

Council of Europe Group on Access to Information (AIG)



AIG(2022)01

Questionnaire on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Access to Official Documents (CETS n°205) – *Tromsø Convention*

Adopted by AIG on 17 November 2022

INTRODUCTION

Each Party that after 17 November 2022 submits its report containing full information on legislative and all other measures giving effect to the provisions of the Council of Europe Access to Official Documents (CETS n°205) (hereafter “the Convention”), in accordance with its Article 14, paragraph one, is requested to use this questionnaire as a basis for preparing its report.

The report must be provided within a period of one year following the entry into force of the Convention in respect of the Party concerned.

For further guidance on the meaning of any of the questions or the requested elements, the drafters of the report are invited to consult the text of the [Convention](#) and its [Explanatory Report](#).

The Parties should submit their reports in one of the official languages of the Council of Europe, structuring them in two main parts, namely:

- (i) General information regarding the preparation of the report;
- (ii) Information on legislative and all other measures giving effect to the provisions of the Convention.

Relevant data, including statistics and results of surveys on access to official documents in practice, as well as any additional information that they may deem appropriate in this context, should be included in or appended to the report.

I - GENERAL INFORMATION

Please indicate:

- a. The existence or not 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;
- b. The involvement, participation or consultation with relevant non-state stakeholders including NGOs, civil society and any other relevant stakeholder in the ratification and subsequent implementation of the Convention.

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

Please provide information on legislative and all other measures adopted to ensure the implementation of the Convention, highlighting wherever deemed appropriate good practices in promoting the overall aim of the Convention or its specific provisions and indicating the efforts made to promote awareness of the Convention among the public and relevant authorities.

Wherever pertinent, please share information on any issues faced in the implementation of the Convention, including those on which your authorities could consider seeking advice and support from the AIG.

The presentation of the second part of the report should follow the order of the provisions of Section I of the Convention which appear below in italics.

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.*

Please 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.¹
- 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.
- 1.3 Do official documents transferred to archives remain within the scope of national legal and/or policy frameworks relating to access to official documents.

¹ Please 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).

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.

Please 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.
- 2.2 Specifications as to whether the right of access to official documents is guaranteed to **everyone**, including non-nationals of the Party.
- 2.3 Whether the Party guarantees the right of access to official documents **irrespective of the use** of the information received by those requesting access.

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, defense 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.

Please provide information on the following:

- 3.1 Whether the Party has introduced **limitations** to the right of access to official documents, including specific information on such limitations, how they are precisely set down in law.

- 3.2. 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.
- 3.2 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.
- 3.3 Whether the Party's legal and/or policy framework contains provisions which only permit **refusal** of access to official documents in compliance with Article 3, paragraph 2.
- 3.4 How the Party ensures that an **evaluation takes place of any overriding public interest** in the disclosure of information contained in an official document that would harm or would be likely to harm any of the interests listed in Article 3, paragraph 1.

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.*

Please 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.
- 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.
- 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.

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.*

Please provide information on the following:

- 5.1 Which public authority is competent to decide on a request for access to an official document? Which other authorities are consulted? How is a request for access to an official document processed when received by the public authority which does not hold the requested official document or is not authorised to process the request? Which public authority deals with such request?
- 5.2 Measures taken by public authorities to **process requests** for access to official documents and to **provide assistance** to a person requesting such access.
- 5.3 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.
- 5.4 Whether a maximum **time limit** is set by law, any other applicable policy framework or through practice for public authorities to reach a decision on a request for access to official documents, notify the applicant about the decision, make the document available if the decision is favourable, and inform the applicant about any possible delays.
- 5.5 Whether the competent 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.

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.*

Please 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, and on whether the applicant has the possibility to choose the form of the document he/she wishes to consult;
- 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; 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.

Article 7 – Charges for access to official documents

- 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.*

Please provide information on the following:

- 7.1. Whether inspection of official documents on the premises of the public authority is ensured **free of charge**.
- 7.2 Whether the applicant can obtain a copy of the requested official documents free of charge. In the case that **fees** are charged, information on how they are calculated, whether tariffs are published and if so, how and where.
- 7.3 Whether fees are charged for access to official documents in **archives**.

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.*

Please 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.

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.

8.3 The **duration** in practice 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.

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.*

Please provide information on the following:

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

9.2 **Training** (pre-service and during service) 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.

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.

9.4 Rules applied for the preservation and destruction of documents by public authorities.

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.

Please 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**.

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.

