

Council of Europe Group on Access to Information (AIG)

**Report submitted by Finland
pursuant to Article 14, paragraph 1
of the Council of Europe Convention
on Access to Official Documents (CETS No.205)**

received by the Secretariat on 31 January 2022

1 General information regarding the preparation of the report

This report has been prepared by the Ministry of Justice in Finland. The Ministry of Finance has been consulted as it is the Ministry responsible for preparing the Act on Information Management in Public Administration. A list of links (unfortunately only in Finnish and/or Swedish) to these consultations and their replies is provided in the annex to this report. Moreover, the process for preparing changes to the Act on Openness is inclusive. The working group that prepares a memorandum on the possible changes to the Act includes representation inter alia from the media and civil society. More information on the reform is provided as links in the annex.

2 The legal framework and specific measures and policies to implement the Convention

2.1 General remarks

Finland's administrative culture is based on transparency and openness. The right of access to information is guaranteed by Section 12(2) of the Constitution. Transparency and openness of public administration is regulated by several acts, such as the Act on the Openness of Government Activities and the Administrative Procedure Act (434/2003). Provisions that regulate or have implications on access to information are also included in specific laws including the Data Protection Act as well as the General Data Protection Regulation of the European Union. The Act on the Openness of Government Activities provides the core foundation for transparency of decision-making in Finland. The main principle in the Act is that official documents are public unless specifically otherwise provided for. In addition to the general right of access to documents, decisions by authorities are public, they need to be reasoned and the citizen involved has the right to appeal the decision.

The Ministry of Justice is currently in the process of updating the Act on the Openness of Government Activities in accordance with the entries in the current Government Programme. The aim of this assessment is a more viable and clear legislation that will promote the transparency of society and meet the requirements of modern society structure. In January 2021, the Ministry of Justice appointed a working group whose term extends to June 2023. The task of the working group is to assess and clarify the possible shortcomings of the current legislation and provide solutions to them as well as to analyze whether the scope of the current legislation is up to date and sufficient particularly considering the changes in the administrative structures.

Moreover, as the Act on Openness has been in force for a fairly long time, there is abundant practice on the application of the law by the Supreme Administrative Court. In addition to judicial supervision the two Ombudsmen in Finland, the parliamentary Ombudsman and the Chancellor of Justice, supervise the application of the law and handle complaints related to the application of the law. The Ombudsmen's supervision is more directed to the compliance with the procedural rules whereas the Courts also interpret the rules and handle appeals related to inter alia the application of the secrecy provisions and the definition of a document in the Act on Openness.

2.2 Article 1 - General Provisions

Article 1 of the Convention provides for the general provisions and definitions for the purpose of the Convention. Section 4 of the Finnish Act on Openness of Government Activities defines the institutional scope of the Act. In addition, there is special legislation (*lex specialis*) that can specify the application of the Act in certain authorities. The institutional scope of the Act includes government and administration at national, regional and local level as provided by the Convention. The scope also includes Parliamentary agencies and institutions, ie. it applies to legislative bodies insofar as they perform administrative functions according to national law. The Act also applies to courts of law and other bodies set up for the administration of law when they

exercise other tasks than judicial tasks, but as a complementary Act also with regard to their judicial activity. The provisions also apply to corporations, institutions, foundations and private individuals appointed for the performance of a public task on the basis of an Act, a Decree or a provision or order issued by virtue of an Act or a Decree, when they exercise public authority. Finland has given a declaration on this issue as provided by the Convention.

The working group that aims to provide a proposal to modernize and update the Act on Openness of Government Activities will also examine the possibilities to expand the institutional scope of the Act with regard to so called public undertakings ie. undertakings in which the public sector bodies may exercise directly or indirectly a dominant influence for example by virtue of their ownership of it. A similar evaluation will be made with regard to public foundations and associations as well as actors that are performing a public task.

According to Section 5 of the Act, it applies to both documents delivered to an authority and those prepared by an authority. The former can be for example letters and applications or replies to public consultations. Documents prepared by an authority, on the other hand, include for example decisions and statements. Certain documents of minor importance relating to internal activities of an authority, for example notes kept by a person in the service of an authority and preliminary drafts or communications between persons in the service of authorities are excluded from the scope of application of the Act. The definition of a document is neutral with regard to the format of the information ie., it is not dependent on the platform the information has been stored. Thus, the definition of a document and official document is broad in the Finnish Act.

2.3 Article 2 - Right of access to official documents

Article 2 of the Convention set the basic principle of a right of access to documents. According to Section 12(2) of the Finnish Constitution, documents and recordings in the possession of the authorities are public, unless their publication has, for compelling reasons, been specifically restricted by an Act. Everyone has the right of access to public documents and recordings. The right is not in any way tied to the nationality of the person making the request. In fact, as a main rule, the applicant has the right to make his/her request anonymously with certain exceptions. Thus, access to documents is a constitutional principle and a fundamental right in Finland. The Act on Openness also sets the principle of openness as the main rule in Section 1 and 6 of the Act. The right of access to official documents is in principle irrespective of the use of the document with some notable exceptions such as electronic access or access to a copy of personal data contained in the registers of public authorities (Section 16(3) of the Act).

2.4 Article 3 - Possible limitations to access to official documents

Article 3 of the Convention set out the possible limitations to access to documents. According to Section 12(2) of the Finnish Constitution, documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. As the principle of openness and the right of access to documents is a fundamental right, the general prerequisites for limiting fundamental rights apply as provided by the preparatory work concerning the Constitution as well as the constitutional practice of the Constitutional committee, which is the authority exercising constitutional control in Finland. The prerequisites include inter alia that the limitation to a fundamental right is necessary for a compelling reason, they are clearly defined and that they are proportionate. The prerequisites are in compliance with article 3 of the Convention.

Due to the general prerequisites on limiting fundamental rights, limitations to the principle on openness need to be clearly prescribed by law. The general provision containing the rules on secret official document is Section 24 of the Act on Openness. Other laws may also contain provisions limiting access to documents, but also these limitations or restrictions need to comply with the general prerequisites for limiting fundamental rights as described above. The secrecy

exceptions have been drafted in a more specific manner than merely describing the interests protected by secrecy. Consequently, the formulation of the exceptions limit the discretion of the authority in keeping a document secret. The interests protected by secrecy provided in the Convention correspond to those in Section 24 roughly in the following way:

Subsection:

- (1) and (2) protect the interest of international relations
- (3)-(5) protect inter alia the general interest related to investigation of criminal activities or other police activity
- (7) protect the interest of the purpose of safety arrangements
- (8)-(10) protect the interest of state security and civil protection
- (11) protects the interest of financial policy, income policy, monetary policy or foreign exchange policy
- (12) protects the interest of the credibility or functioning of the financial or insurance systems;
- (13) protects the interest of trust to the capital and financial markets and their neutrality
- (5)(6) and (15) protect the interest of inspections of authorities
- (14) protects the interest of nature preservation
- (16) protects the interest of production of statistics
- (17)-(20) protect financial interests
- (21) protects the interest of scientific, technological and other development projects that are comparable to professional or business secrets (22) the interest of teaching or education
- (23)-(32) the interest of protection of privacy

The Article of the Convention contains a provision that provides for the possibility to the concerned states to declare that communication with the reigning Family and its Household or the Head of State shall also be included among the possible limitations. According to the law that governs the office of the Finnish President (2012/100), the review procedure in the Act on Openness does not apply to a decision made by the President of the Republic in response to a request for access to a document. Finland has given a declaration to the Convention in this regard.

According to the Convention access to information contained in an official document may be refused if its disclosure would or would be likely to harm any of the interests mentioned in the Article, unless there is an overriding public interest in disclosure. According to Finnish legislation, the limitations on access to documents have to be provided by law. Thus, it is for the parliament to define the limitations to the fundamental right of access to documents and evaluate the existence of an overriding public interest. However, several of the secrecy provisions contain the possibility to take into consideration the interests of the right of access. Section 17 contains a general provision on taking the right of access into account in decision-making.

The last Subsection of Article 3 provides the parties a possibility to consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply. Section 31 of the Act on Openness contains a general rule on declassification of an official document.

2.5 Article 4 - Requests for access to official documents

Article 4 of the Convention sets out the basic prerequisites for making a request for access to documents. In Finland, Section 13 of the Act on Openness contains the general rules on the preconditions for making a request for access to a document. The provisions correspond to the requirements of the Convention. According to Section 13(1) the person requesting access need not identify himself or herself nor provide reasons for the request, unless this is necessary for the exercise of the authority's discretion or for determining if the person requesting access has the

right of access to the document. The exceptions to anonymity apply mainly in cases where information protected by secrecy provisions is provided under Section 11 to a petitioner, an appellant and any other person whose right, interest or obligation is concerned in a matter or to another authority or under Section 28 based on an official permission. The formalities applicable to requests are fairly simple. For example, an oral request for documents needs to be processed.

2.6 Article 5 - Processing of requests for access to official documents

Article 5 contains the rules on processing of requests for access to official documents. According to the Article the public authority shall help the applicant, as far as reasonably possible, to identify the requested official document. According to Section 13 of the Act on Openness a request for access to an official document shall be sufficiently detailed, so that the authority can determine which document the request concerns. The person requesting access shall be assisted, by means of official diaries and indexes, in specifying the document to which access is being requested. The request can be made orally or in writing including through electronic means.

Under Subsection 2 of Article 6 of the Convention, a request for access to an official document shall be dealt with by any public authority holding the document. If the public authority does not hold the requested official document or if it is not authorized to process that request, it shall wherever possible, refer the application or the applicant to the competent public authority. Under Section 14(1) of the Act on Openness, the decision to grant access to an official document shall be made by the authority in possession of the document. However, a Municipal Council or a Regional Government may, in their regulations, provide a municipal or regional body serving as an authority as referred to in this Act, the right to transfer to a subordinate official, to the extent it decides, the public authority to decide on access. The decision to grant access to a document commissioned by an authority or to a document issued in connection with a task performed on commission by any other authority shall be made by the commissioning authority, unless otherwise required by the nature of the commission.

Moreover, Section 15(1) of the Act on Openness provides that if access is requested to a document prepared by another authority or pertaining to a matter under consideration by another authority, the request may be forwarded to be dealt with by the authority that has prepared the document and is responsible for the consideration of the matter as a whole. Section 15(3) provides that when the request pertains to a document that has been security classified, the request must be transferred to the authority that has drafted the document. Section 21 of the Act on Administrative Procedure also contains rules on transferring a document and provides that if an authority has been erroneously submitted a document requesting consideration of a matter beyond its competence, the authority shall transfer the document without delay to the authority it considers to be competent. The document sender shall be notified of the transfer.

According to Subsection 3 of Article 5 requests for access to official documents shall be dealt with on an equal basis. Under Section 17(1) of the Act on openness, when making decisions under the Act and also otherwise when performing its duties, an authority shall see to it that persons requesting access are treated on an equal basis.

According to Subsection 4 of Article 5 of the Convention a request for access to an official document shall be dealt with promptly. The decision shall be reached, communicated and executed as soon as possible or within a reasonable time limit which has been specified beforehand. Under Section 14(4) of the Act on Openness a matter referred to in this Section shall be considered without delay, and access to a document in the public domain shall be granted as soon as possible, and in any event within two weeks from the date when the authority received the request for the document. If the number of the requested documents is large, if they contain secret parts or if there is any other comparable reason for the consideration and the decision of the matter requiring special measures or otherwise an irregular amount of work, the matter shall be decided and access to the document granted within one month of the receipt of the request

for access by the authority.

Subsection 5 of the Article provides that a request for access to an official document may be refused: i) if, despite the assistance from the public authority, the request remains too vague to allow the official document to be identified; or ii) if the request is manifestly unreasonable. The Act on Openness does not contain provisions that would allow the authority to assess whether the request is manifestly unreasonable. The fact that the request covers a large amount of documents or providing access would cause an unreasonable burden can be taken into consideration under Section 16 in relation to how access is provided and under Section 14(4) on the time limit. Section 16 will be dealt with in more detail below.

Under Subsection 6 of Article 5 a public authority refusing access to an official document wholly or in part shall give the reasons for the refusal. The applicant has the right to receive on request a written justification from this public authority for the refusal. Under Section 14(3) of the Act on Openness, if the official or the other person referred to in Subsection 2 refuses to grant the requested access, he or she shall inform the person requesting access of the reason for the refusal and inform the person requesting access that he or she may have the matter decided by the authority. Under Section 43 of the Administrative Procedure Act, an administrative decision shall be issued in writing. Under Section 44 of the Act, a written decision shall indicate clearly inter alia the reasons for the decision and specific information about what a party is entitled or obliged to do or how the matter was otherwise decided.

2.7 Article 6 - Forms of access to official documents

According to article 6(1) of the Convention, when access to an official document is granted, the applicant has the right to choose whether to inspect the original or a copy, or to receive a copy of it in any available form or format of his or her choice unless the preference expressed is unreasonable. According to Section 16(1) of the Act on Openness access to an official document shall be granted by explaining its contents orally to the requester, by giving the document to be studied, copied or listened to in the offices of the authority, or by issuing a copy or a printout of the document. Access to the public contents of the document shall be granted in the manner requested, unless this would unreasonably inconvenience the activity of the authority owing to the volume of the documents, the inherent difficulty of copying or any other comparable reason.

Article 6(2) of the Convention provides that 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, or if it poses a manifestly unreasonable burden for the authority to release the remainder of the document, such access may be refused. Section 10 of the Act on Openness provides that when only a part of a document is secret, access shall be granted to the public part of the document if this is possible without disclosing the secret part. Case-law of the Supreme Administrative Court provides that access may be refused if the document could not be understood and it would not correspond to the request for access as a partial access version ([KHO:2013:28](#)). The duty of the authority to provide reasons to its decision and denial of access includes that each removal of information needs to be clearly marked and reasoned. Under Article 6(3) the public authority may give access to an official document by referring the applicant to easily accessible alternative sources. A corresponding specific rule is not contained in the Act on Openness. However, the legislation in force does not prohibit the authority to do so.

2.8 Article 7 - Charges for access to official document

Article 7 of the Convention governs charges for access to official documents. Inspection of official documents on the premises of a public authority shall be free of charge. This does not prevent Parties from laying down charges for services in this respect provided by archives and museums. 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 of reproduction and delivery of the document. Tariffs of charges shall be published. The corresponding regulation is contained in Section 34 of the Act on Openness. According to Section 34, no charge is levied for the provision of access to document when information regarding the document is provided orally or the document is provided for reading and copying at the office of the authority. No charge is levied if a public electronically recorded document is sent by electronic mail.

A charge is levied for the provision of access in the form of a copy or print-out, with said charge corresponding to the amount of costs incurred by the authority in providing access, unless a lower charge is provided in law or a lower charge is decided on the basis of the Municipal Act or the Act that governs Regional Governance. In the levying of a charge for a copy or print-out in the cases referred to in Subsection 3, an average charge per page or other average charge per unit may be levied which can be defined separately for ordinary requests for access to a document, and for requests for access to a document that require special measures. In specific cases, a charge is levied that corresponds to the costs of obtaining the information. This is when access is requested to a document which cannot be specified and found in the manner referred to in Section 13(1), from document registers of the authority maintained in accordance with the Act on Openness using the document classification to be used in such registers, the identifying code of the document nor from computerized registers using their search functions. The publication of the fees for state authorities materializes through Decrees that are drafted based on the Act on Criteria for Charges Payable to the State (1992/150). For municipal authorities, the fees are decided based on authorization in the Municipal or Regional Government Acts.

2.9 Article 8 - Review procedure

According to Article 8 of the Convention an applicant whose request for an official document has been denied, expressly or impliedly, whether in part or in full, shall have access to a review procedure before a court or another independent and impartial body established by law. Under Subsection 2 of the Article, an applicant shall always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review in accordance with paragraph 1.

Section 33 of the Act on Openness contains the rules on appeals and Section 14(3) contains rules on the forwarding of the request to the authority for a decision, which is the first stage of review for access to documents. A decision of an authority referred to in the Act on Openness is subject to appeal to the Administrative Court. The Administrative Court can overturn the decision of the authority or return the matter to the authority. For the appeal in an Administrative Court, no specific time limit for handling the appeal applies. A fee is charged according to the normal charges for judicial proceedings in Administrative Courts. A complaint can also be lodged at the Parliamentary Ombudsman or the Chancellor of Justice. The handling of such complaints is free of charge, but neither of the Ombudsmen has the competence to overturn the decision of an authority. However, if they conclude that a subject has acted unlawfully or neglected a duty, they may issue a reprimand to the subject for future guidance, if they consider that a criminal charge or disciplinary proceedings are unwarranted in the case. Moreover, they may express to the subject his or her opinion concerning what constitutes proper observance of the law, or draw the attention of the subject to the requirements of good administration or to considerations of fundamental and human rights.

2.10 Article 9 - Complementary measures

According to Article 9 of the Convention, the Parties shall inform the public about its right of access to official documents and how that right may be exercised. They shall also take appropriate measures to:

- a) educate public authorities in their duties and obligations with respect to the implementation of this right;
- b) provide information on the matters or activities for which they are responsible; c) manage their documents efficiently so that they are easily accessible; and d) apply clear and established rules for the preservation and destruction of their documents.

Chapter 5 of the Act on Openness provides for a duty of the authorities to promote access. Moreover, the Act on Information Management in Public Administration (906/2019), which has been in force since 1 January 2020, has as its objective 1) to ensure harmonized and high-quality management and data secure processing of datasets of authorities to implement the principle of openness; 2) to enable secure and efficient exploitation of the datasets of authorities so that an authority may attend to its tasks and provide its services to public administration clients successfully and in a qualitative manner in compliance with good governance; 3) to promote the interoperability of information systems and information pools. More concretely, Section 13(3) of the Act contains a duty to the authorities to plan the information systems, the internal structure of the information pools and related processing so that the publicity of documents can be easily implemented. Section 5(1) of the Act provides that the information management entity shall maintain an information management model, which defines and describes the information management in its operating environment. The information management model is maintained *inter alia* to implement the rights and restrictions relating to access to information. The information management model shall include *inter alia* information on the archiving, manner and place of archiving or destruction of datasets (Section 5(2)(3)).

According to Section 4 of the Act on Information Management, the management body of the information management entity shall ensure that the information management entity has: 1) defined the responsibilities connected to the tasks relating to the implementation of information management provided in this Act and in another act; 2) up-to-date instructions for the processing of datasets, the use of information systems, the data processing rights, the implementation of the information management responsibilities and for the rights of access to information, data security measures and preparedness for exceptional circumstances; 3) training available to ensure that the personnel and those acting on behalf of the information management entity have adequate knowledge of the provisions, regulations and instructions of the information management entity in force relating to information management, data processing and publicity and secrecy of documents; 4) proper tools for implementing the obligations relating to information management; 5) organised adequate supervision of compliance with the provisions, regulations and instructions relating to information management.

Moreover, according to Section 25 of the Act on Information Management, an information management entity shall maintain a case register of matters that are being and have been considered by the authorities, into which information on the matter, its consideration and the documents shall be registered. An authority shall, without delay, register a document it has received or drafted in the case register. According to Section 28 of the Information Management Act, the information management entity shall maintain a description of the information pools and case register managed by it, in order to implement the publicity principle.

Section 20 of the Act on Openness provides for a duty of the authorities to produce and disseminate information. The authorities shall publicize their activities and services, as well as the rights and obligations of private individuals and corporations in matters falling within their field

of competence. The authorities shall promote the openness of their activities and, where necessary for this purpose, produce guides, statistics and other publications, as well as information materials on their services and practices, as well as on the social conditions and developments in their field of competence. The rules on preservation of documents and their destruction are contained in the Archives Act (831/1994). Relevant in this context are also Section 19 of the Information Management Act that provides for modification of datasets into electronic format and access to datasets and Section 21 that provides for the rules on determining the necessity for storage of datasets.

2.11 Article 10 - Documents made public at the initiative of the public authorities

Article 10 of the Convention provides that at its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest. Section 20 of the Act on Openness provides for a duty of the authorities to produce and disseminate information. The authorities shall publicize their activities and services, as well as the rights and obligations of private individuals and corporations in matters falling within their field of competence. The authorities shall promote the openness of their activities and, where necessary for this purpose, produce guides, statistics and other publications, as well as information materials on their services and practices, as well as on the social conditions and developments in their field of competence. Section 19 of the Act on Openness contains specific provisions on the duty of the authorities to provide access to information in pending matters.

Annex

Relevant sources:

The Constitution of Finland

<https://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf>

Act on openness of Government Activities (unofficial translation and an up-to date version in Finnish)

https://www.finlex.fi/en/laki/kaannokset/1999/en19990621_20150907.pdf

<https://www.finlex.fi/fi/laki/ajantasa/1999/19990621>

Act on Information Management in Public Administration (unofficial translation)

<https://www.finlex.fi/fi/laki/kaannokset/2019/en20190906.pdf>

Government proposal on the ratification of the Tromsø Convention

<https://www.finlex.fi/fi/esitykset/he/2014/20140116.pdf>

Information on the procedure of ratification in the Finnish Parliament

<https://www.eduskunta.fi/FI/Vaski/sivut/trip.aspx?triptype=ValtiopaivaAsiat&docid=he+116/2014>

Information on the current on-going process of updating the law:

General information on the process

<https://oikeusministerio.fi/hanke?tunnus=OM083:00/2020>

Public consultation for media representatives on the need to update the Act on Openness

<https://www.lausuntopalvelu.fi/FI/Proposal/Participation?proposalId=01bf4a6f-6e71-4fd2-b9e4-7fcdde4077b4> Public consultation for economic actors

<https://www.lausuntopalvelu.fi/FI/Proposal/Participation?proposalId=c9f42de7-bc66-4ab3-80e8-5638a9c35b8b> Public consultation for authorities and to actors that have been assigned a public administrative task

<https://www.lausuntopalvelu.fi/FI/Proposal/Participation?proposalId=65a44e10-11f9-4545-8324-ffb3c76288b6> Public consultation open for everybody specifically on experiences in the application of the

Act on Openness <https://www.otakantaa.fi/fi/hankkeet/675/osallistuminen/1205/kysely/>