

AIG/Inf(2022)06

## **Council of Europe Group on Access to Information (AIG)**

**Report submitted by Estonia  
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 24 March 2022**

## I – GENERAL INFORMATION

a. The existence of a State body/agency responsible for the preparation of the report as well as the State bodies/agencies which contributed to the report by providing relevant information, or lack thereof

The Ministry of Justice of the Republic of Estonia is responsible for the preparation of the report. The Public Information Act, which fulfils the requirements of the Council of Europe Convention on Access to Official Documents (CETS No. 205; hereafter the Convention), is in the area of the government of the Ministry of Justice.

b. The involvement, participation, or consultation with relevant non-state stakeholders including NGOs, civil society, and other relevant stakeholders, in the implementation of the Convention.

Non-state stakeholders have an opportunity to submit their comments on the legislative initiative (measure) before its submission to the Riigikogu (the parliament of Estonia) as well as during the proceedings of the Riigikogu.

## II – LEGISLATIVE AND OTHER MEASURES GIVING EFFECT TO THE PROVISIONS OF THE CONVENTION

Everyone's right to receive public information in Estonia is provided for in the Constitution of the Republic of Estonia<sup>1</sup>, namely in section 44: Everyone has the right to freely receive information disseminated for public use (paragraph 1).

All state agencies, municipalities and their officials have a duty to provide information about their activities, pursuant to a procedure provided by a law, to Estonian citizens at their request, except information the disclosure of which is prohibited by a law, and information intended exclusively for internal use (paragraph 2).

The Public Information Act<sup>2</sup> which sets out rules on access to public information, entered into force on 1 January 2000. It is also the national legislative act which transposes the requirements of the Convention. The Public Information Act has maintained its main principles since it entered into force. Its principles and key provisions have been relevant for more than 20 years.

The purpose of the Public Information Act is to ensure that the public and every person has the opportunity to access information intended for public use, based on the principles of a democratic and social state governed by the rule of law and an open society, and to create opportunities for the public to monitor the performance of public duties. The Act provides for:

1) the conditions of, procedure for, and methods of access to and re-use of public information and the bases for refusal to grant access to information;

---

1 <https://www.riigiteataja.ee/en/eli/530122020003/consolide>

2 <https://www.riigiteataja.ee/en/eli/510122021005/consolide>

- 2) restricted public information and the procedure for granting access thereto to the extent not regulated by other Acts;
- 3) the bases for establishment and administration of databases, and supervision over the administration of databases and
- 4) the procedure for the exercise of state supervision and administrative supervision over the organisation of access to information.

Supervision over compliance with the Public Information Act is exercised by the Data Protection Inspectorate<sup>3</sup>. The Data Protection Inspectorate exercises state and administrative supervision over holders of information *inter alia* in regard to:

- 1) compliance with requests for information and the disclosure of information;
- 2) protection of information intended for internal use.

The Inspectorate has developed a broad variety of practice in form of instructions, precepts, info days, etc.

Among other tasks, the Data Protection Inspectorate has the obligation to coordinate development of services across authorities in organising access to and protection of information. To support the implementation of this obligation, a body has been set up within the Data Protection Inspectorate – the Public Information Council. The council consists of representatives of the ministries and the Information System Authority. The Council meets on a regular basis.

The Ministry of Economic Affairs and Communications has a role in the implementation of the Public Information Act as well. Administration and development of the Estonian information gateway is ensured by the Ministry of Economic Affairs and Communications. The Estonian information gateway is a website allowing access to public information related to the fields of activities of holders of information and the public services provided by them, and allowing access to public electronic services and to reusable information<sup>4</sup>.

Also, a document register of agency is a way to facilitate accessibility to public information. The document register of an agency is a digital database which is maintained by a state or local government agency or a legal person in public law in order to register documents received by the agency and prepared in the agency and to ensure access thereto.

---

<sup>3</sup> <https://www.aki.ee/en>

<sup>4</sup> <https://avaandmed.eesti.ee/>

## Article 1 – General Provisions

1. *The principles set out hereafter should be understood without prejudice to those domestic laws and regulations and to international treaties which recognise a wider right of access to official documents.*
2. *For the purposes of this Convention:*
  - a. *(i) “public authorities” means:*
    1. *government and administration at national, regional and local level;*
    2. *legislative bodies and judicial authorities insofar as they perform administrative functions according to national law;*
    3. *natural or legal persons insofar as they exercise administrative authority.*
  - (ii) Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that the definition of “public authorities” also includes one or more of the following:*
    1. *legislative bodies as regards their other activities;*
    2. *judicial authorities as regards their other activities;*
    3. *natural or legal persons insofar as they perform public functions or operate with public funds, according to national law.*
- b. *“official documents” means all information recorded in any form, drawn up or received and held by public authorities.*

The Parties could provide information on the following:

1.1 The **definition of “public authorities”** as adopted in national legal and/or policy frameworks relating to access to official documents, including specifications and/or examples of authorities covered by this definition.<sup>5</sup>

Public authorities are named holders of information. According to subsections 5 (1)–(3) of the Act, holders of information are:

- 1) state and local government agencies;
- 2) legal persons in public law;
- 3) legal persons in private law and natural persons under the conditions provided for in subsection (2) of this section.

(2) The obligations of holders of information extend to legal persons in private law and natural persons if the persons perform public duties pursuant to law, administrative act or contract, including the provision of educational, health care, social or other public services, – with regard to information concerning the performance of their duties.

(3) The following are deemed to be equal to holders of information:

1) undertakings which have a dominant position in the market or special or exclusive rights or which are natural monopolies – with regard to information concerning the conditions and prices of the supply of goods and services and changes thereto;

2) sole proprietors, non-profit associations, foundations and companies – with regard to information concerning the use of funds allocated from the state or a local government budget for the performance of public duties or as support.

---

<sup>5</sup> The Parties could also provide specifications and/or examples of activities performed by legislative bodies, judicial authorities and natural or legal persons which may be included in the definition of public authorities on the basis of a declaration made by the Party pursuant to Article 1, paragraph (2)(a)(ii)(1), Article 1 paragraph (2)(a)(ii)(2) or Article 1, paragraph (2)(a)(ii)(3).

1.2 The **definition of “official documents”** as adopted in relevant national legal and/or policy frameworks, including specific information as to whether this definition covers information stored electronically or in databases.

Official documents are understood as public information. According to subsection 3 (1), public information is information which is recorded and documented in any manner and on any medium and which is obtained or created upon performance of public duties provided by law or legislation issued on the basis thereof.

According to subsection 3<sup>1</sup> (1), such public information, the public use of which is not restricted by law or pursuant to the procedure established by law, is named open data. Restricted information is information to which access is restricted by law (subsection 34 (1)).

Therefore, public information is divided into two categories:

- 1) Open data – public information, the public use of which is not restricted by law;
- 2) Restricted data – information to which access is restricted pursuant to the procedure established by law.

## Article 2 – Right of access to official documents

1. *Each Party shall guarantee the right of everyone, without discrimination on any ground, to have access, on request, to official documents held by public authorities.*
2. *Each Party shall take the necessary measures in its domestic law to give effect to the provisions for access to official documents set out in this Convention.*
3. *These measures shall be taken at the latest at the time of entry into force of this Convention in respect of that Party.*

The Parties could provide information on the following:

2.1 The **legal and/or policy framework** guaranteeing the right of access to official documents, including specific information on relevant domestic laws, regulations, and policies recognising the right of access to official documents;

Everyone’s right to receive public information in Estonia is provided for in the Constitution of the Republic of Estonia, namely in section 44:

Everyone has the right to freely receive information disseminated for public use (paragraph 1).

All state agencies, municipalities and their officials have a duty to provide information about their activities, pursuant to a procedure provided by a law, to Estonian citizens at their request, except information the disclosure of which is prohibited by a law, and information intended exclusively for internal use (paragraph 2).

Subsections 4 (1)–(5) of the Public Information Act set out the principles of granting access to public information:

(1) In order to ensure democracy, to enable public interest to be met and to enable all persons to exercise their rights and freedoms and perform their obligations, holders of information are required to ensure access to the information in their possession under the conditions and pursuant to the procedure provided by law.

(2) Access to information shall be ensured for every person in the quickest and easiest manner possible.

(3) Upon granting access to information, the inviolability of the private life of persons and protection of copyright shall be ensured.

(4) Access to information shall be granted without charge unless payment for the direct expenses relating to the release of the information is prescribed by law.

(4<sup>1</sup>) A holder of information must publish the conditions for accessing the information and the amount to be charged for access and, if a person making a request for information so requires, provide explanations concerning the cost-orientation of the charges.

(4<sup>2</sup>) The conditions for access shall not be unnecessarily restrictive or detrimental to competition.

(4<sup>3</sup>) If a holder of information uses the information as input for activities falling outside the scope of the public duties, the same charge and other conditions shall apply upon supplying the holder with the information as apply to other applicants, thus ensuring equal treatment.

(5) Every person has the right to contest a restriction on access to information if such restriction violates the rights or freedoms of the person.

Subsections 8 (1) and (2) provide that access to information shall be granted by a holder of information by:

- 1) complying with a request for information;
- 2) disclosing information.

(2) Disclosure of information is the grant of access to information by a holder of information pursuant to the procedure provided by law, without a person being required to make a request for information.

Subsections 9 (1) and (2) set out obligations to holder of information:

(1) Holders of information are required to grant access to information in their possession pursuant to the procedure provided by law.

(2) Upon granting access to information, a holder of information is required:

- 1) to ensure access to the documents which the person making a request for information requests access to if the person making the request for information has the right to access the information;
- 2) to keep an account of documents in the possession thereof;
- 3) to disclose information subject to disclosure pursuant to the procedure provided by law;
- 4) to provide information to the public regularly on the performance of public duties;
- 5) to assist persons making requests for information;
- 6) to inform persons making requests for information of any valid restrictions on access to documents;
- 7) to ensure compliance with restrictions on access to information;
- 8) not to submit knowingly misleading, inaccurate or incorrect information and, in the case of doubt, is required to verify the correctness and accuracy of the information released.

2.2 Specifications as to whether the right of access to official documents is guaranteed to **everyone**, including non-nationals of the Party;

According to paragraph 2 of section 44, all state agencies, municipalities, and their officials have a duty to provide information about their activities, pursuant to a procedure provided by law, to Estonian citizens at their request, except for information the disclosure of which is prohibited by law and information intended exclusively for internal use

According to paragraph 4 of section 44, citizens of foreign states and stateless persons who are in Estonia have the rights specified in paragraph 2 equally with Estonian citizens, unless otherwise provided by a law.

The Public Information Act does not provide otherwise, meaning that non-nationals of the Party are considered to be everyone within the meaning of the section 1 of the Public Information Act.

2.3 Whether the Party guarantees the right of access to official documents **irrespective of the use** of the information received by the requestors of access.

According to subsection 3<sup>1</sup> (1), the re-use of information is the use of such public information, the public use of which is not restricted by law or pursuant to the procedure established by law (hereinafter open data), by natural persons or legal persons for commercial or non-commercial purposes other than the initial purpose within the public duties for which the information was obtained or produced. The exchange of information between holders of information for the performance of their public duties does not constitute re-use of information.

According to subsection 8 (3), access to open data also includes the right to re-use that information.

The Public Information Act does not oblige a person accessing open data to offer any justification of his/her reasons.

### Article 3 – Possible limitations to access to official documents

1. Each Party may limit the right of access to official documents. Limitations shall be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:

- a. national security, defence and international relations;
- b. public safety;
- c. the prevention, investigation and prosecution of criminal activities;
- d. disciplinary investigations;
- e. inspection, control and supervision by public authorities;
- f. privacy and other legitimate private interests;
- g. commercial and other economic interests;
- h. the economic, monetary and exchange rate policies of the State;
- i. the equality of parties in court proceedings and the effective administration of justice;
- j. environment; or
- k. the deliberations within or between public authorities concerning the examination of a matter.

Concerned States may, at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that communication with the reigning Family and its Household or the Head of State shall also be included among the possible limitations.

2. 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 paragraph 1, unless there is an overriding public interest in disclosure.

3. The Parties shall consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply.

The Parties could provide information on the following:

1.1 Whether the Party has introduced **limitations** to the right of access to official documents, including specific information on such limitations, whether they are set by law and whether the relevant legal and/or policy frameworks provide for limitations of the right of access to official documents which pursue aims not listed in Article 3(1), and if so, specifying which ones;

Legal grounds for limitations to the right of access to public information are set out in subsections 35 (1) and (2) of the Public Information Act (named as classification of information as internal):

(1) A holder of information is required to classify the following as information intended for internal use:

1) information collected in criminal or misdemeanour proceedings, except for the information subject to disclosure under the conditions provided by the Code of Misdemeanour Procedure and the Code of Criminal Procedure;

2) information collected in the course of state supervision, administrative supervision and supervisory control proceedings until the entry into force of a decision made thereon;

3) information the disclosure of which would damage the foreign relations of the state;

3<sup>1</sup>) information concerning the duties and staff of a structural unit and officials and employees and the duties of the officials and employees of a holder of information engaged in ensuring of internal security, development of national defence policy, organisation of national defence, including planning, preparation and conduct of national military defence, or organisation of the protection of state secrets and classified information of foreign states, if the disclosure of such information would endanger national defence or protection of state secrets and classified information of foreign states;



- 4) information concerning tables reflecting the armament and equipment, and the quantities of armament and equipment of the Defence Forces, unless such information is a state secret or classified foreign information;
- 5) information concerning the state assets to be transferred, in the event of mobilisation or increasing of military preparedness, into the possession of the Defence Forces;
- 5<sup>1</sup>) information concerning the methods and tactics utilised by an investigative body in its activities, if the disclosure of such information could hinder detection of criminal offences or facilitate committing thereof;
- 5<sup>2</sup>) information concerning the quantity of armament of the Police, unless such information is a state secret or classified foreign information;
- 6) information concerning national defence duty;
- 6<sup>1</sup>) information the disclosure of which would endanger a national defence object or facilitate carrying out an attack against such object;
- 6<sup>2</sup>) information concerning the amount of stocks and resources necessary for the performance of national defence tasks and for mitigating the consequences of an emergency, and the extent of and conditions for utilisation of such stocks;
- 7) information the disclosure of which would endanger objects protected under heritage conservation or museum objects belonging to a museum collection;
- 8) information the disclosure of which would endanger the protected areas or the preservation of protected species and their habitats;
- 9) information including a description of security systems, security organisations or security measures;
- 10) information on technological solutions if disclosure of such information would damage the interests of the holder of information or if classification of such information as internal is prescribed in a contract entered into with a person in private law;
- 11) information which contains special categories of personal data or data concerning commission of an offence or falling victim to an offence before a public court hearing, or making of a decision in the matter of the offence or termination of the court proceeding in the matter;
- 12) information which contains personal data if enabling access to such information significantly breaches the inviolability of private life of the data subject;
- 13) information which contains data revealing details of family life;
- 14) information concerning application for social assistance or social services;
- 15) information revealing mental or physical suffering endured by a person;
- 16) data collected on a person during the process of taxation, except data specified in section 27 of the Taxation Act;
- 17) information whose disclosure may violate a business secret;
- 18) reports of an internal audit before approval thereof by the head of the agency;
- 18<sup>1</sup>) the risk assessment of vitally important services and information concerning the operational continuity plan;

18<sup>2</sup>) information concerning notification of a personal data breach;

19) any other information provided by law.

(2) The head of a state or local government agency or a legal person in public law may classify the following as information intended for internal use:

1) draft legislation of general application before it is sent for approval or submitted for passage;

2) draft documents and accompanying documents before receipt or signature thereof;

3) in justified cases, documents addressed to persons within the agency which are not registered in the document register (opinions, notices, memoranda, certificates, advice, etc.);

4) information which may damage the interests of the state acting as a participant in the proceedings in a civil proceeding, until the court decision is made;

5) information related to the formation of stocks and provision of resources necessary for the performance of national defence tasks and for mitigating the consequences of an emergency, if the disclosure of such information could affect the formation of stocks and provision of resources.

Legal basis for restrictions on access to public information must be provided for by law. All these abovementioned grounds fall within the cases referred to in Article 3(1) of the Convention.

1.2 Specification as to why the limitations to the right of access to official documents are **necessary** and as to their **proportionality** to the aims listed in Article 3, paragraph 1;

The proportionality-test is the centre of limitation of the fundamental right. The legislator has assessed on a case-by-case basis the proportionality of each abovementioned legal basis since they constitute the limitation of a fundamental right (right to access to public information).

The list is long and has been amended during the 20 years; all justifications of proportionality are described in an explanatory memorandum to each amendment of the law. Therefore, it is difficult to bring it out in a general form of this report. Holder of the information has the powers to assess whether conditions set out in subsections 35 (1) and (2) are met.

1.3 Whether the Party's legal and/or policy framework contains provisions which permit **refusal** of access to official documents in compliance with Article 3, paragraph 2;

Subsections 8 (1) and (2) set out that access to information shall be granted by a holder of information by:

1) complying with a request for information;

2) disclosing information.

Disclosure of information is the grant of access to information by a holder of information pursuant to the procedure provided by law, without a person being required to make a request for information.

The Public Information Act provides for legal grounds for refusal to comply with requests for information (subsections 23 (1) and (2)):

(1) A holder of information **shall refuse** to comply with a request for information if:

- 1) restrictions on access apply to the requested information and the person making the request for information does not have the right to access the requested information;
- 2) the holder of information does not possess the requested information, does not know who possesses it, and is unable to identify the holder of the requested information;
- 3) compliance with the request for information is impossible because it is not evident from specification of the request for information which information the person making the request for information is requesting;
- 4) the person making the request for information has not paid the state fee or has not paid the expenses relating to compliance with the request for information if the state fee or other fee is prescribed by law and the holder of information has not withdrawn the claim for expenses incurred to be covered.

(2) A holder of information **may refuse** to comply with a request for information if:

- 1) the requested information has already been released to the person making the request for information and the person does not justify the need to obtain the information for a second time;
- 2) information requested from a natural person or a legal person in private law does not concern the performance of public duties;
- 3) compliance with the request for information would require a change in the organisation of work of the holder of information, hinder the performance of public duties imposed thereon or require unnecessarily disproportionate expenses due to the large volume of requested information;
- 4) the request for information cannot be complied with by a single release of information;
- 5) in order to comply with the request for information, information would have to be additionally systematised and analysed and new information would have to be documented on the basis thereof. Such request for information is deemed to be a request for explanation and shall be responded to pursuant to the procedure prescribed in the Response to Memoranda and Requests for Explanations Act;
- 6) a court has established that the active legal capacity of the person making the request for information is restricted;
- 7) there are no contact details concerning the person making the request for information.

The holder of information shall notify the person making the request for information of refusal to comply with the request for information and the reason for such refusal within five working days (subsection 23 (3)).

Section 28 stipulates an obligation for holder of information to disclose information. Manners of disclosure of information are set out in subsections 29 (1) and (2):

(1) The holders of information specified in section 31 of this Act shall disclose the information specified in subsection 28 (1) of the Act on a website, or shall add a link to a webpage through which the information can be accessed.

(2) In addition to a website, information specified in subsection 28 (1) of this Act may be disclosed:

- 1) in television or radio programmes or in the printed press;
- 2) by displaying the document for public examination in a local government agency or public library;
- 3) in an official publication;
- 4) in any other manner prescribed by an Act or legislation passed on the basis thereof.

A holder of information is required to disclose information in a manner which ensures that it reaches every person who needs the information as quickly as possible. A holder of information is not required to carry out further systematisation or analysis of information for the information to be disclosed for the purposes of re-use if this would involve disproportionate effort (subsection 30 (1)).

A person whose rights provided for in the Act are violated may file a challenge with a the Data Protection Inspectorate or an action with an administrative court either personally or through a representative (subsection 46 (1)).

If the Data Protection Inspectorate refuses to satisfy the challenge, the person who filed the challenge has the right to file a claim with an administrative court against the holder of information (subsection 46 (2)).

1.4 How does the public authority **evaluate an overriding public interest** when deciding to disclose official documents that would harm one of the interests listed in Article 3, paragraph 1.

The Data Protection Inspectorate evaluates on a case-by-case basis, taking into consideration the circumstances of the case, the nature of the information, and many other factors, also the case-law developed by the Estonian court system.

#### Article 4 – Requests for access to official documents

1. *An applicant for an official document shall not be obliged to give reasons for having access to the official document.*
2. *Parties may give applicants the right to remain anonymous except when disclosure of identity is essential in order to process the request.*
3. *Formalities for requests shall not exceed what is essential in order to process the request.*

The Parties could provide information on the following:

4.1 Whether the Party's legal and/or policy framework on access to official documents guarantees that the applicant shall not be obliged to **give reasons** for having access to official documents;

According to subsection 3<sup>1</sup> (1), the re-use of information is the use of such public information, the public use of which is not restricted by law or pursuant to the procedure established by law (hereinafter open data), by natural persons or legal persons for commercial or non-commercial purposes other than the initial purpose within the public duties for which the information was obtained or produced. The exchange of information between holders of information for the performance of their public duties does not constitute re-use of information.

According to subsection 8 (3), access to open data also includes the right to re-use that information.

The Public Information Act does not oblige a person accessing open data to offer any justification of his/her reasons.

4.2 Whether **anonymous** requests for access to official documents are authorised and if so, how the public authorities implement this in practice and how are the applicants informed about this possibility;

In case of disclosed information, access to open data is not registered. In case of request for information, the Act sets out certain conditions.

According to section 13, a person making a request for information shall make the request for information to a holder of information either:

- 1) orally, addressing a holder of information directly or by telephone, or
- 2) in writing, delivering a request for information personally or communicating it by post, fax or electronic mail.

Subsection 14 (1) provides that a request for information shall set out the following information orally or in writing:

- 1) the given name and surname of the person making the request for information;
- 2) the name of the legal person or agency in the case of a request for information made on behalf of an agency or legal person;
- 3) the contact details of the person making the request for information (postal or electronic mail address, or fax or telephone number), through which the holder of information could release the information or contact the person making the request for information;
- 4) the content of the information or the type, name and content of the document requested, or the requisite information on the document known to the person making the request for information;
- 5) the manner of complying with the request for information.

If a person requests information which contains restricted personal data concerning him or her or third persons, the holder of information shall identify the person making the request for information. If a person requests restricted private personal data concerning a third person, he or she shall inform the holder of information of the basis and purpose of accessing the information (section 2).

A holder of information has the right to request submission of a request for information in writing if the person making the request for information is not satisfied with the information provided orally (section 3).

A request for information is registered in the document register of the agency not later than on the working day following the day on which the documents are received or released (clause 12 (1) 1)) and at least the following information concerning received and released documents shall be entered in a document register:

- 1) from whom the documents are received or to whom they are released;

- 2) the date of receipt or release;
- 3) the manner in which the documents are received or released (by electronic mail, post, fax, courier or delivered in person);
- 4) requisite information on the documents;
- 5) the type of documents (petitions, memoranda, decisions, requests for information, letters, etc.);
- 6) restrictions on access to the documents (subsection 12 (3)).

However, if the person making request for information is a natural person, information which would allow to identify the natural person shall not be indicated in public view of the document register (subsection 12 (3<sup>1</sup>)).

#### 4.3 Measures taken to assess the necessity of the **formalities** applicable to requests for access to official documents or to periodically review such formalities.

The necessity to ensure the most convenient and swift access to information (to open data) is increasingly relevant. The document register of an agency<sup>6</sup> is a way to get easy access to open data which is not disclosed. However, there are some ongoing discussions on how to improve the access to open data through a document register.

### Article 5 – Processing of requests for access to official documents

1. *The public authority shall help the applicant, as far as reasonably possible, to identify the requested official document.*
2. *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 authorised to process that request, it shall, wherever possible, refer the application or the applicant to the competent public authority.*
3. *Requests for access to official documents shall be dealt with on an equal basis.*
4. *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.*
5. *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.*
6. *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.*

The Parties could provide information on the following:

#### 5.1 Measures taken by public authorities to **process requests** for access to official documents and to **provide assistance** to a person requesting such access;

<sup>6</sup>Document register of the Ministry of Justice is available here: <https://adr.rik.ee/jm/>

According to clause 9 (2) 5) of the Public Information Act, upon granting access to information, a holder of information is required to assist persons making requests for information. This obligation is further specified in section 15:

(1) Holders of information are required to clearly explain the procedure for and the conditions and methods of access to information to persons making requests for information.

(2) Officials or employees of holders of information are required to assist persons making requests for information in every way during the making of requests for information and the identification of the information necessary for the persons making requests for information, the location of the information and the most suitable methods of access thereto.

(3) An official or employee of a holder of information who is not competent to comply with a request for information is required promptly to send the person making the request for information to an official or employee who has the corresponding competence, or promptly to communicate the request for information in writing to the specified official or employee.

(4) If a request for information does not indicate the method or the information which the person making the request for information is requesting, the holder of information shall promptly contact the person making the request for information in order to specify the request for information.

If a holder of information does not possess the requested information, the holder of information shall ascertain the competent holder of information and forward the request for information promptly thereto, but not later than within five working days, and shall notify the person making the request for information thereof at the same time (subsection 21 (1)).

5.2 Measures taken by public authorities to ensure that requests for access to official documents are dealt with on an equal basis and that **no distinction** is made on the basis of the nature of the request or the status of the requestor;

The principle of equal treatment is set out in section 12 of the Constitution of the Republic of Estonia:

Everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other beliefs, property or social status, or on other grounds.

The incitement of national, racial, religious or political hatred, violence or discrimination shall be prohibited and punishable by law. The incitement of hatred, violence or discrimination between social strata shall also be prohibited and punishable by law.

The Equal Treatment Act ensures the protection of persons against discrimination on grounds of nationality (ethnic origin), race, colour, religion or other beliefs, age, disability or sexual orientation.

The holder of information must ensure that its officials and employees concerned are qualified and aware of the laws regulating its activities.

5.3 Whether a maximum **time limit** is set for public authorities by law, any other applicable policy framework, or through practice to reach a decision on a request for access to official documents, notify the applicant about the decision, to make the document available if the decision is favourable, and to inform the applicant about any possible delays;

According to section 18, a request for information shall be complied with promptly, but not later than within five working days (subsection 1).

If a request for information cannot be complied with due to the insufficiency of the information submitted by the person making the request for information, the holder of information shall notify the person making the request for information thereof within five working days in order to specify the request for information (subsection 2).

The terms for processing requests for information provided for in the Public Information Act shall be calculated as of the working day following registration of the requests for information (subsection 3).

5.4 Whether the public authority gives **reasons in cases of refusal** of access to official documents, wholly or in part, on its own initiative and whether it provides justification in writing to the applicant upon his/her request for explanations about the refusal.

The holder of information shall notify the person making the request for information of refusal to comply with the request for information and the reason for such refusal within five working days (subsection 23 (3)).

#### Article 6 – Forms of access to official documents

1. *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.*
2. *If a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to the remainder of the information it contains. Any omissions should be clearly indicated. However, if the partial version of the document is misleading or meaningless, or if it poses a manifestly unreasonable burden for the authority to release the remainder of the document, such access may be refused.*
3. *The public authority may give access to an official document by referring the applicant to easily accessible alternative sources.*

The Parties could provide information on the following:

6.1 The form or **format** in which official documents are made available to the applicant once access to these documents is granted as well as information on whether the applicant has the possibility to choose the form of the document he/she wishes to consult in compliance with Article 6, paragraph 1;

A holder of information must comply with a request for information in the manner requested by the person making the request for information and shall release the information:

- 1) digitally to a transferable data medium or to an electronic mail address set out in the request for information;
- 2) as a copy or transcript of the document on paper either directly to the person making the request for information or to his or her postal address;
- 3) by fax;
- 4) orally;
- 5) for access at the holder of information;
- 6) in any other manner, taking into account the type of medium (subsection 17 (1)).



A holder of information may refuse to comply with a request for information in a desired manner if:

- 1) there are no technical means therefor;
- 2) the type of medium does not enable compliance;
- 3) oral communication of the information would excessively hinder performance of the main duties of the holder of information due to the time this would take (subsection 17 (2)).

6.2 How the public authority deals with requests to access official documents for which some of the information cannot be disclosed due to applicable limitations. Information on whether the rest of the document is released and whether the relevant decision of the public authority gives clear indications as to where and how much information is **deleted** and indicates the limitation justifying each deletion.

According to subsection 38 (2), if the grant of access to information may cause the disclosure of restricted information, it shall be ensured that only the part of the information or document to which restrictions on access do not apply may be accessed.

In cases where a document contains both open and restricted data, a long-term practice has been to cover the restricted parts and give access to the rest of the data.

#### Article 7 – Charges for access to official document

1. *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.*
2. *A fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs of reproduction and delivery of the document. Tariffs of charges shall be published.*

The Parties could provide information on the following:

7. Whether inspection of official documents on the premises of the public authority is ensured **free of charge**, whether the applicant can obtain a copy of the requested official documents free of charge or, in the case that **fees** are charged, information on whether they are published and if so, how and where.

A holder of information shall cover the expenses relating to compliance with requests for information unless otherwise prescribed by law (subsection 25 (1)). A person making a request for information must pay up to 0.19 euros per page for printouts and copies on paper starting from the twenty-first page, unless a state fee for the release of information is prescribed by law (subsection 25 (2)).

#### Article 8 – Review procedure

1. *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.*
2. *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.*

The Parties could provide information on the following:

8.1 Whether the relevant legal and/or the policy framework provides for a **review procedure**, before a court or another independent and impartial body established by law, which is accessible by the person whose request for having access to official documents has been denied;

A person whose rights provided for in the Public Information Act are violated can file a challenge with Data Protection Inspectorate or an action with an administrative court either personally or through a representative (subsection 46 (1)). If the Data Protection Inspectorate refuses to satisfy the challenge, the person who filed the challenge has the right to file a claim with an administrative court against the holder of information (subsection 46 (2)).

8.2 The **type of decisions** made by the court or the independent body, notably whether the latter is able to overturn decisions taken by public authorities which it considers to not comply with the applicable law(s), or to request the public authority in question to reconsider its position;

According to the Code of Administrative Court Procedure<sup>7</sup>, the court clearly and unambiguously adjudicates the claims made in the action and any outstanding applications of participants in proceedings in the operative part of the judgment (subsection 162 (1)). Considering what an action may seek (section 37 of the Code), the court may:

- 1) fully or partially annul the administrative act;
- 2) require an administrative authority to issue an administrative act or take an administrative measure;
- 3) prohibit an administrative authority to issue certain administrative act or take a certain administrative measure;
- 4) order a compensation for harm caused in a public law relationship;
- 5) order elimination of unlawful consequences of an administrative act or measure;
- 6) declaration of nullity of an administrative act, a declaration of unlawfulness of an administrative act or measure, or a declaration ascertaining other facts of material importance in a public law relationship.

According to Section 51 of the Public Information Act the Data Protection Inspectorate may issue a precept which requires a holder of information to bring its activities into accordance with law if the Inspectorate finds that the holder of information:

- 1) has refused illegally to comply with a request for information;
- 2) has not responded to a request for information within the prescribed term;
- 3) has not complied with a request for information as required;
- 4) has not processed a request for information as required;
- 5) has failed to disclose information subject to disclosure as required;
- 6) has not performed the obligation to maintain a website as required;
- 7) has established restrictions on access to information illegally;
- 8) has failed to establish restrictions on access to information provided by law;

---

<sup>7</sup><https://www.riigiteataja.ee/en/eli/527122021008/consolide>

9) has released information to which restrictions on access are established pursuant to this Act.

Upon failure of a holder of information to comply with a precept the Data Protection Inspectorate may impose a penalty payment pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act. The upper limit for a penalty payment is 9600 euros.

A holder of information shall, within five working days as of receipt of a precept, take measures to comply with the precept and shall notify the Data Protection Inspectorate thereof. The Data Protection Inspectorate shall publish the notice on its website (section 52, Public Information Act).

If a holder of information fails to comply with a precept of the Data Protection Inspectorate, the Data Protection Inspectorate may address a superior agency, person or body of the holder of information for organisation of supervisory control or commencement of disciplinary proceedings against an official. A person exercising supervisory control or a person with the right to commence disciplinary proceedings is required to review an application within one month as of receipt thereof and submit a reasoned opinion to the Data Protection Inspectorate. Upon supervisory control or commencement of disciplinary proceedings, the person exercising supervisory control or the person with the right to commence disciplinary proceedings is required to immediately notify the Data Protection Inspectorate of the results thereof. (Section 53, Public Information Act.)

8.3 The **duration** in time of the review procedure involving either reconsideration by a public authority or by the court or the independent body and whether fees are charged for it.

The average duration of the proceedings in the first instance of administrative court is 122 days and in the second instance 194 days.

According to the State Fees Act, a state fee of 20 euros is paid upon the filing of a complaint with an administrative court (subsection 60 (1)). Upon filing of an appeal against a judgment of an administrative court, a state fee shall be paid in the same amount as upon the initial filing of the action with the administrative court, taking into consideration the extent of the appeal (20 euros; subsection 60 (7)). A state fee of 50 euros is paid upon the filing of an appeal in cassation and petition for review with the Supreme Court (subsection 60 (8)).

## Article 9 – Complementary measures

*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.*

The Parties could provide information on the following:

9.1 Measures taken by public authorities to **inform** the public about its right of access to official documents and how this right can be exercised;

The necessary information can be found on the website of every holder of information. Detailed information about public information (guidance, Q&A, instructional videos, precepts and current case-law) can be found on the website of the Data Protection Inspectorate. Also, from time-to-time, info days are conducted to raise awareness and discuss relevant matters<sup>8</sup>.

9.2 **Training** and any other measures taken to ensure that public authorities are aware of and knowledgeable about their duties and obligations concerning the implementation of the right of access to official documents;

Instructional videos are available on the website of the Inspectorate<sup>9</sup>; the Inspectorate also conducts trainings if possible. The Ministry of Economic Affairs and Communications holds regular meetings about the data management and activities of the holder of information concerning access to open data in the open data portal. The Ministry of Justice provides explanations concerning the Public Information Act.

9.3 Measures taken by public authorities to set up effective systems for the **management and storage** of official documents that they hold, including information on how such measures facilitate access to official documents.

Access to electronic documents registered in a document register and contained in the document management system of the agency shall be granted through the document register (subsection 12 (4<sup>1</sup>) of the Public Information Act).

The registrars of document registers must grant access to the document registers and must create indexes and instructions in order to facilitate the finding of documents and ensure finding of documents by a full text search using a computer search system based on the data (subsection 12 (5)).

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

*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.*

The Parties could provide information on the following:

10.1 Measures taken to encourage transparency by public authorities through the publication of official documents that they hold, notably information on the criteria used by public authorities to determine which documents they should publish **proactively**;

The Public Information Act provides for an obligation of holder of information to disclose certain information. Such information is as follows:

- 1) generalised economic statistics and economic forecasts of the state and local governments;
- 2) generalised statistics relating to crime and misdemeanours;
- 3) statutes of state or local government agencies and their structural units;

<sup>8</sup> E.g. Open Data Forum

<sup>9</sup> <https://www.aki.ee/et/teavitus-juhised/oppevideod>

- 4) formats of petitions and other documents submitted to state and local government agencies and instructions for the completion thereof;
- 5) job descriptions of state and local government officials;
- 6) composition of state and local government agencies, and the given names, surnames, education, areas of specialisation, telephone numbers and electronic mail addresses of officials filling the positions prescribed in such agencies;
- 7) information concerning danger to the life, health and property of persons;
- 8) reports on work results and the performance of duties in state and local government agencies;
- 9) names and electronic mail addresses of members of the supervisory boards and management boards of legal persons in public law;
- 10) management reports and income and expense statements of legal persons in public law;
- 11) budgets and draft budgets of state agencies, local governments and local government agencies, and reports on the implementation thereof;
- 12) information concerning the receipt of state budget revenue;
- 13) information concerning the state of the environment, environmental damage and dangerous environmental impact;
- 14) precepts issued or decisions made in the course of state supervision, administrative supervision or supervisory control as of the entry into force thereof;
- 15) draft Acts prepared by ministries and draft regulations of the Government of the Republic, together with explanatory memoranda, when such drafts are sent for approval or presentation to the Government of the Republic;
- 16) draft regulations of ministers and local governments together with explanatory memoranda before such drafts are submitted for passage;
- 17) draft concepts, development plans, programmes and other projects of general importance before such drafts are submitted to the competent bodies for approval, and the corresponding approved or adopted documents;
- 18) research or analyses ordered by the state or local government agencies;
- 19) information concerning unfilled positions in state or local government agencies;
- 20) information concerning public procurements which are being organised or have been organised by the state or local governments;
- 21) information concerning the use of assets and budgetary funds which the state or a local government has transferred to legal persons in private law founded by the state or local government or with the participation thereof;
- 22) programmes of public events;
- 23) changes in the work and duties of state and local government agencies which are related to services provided for persons, not later than ten days before implementation of the changes;
- 24) information concerning the consultation hours of heads of state and local government agencies;
- 25) salaries of officials of state and local government agencies and other income related to their functions, and salary guides of agencies pursuant to the procedure provided for in the Public Service Act;
- 26) information concerning the price formation of companies which have a dominant position in the market or special or exclusive rights or which are natural monopolies;
- 27) information concerning the provision of public services and concerning changes in the conditions and price of the provision of the service before implementation of such changes;
- 28) lists of the members of political parties;
- 29) court decisions entered into force with restrictions arising from law;
- 30) data contained in databases, access to which is not restricted;
- 31) the document register of the agency;
- 31<sup>1</sup>) the purpose, scope and method of processing personal data, the communication of personal data to third persons, including other agencies, and the making of personal data

available to the public, and the right of and procedure for a person to examine data concerning themselves;

31<sup>2</sup>) open data subject to disclosure, information on the availability of open data and on licences, if necessary;

32) other information and documents concerning which the obligation to disclose is provided by an international agreement, an Act or legislation passed on the basis thereof or which the holder of information deems necessary to disclose (subsection 28 (1)).

10.2 How these official documents are **made public**, in which format and whether any measures are taken to facilitate the public's understanding of these documents.

Upon the disclosure of information, the person who documents the disclosed information, the time the disclosed information is documented, the act (establishment, approval, registration or other official act) with which the disclosed information is documented, and the person from whom explanations concerning the disclosed information can be obtained shall be set out (subsection 28 (2)).

The holders of information specified must disclose the information specified in subsection 28 (1) on a website, or must add a link to a webpage through which the information can be accessed (subsection 29 (1)). In addition to a website, information specified in subsection 28 (1) may be disclosed:

- 1) in television or radio programmes or in the printed press;
- 2) by displaying the document for public examination in a local government agency or public library;
- 3) in an official publication;
- 4) in any other manner prescribed by an Act or legislation passed on the basis thereof.

If it is possible and appropriate, the holder of information must grant access to open data in a machine-readable format, and in an open format together with data descriptions describing data sets and data contained therein. If conversion of open data into digital format, machine-readable format or open format is impossible or would involve disproportionately great effort, the holder of information shall grant access to open data in their original format or in any other format (subsection 3<sup>1</sup> (4)). However, some information mentioned in subsection 28 (1) must be disclosed in a machine-readable format and in an open format together with data descriptions describing data sets and data contained therein: clauses 1–4, 7, 8, 10–13, 15– 24, 26, 27, 31<sup>1</sup> and 31<sup>2</sup> (subsection 29 (3)). All open data in machine-readable format must be accessible through the Estonian information gateway (open data portal; subsection 29 (6)).