed full cost coverage.

For authorities under the Parliament, the prerequisites to charging fees for copies are regulated separately.

Article 8 – Review procedure

Under the FPA, a person whose request to access a document has been rejected, or granted subject to reservations, is normally entitled to request that the matter be examined by a court. The court can overturn decisions made by public authorities. The Public Access to Information and Secrecy Act contains provisions concerning which court an appeal should be addressed to. In most cases appeals should be addressed to one of the four Administrative Courts of Appeal. The decision of an authority to disclose an official document cannot be appealed against.

Article 9 – Complementary measures

The need to inform the public of the right of access to public documents and train authorities must be appraised in regard to the circumstances of the Party. Sweden has a long tradition of access to information. The first FPA was passed in 1766, making Sweden the first country in the world to pass a fundamental law in this area.

As mentioned under Article 5, the Administrative Procedure Act refers on public authorities a duty of service towards private persons (natural and private legal persons). The duty of service includes a duty to give advice and guidance on how to exercise the right of access to official documents. In addition, the Administrative Procedure Act also stipulates that an authority shall be available for contacts with private persons and inform the public about how and when they can make these contacts. The authority shall also take the measures regarding availability that are needed to enable it to fulfil its obligations to the public under Chapter 2 of the FPA about the right to access official documents (Section 7). Furthermore, public authorities often publish information on how to access information on the website of the respective authority.

The Government Offices have also published a brochure with information concerning public access to information and secrecy legislation. The brochure, available in Swedish and English, can be downloaded for free via the Government website. A copy of the brochure can also be ordered from the Government Offices free of charge.

For public authorities, court rulings on access to public documents, especially rulings by the Supreme Administrative Court, provide guidance on the application of the legislation. In addition, guidance on the application of the FPA is also provided in decisions by the Parliamentary Ombudsmen, which are tasked with ensuring that public authorities and courts abide by the provisions of the Instrument of Government concerning impartiality and objectivity and that the public sector does not infringe on the basic freedoms and rights of the citizens, including the right of access to official documents.

When it comes to management and storage of official documents, the Public Access to Information and Secrecy Act states that the authorities must take into account the principle of public access to information when they deal with official documents. The authorities should in particular ensure, among other things, that official documents be made available with the expedition required according to the FPA and that automatic data processing of information at the authority (that is to say the handling of information in the authority's IT system) is arranged in a manner that takes into account the interest that private parties may have in using technical aids to search for and obtain official documents (Chapter 4, Section 1). The authorities are also liable, with the aim of facilitating the search for official documents, to draw up a description that provides certain information about, among other things, the authority's operations and organisation, which types of information the authority regularly gathers from or discloses to others and how and when this is done, means of searching available, etc.

The Archives Act (1990:782) also contains provisions that are to be taken into account when handling official documents. This Act contains, among other things, a provision stating that when producing and registering official documents, account shall be taken to the care of archives, and a reminder of this has been included in the Public Access to Information and Secrecy Act. The Archives Act also contains a general provision regarding the disposal of official documents. In accordance with The Archives Ordinance, the National Archives can issue regulations concerning such disposals.

Article 10 – Documents made public at the initiative of the public authorities

Publishing documents that are deemed to be of special interest to the public can both increase transparency and improve efficiency in public administration. There are plenty of examples of public authorities taking own initiative to publish such documents digitally. Such measures are positive and should be encouraged, provided that the publication is considered appropriate in each particular case. The Government and Government Offices publish a wide range of documents on the Government's website, from legislative products to consultation responses.
To increase access to information from the public sector, Sweden also works actively with open data. Data that is utilized proactively from the public can increase both innovation and competition, but also contribute to increased transparency and insight. The Government has

amongst other things commissioned an inquiry with the task to present a proposal on the implementation of the Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (Open Data Directive). The inquiry has in its report to the Government (SOU 2020:55) recommended that the Directive should be implemented through a new act on open data. The act aims to increase access to public sector information, particularly in the form of open data, in order to support the development of the information market and stimulate innovation. If the act is passed, it will regulate in which formats and with what fees and other conditions information shall be provided, amongst other things. The inquiry also has suggested that the requestor of digital information shall have the right to receive information in a digital format. The proposals in the report are currently being evaluated within the Government Offices in the course of the preparation of a Government Bill to the Parliament.

Furthermore, the Agency for Digital Government has been given the assignment (I2021/01826) to promote public actors ability to share and utilize data. As assigned by the Government the Agency has also launched a new version of Sweden's data portal for increased innovation (dataportal.se). The portal gathers re-users of data who can search data sets provided by public and private holders of data who in their turn can publish data sets for re-use. The amounts of data published during 2020 has more than trebled (from 2 159 till 7 228).

The work on open data has resulted in Sweden advancing in the European Commissions' Open Data Maturity Report in 2020 to be ranked in place 16, from rank 23 in year 2018 and 2019.