



AIG/Inf(2023)15REV

6 July 2023

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

**Questions to Parties relating to reports submitted pursuant to Article  
14, paragraph 1, of the Tromsø Convention**

# CONTENTS

**Estonia** ..... 3  
**Finland**..... 3  
**Hungary** ..... 4  
**Iceland** ..... 4  
**Lithuania**..... 6  
**Montenegro**..... 7  
**Norway** ..... 8  
**Sweden**..... 9  
**Ukraine** ..... 9

## Estonia

1. What is the rationale for the qualification “upon performance of public duties” in §3(1) of the Public Information Act? What types of documents held by public authorities would be excluded from the notion of public information in accordance with this provision?
2. The Public Information Act provides in its § 23(1)(1) that a public authority holding the information shall refuse to comply with a request for information if restrictions on access apply and the person making the request does not have the right to access the requested information. Which persons do not have the right to access information under this provision?
3. Which law governs restrictions of access to a database within the meaning of §43<sup>1</sup>(1) of the Public Information Act?
4. How do the restrictions of access applicable to open data under §3<sup>1</sup> (2) (2)-(9) of the of the Public Information Act relate to the regulation of restrictions under Chapter 5 of the same Act?
5. Is an overriding public interest test carried out under § 38(1) (4) of the Public Information Act and if yes how is this done in practice? Does it apply to restrictions of access to open data?
6. How is the principle of dealing with requests for access on an equal basis (Article 5(3) of the Convention) carried out in practice? What is the order of dealing with the requests? Is there any differentiated treatment of requests?
7. Please provide information on the application of clear and established rules for the preservation and destruction of documents by public authorities within the meaning of Article 9, d of the Convention.

## Finland

1. The Act on Openness of Government Activities (§4(1)6) states that it applies to parliamentary agencies and institutions without distinguishing as regards their administrative or other functions. The Party states in the report that it applies to such institutions only as regards their administrative functions. This point needs explanation.
2. How does the legislation and practice comply with Article 3(2) of the Convention when there is no harm or public interest test laid out in the Act on Openness of Government Activities?
3. How is the principle of dealing with requests for access on an equal basis (Article 5(3) of the Convention) carried out in practice? What is the order of dealing with the requests? Is there any differentiated treatment of requests?

4. What is the average time needed for administrative courts and the Supreme Administrative Court to review and decide on complaints against public authorities denying access to information that they hold? Are there court fees?

## Hungary

1. Is any information belonging to State-owned enterprises exempted from the scope of data of public interest?
2. What is the rationale for excluding personal data from the definition of data of public interest in §3(5) of the Freedom of Information Act?
3. The Freedom of Information Act distinguishes between “data of public interest” (§3(5)) and “data accessible on public interest grounds”(§3(6)). What is the rationale for this distinction and the practical difference between these two notions?
4. What information is classified under the Act on the Protection of Classified Data? Can a copy of this Act be provided?
5. There is no harm test included in the Freedom of Information Act, how is the requirement in Article 3(2) of a harm test fulfilled in law and practice?
6. How is the principle of dealing with requests for access on an equal basis (Article 5(3) of the Convention) carried out in practice? What is the order of dealing with the requests? Is there any differentiated treatment of requests?
7. How is the notion of disproportionate difficulties in §30(2) of the Freedom of Information Act interpreted and applied by the public authority?
8. What kinds of storage costs are included in the fees charged to the applicant and how are they calculated?
9. Are the regulations which were issued in 2020 in the context of pandemic extending the deadline for responding to freedom of information requests from 15 to 45 days still applied?
10. Are there time limits for adjudication of complaints by a court of first instance pursuant to §31(1) of the Freedom of Information Act? Are fees charged on the applicant?
11. How is an expeditious and inexpensive procedure within the meaning of Article 8(1) of the Convention achieved when the court procedure for appeals against refusals to release information may involve procedures in both civil and administrative courts?

## Iceland

1. What content/material is typically included in databases and registries and what is the rationale for not considering them as official documents? Since 117 databases are

accessible, what is the reason for generally exempting the remaining databases from the right of access?

2. How do the exemptions under Article 4, paragraph 1, of the Information Act regarding property registrations, enforcement proceedings, the arrest of property, attachments, injunctions, forced sale, payment moratoria, compositions, liquidations, estate settlements or other administrative settlements, investigations or prosecutions in criminal cases, comply with the Convention?
3. How does the exemption under Article 4, paragraph 2, of the Information Act regarding information to be kept confidential according to any international agreement to which Iceland is a Party comply with the Convention?
4. Does the Information Act apply to natural persons pursuant to Article 1(2)a, sub-paragraph i,3 and sub-paragraph ii,3 of the Convention, or is administrative authority never exercised by natural persons?
5. What does the notion of material available on any specific matter used in Article 5§1 of the Information Act mean? Does it include information that is held by a public authority?
6. Can working documents envisaged in Article 8 of the Information Act be disclosed when they are not handed over to another party pursuant to Article 8, paragraph 1 or when they do not meet the requirements of Article 8, paragraph 3?
7. When applying Article 15, paragraph 4, of the Information Act, how do public authorities discover whether a request for access is presented for an illegitimate purpose?
8. Do public authorities require the applicant to submit a request for information in any particular form? If yes, what is the content of such form?
9. How is the principle of dealing with requests for access on an equal basis (Article 5(3) of the Convention) carried out in practice? What is the order of dealing with the requests? Is there any differentiated treatment of requests?
10. Can practical examples of the implementation of restrictions pursuant to Article 10 §5 of the Information Act (information on the planned arrangements or examinations under public auspices, if these arrangements or examinations would lose their meaning or not achieve their intended results upon becoming common knowledge) be provided?
11. Where an appeal is lodged with courts, what is the duration of court proceedings and possible applicable charges?
12. What do staff costs provided for in Article 18, paragraph 3 of the Information Act consist of?

## Lithuania

1. Does the information covered by Article 2(2) Law on the Right to Receive Information and Re-use of Data constitute official documents in view of Article 1(2) of the Convention?
2. To which legitimate aims provided in Article 3(1) of the Convention correspond the limitations set out in Article 2(2)(1); (4); (5); (7); (8); (9) and (10)?
3. Does the Lithuanian legislation provide for a harm test and an overriding public interest test pursuant to Article 3(2) of the Convention? If yes, when does it apply?
4. Are there other limitations of the right of access provided for by laws other than Law on the Right to Receive Information and Re-use of Data?
5. Does the principle of equality contained in the Law on Public Administration apply to judicial authorities and state-owned enterprises or other entities exercising public function which are considered as public authorities within the meaning of the Law on the Right to Receive Information and Re-use of Data?
6. Does Article 8(1) of Law on the Right to Receive Information and Re-use of Data restrict the use of the information by the applicant according to the intended use of the information by the applicant?
7. Lithuania has reported that despite the fact that the law does not oblige the applicant to give reasons for his/her request this may be the case when it is necessary to justify the lawfulness of processing documents. How is this exception regulated? Can some practical examples be provided?
8. Do the Government Rules for Considering Applications and Complaints and Providing Services to Persons at Entities of Public Administration apply to the processing of requests for information by judicial authorities and state-owned enterprises or other entities exercising public function which are considered as public authorities within the meaning of the Law on the Right to Receive Information and Re-use of Data?
9. What kind of assistance is provided by public authorities to the applicant within the meaning of Article 5(1) of the Convention? Which rules govern this aspect?
10. Does Article 11(4) of the Law on Public Administration concerning the transfer of a request for access to the competent authority apply to judicial authorities and state-owned enterprises or other entities exercising public function which are considered as public authorities within the meaning of the Law on the Right to Receive Information and Re-use of Data?
11. When a request for access is refused on grounds of it not being concrete or understandable rendering its consideration not possible (Law on Public Administration (Article 11(3))), is there an obligation for the public authority to help the applicant clarify his/her request before deciding on the refusal?
12. Does Article 3(6) of the Law on Public Administration concerning the principle of equality apply to the processing of requests for information by judicial authorities and state-owned enterprises or other entities exercising public function? How is the principle of dealing with requests for access on an equal basis (Article 5(3) of the Convention) carried out in

practice? What is the order of dealing with the requests? Is there any differentiated treatment of requests?

13. Do provisions of the Law on Public Administration concerning time limits for dealing with requests for information and those concerning the grounds for rejection of requests (Article 11(3)) apply to judicial authorities and state-owned enterprises or other entities exercising public function?
14. Does the Law on the Right to Receive Information and Re-use of Data guarantee the right of the applicant to choose between inspection of official documents on the premises of the public authority and receiving a copy thereof as per Article 6(1) of the Convention?
15. When partial access to official documents is granted are the omissions indicated in the response to the applicant?
16. To which non-judicial dispute settlement arrangements can appeals under the Law on the Right to Receive Information be lodged? What decisions can such mechanism take? What is the length of this procedure? What are costs to the applicant?
17. What is the length of appeal procedures before the administrative court? What are the costs to the applicant?
18. Please provide information on the application of clear and established rules for the preservation and destruction of documents by public authorities within the meaning of Article 9, d of the Convention.

## Montenegro

1. How is the exemption provided in Article 16, 5<sup>th</sup> paragraph of the Law on Free Access to Information compatible with the Convention?
2. How is the principle of dealing with requests for access on an equal basis (Article 5(3) of the Convention) carried out in practice? What is the order of dealing with the requests? Is there any differentiated treatment of requests? Article 6 of the Law on Free Access to Information permits exemptions to the principle of equal treatment of applicants when this is provided by law. In which circumstances does the law stipulate that applicants are not treated on an equal basis and under equal conditions? Which law regulates these exceptions from the principle of equal treatment?
3. What are the investigative powers of the Authority for Protection of Personal Data and Free Access to Information in cases when complaints against a decision on access are lodged with it? What is its procedure for examining a complaint and the possible decisions it make take on it? What is the duration of the procedure?
4. Where an appeal against a denial of a request for access is lodged with courts, what is the average time for the court procedures to be completed? Are there fees charged on the applicant?
5. What measures are taken pursuant to Article 9, c of the Convention? Please provide information on the application of clear and established rules for the preservation and

destruction of documents by public authorities within the meaning of Article 9, d of the Convention.

## Norway

1. Are the administrative functions of the Parliament, the Office of the Auditor General, the Parliamentary Ombudsman for Scrutiny of the Public Administration covered by the special rules on access applicable to these bodies?
2. Can some practical examples of the implementation of §5 of Freedom of Information Act (deferred access) be provided? What is considered as an obvious public or private interest? How does a public authority weigh such interests and whether it also weighs at the same time the public interest in having access to the requested dispatched/ final documents?
3. What is the meaning of the word “case” in §28 of the Freedom of Information Act?
4. To which legitimate aim provided for in Article 3(1) of the Convention correspond the exemptions set out in §22 and §23 of the Freedom of Information Act?
5. What exemptions have been made by regulations under §27 of the Freedom of Information Act and how do they comply with the Convention? Does this section authorise limitations which may fall outside of the limitations provided for in the Convention?
6. How is Article 3(2) of the Convention reflected in the Freedom of Information Act?
7. Do the obligations set out in §11 of the Public Administration Act apply to judicial authorities as regards their administrative functions and other legal entities which fall within the scope of the Freedom of Information Act?
8. What is the content of regulations issued under the 2<sup>nd</sup> paragraph of §29 of the Freedom of Information Act? Which authorities are competent to deal with requests for access?
9. How are agreements granting exclusive rights of access provided for in the 2<sup>nd</sup> paragraph of §6 of the Freedom of Information Act implemented in practice? Can some examples be provided? Are they compatible with Article 5(3) of the Convention?
10. What regulations on fees have been issued pursuant to §8 of the Freedom of Information Act?
11. Which are the appellate instances determined by the King pursuant to §32 of the Freedom of Information Act concerning decisions made by State agencies or by legal persons exercising administrative authority?
12. Where an appeal against a denial of a request for access is lodged with courts, what is the average time for the court procedures to be completed? Are there fees charged on the applicant?

## Sweden

1. To what extent do natural persons insofar as they exercise administrative authority fall outside of the scope of public authorities as they are defined in the Article 1(2)a, subparagraph i.3 of the Convention?
2. Which secrecy provisions are absolute according to the Swedish legislation?
3. Could examples be provided of how an inquiry into the purpose of an applicant's request under Chapter 2, Section 18 of Freedom of Press Act, contributes to the assessment by the public authority of potential harm when deciding whether to disclose the requested official document/s?
4. Is the duty of service envisaged by Section 6 of the Administrative Procedure Act applicable to all entities which fall within the scope of the Freedom of the Press Act?
5. How is the principle of dealing with requests for access on an equal basis (Article 5(3) of the Convention) carried out in practice? What is the order of dealing with the requests? Is there any differentiated treatment of requests?

## Ukraine

1. What is the relationship between the Law on Information and the Law on Access to Public Information?
2. In particular, what is the relationship between Article 6.2 of the Law on Information (concerning limitations of the right to information) and Article 6(2), 1st indent, of the Law on Access to Public information (grounds of limitations of access to information)?
3. What is the purpose of Article 29 of the Law on Information? In which situations does it apply? What is its relationship with Article 6(2), 2<sup>nd</sup> and 3<sup>d</sup> indents of the Law on Access to Public Information?
4. What information would qualify as information that was received or created outside of the process of performance by public authorities of their duties under Article 1 of the Law on Access to Public Information?
5. Are legal persons entitled to the right of access under the Law on Access to Public Information?
6. How is the principle of dealing with requests for access on an equal basis (Article 5(3) of the Convention) carried out in practice? What is the order of dealing with the requests? Is there any differentiated treatment of requests?

7. Are tariffs applicable to granting access to official documents published? If so, where and when?
8. Please provide information on the application of clear and established rules for the preservation and destruction of documents by public authorities within the meaning of Article 9, d of the Convention.