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Council of Europe Group on Access to Information (AIG)

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

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I. Introduction

Hungary has signed the *Council of Europe Convention on Access to Official Documents (CETS No. 205)* – hereinafter referred to as „Convention” – on 18 June 2009 and ratified it on 1 May 2010 with the promulgation of the *Act CXXXI of 2009 on the promulgation of the Council of Europe Convention on Access to Official Documents*.¹

Hungary has also made the following declaration to the Convention at the time of signature:

„In accordance with Article 1, paragraph 2, subparagraph a.ii, of the Convention, the Republic of Hungary informs the Secretary General of the Council of Europe that, for the Republic of Hungary, the definition of “public authorities” includes the following:

- legislative bodies as regards their other activities;*
- judicial authorities as regards their other activities;*
- natural or legal persons insofar as they perform public functions or operate with public funds, according to national law.”*

The following sections of this report summarize how the Hungarian legislation gave effect to the Convention by enacting – both substantive and procedural – legal provisions that ensure the consistent application of the right of access to official documents.

II. Articles of the Convention and the related Hungarian measures

Article 2 – Right of access to official documents

Paragraph 1 of Article 2 of the Convention states that the Parties shall **guarantee** the right of everyone, **without discrimination on any ground**, to have access, on request, to official documents held by public authorities. Paragraph 2 of Article 2 of the Convention also states that the Parties **shall take the necessary measures** in their domestic law **to give effect to the provisions** for access to official documents set out in the Convention.

1) „shall guarantee”

Paragraph (3) of Article VI of The Fundamental Law of Hungary² (hereinafter referred to as „Fundamental Law”) provides that *„[e]veryone shall have the right to the protection of his or her personal data, as well as to access and disseminate data of public interest”*. Paragraph 4 of the Article VI of the Fundamental Law lays down that the enforcement of the right of access to data of public interest shall be monitored by an independent authority established by a cardinal Act.³ According to Article R) of the Fundamental Law *„[t]he Fundamental Law shall be the foundation of the legal system of Hungary”*, therefore it can be concluded that the right of access to official documents (*in the text of the Fundamental Law, the right of access to access and dissemination of data of public interest*) has been established as **a fundamental right in the highest level legal norm** in Hungary.

¹ <https://njt.hu/jogszabaly/2009-131-00-00>

² See the English translation here (as in force on 1 January 2022): https://njt.hu/translation/TheFundamentalLawofHungary_20201223_FINrev.pdf

³ According to Paragraph (4) of Article T) of the Fundamental Law, a cardinal Act is an Act of which the adoption and the amendment requires the votes of two thirds of the Members of the National Assembly present.

According to Paragraph 1 of Article I of the Fundamental Law that „[t]he inviolable and inalienable fundamental rights of MAN must be respected”, and it also lays down that „it shall be the primary obligation of the State to protect these rights”.

Paragraph (3) of Article I lays down that **the rules for fundamental rights and obligations shall be laid down in an Act**. The same provision also clarifies that a fundamental right *may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right*.

Furthermore, Article 39 of the Fundamental Law provides a wide range of transparency relating to public funds as well. The Fundamental Law states that „[e]very organisation managing public funds shall be obliged to publicly account for its management of public funds. **Public funds and national assets shall be managed according to the principles of transparency and the purity of public life. Data relating to public funds and national assets shall be data of public interest**”.

The National Assembly, in order to ensure the right to informational self-determination and the freedom of information, for the purpose of implementing the Fundamental Law, adopted the *Act CXII of 2011 on the right to informational self-determination and on the freedom of information*⁴ (hereinafter referred to as „Information Act”). The Information Act contains all relevant rules necessary for the protection and the enforcement of the above-mentioned fundamental right.

Furthermore, the Constitutional Court of Hungary⁵ (hereinafter referred to as „Constitutional Court”) emphasised in an early decision, “[f]ree access to information of public interest provides an opportunity to control the lawfulness and efficiency of the elected bodies of popular representation, the executive power and public administration, and facilitates the democratic operation thereof”, and also expressed that „[d]ue to the complexity of public affairs, the citizens’ control and influence over decision-making and administration by the public authorities can only be efficient if the competent organs disclose the necessary information”.⁶

2) „official documents held by public authorities”

Paragraph (1) of Section 2 of the Information Act sets out the scope of the Act by declaring that the Information Act shall apply to **all data processing activities that are related to data of public interest and data accessible on public interest grounds**.

Section 3 of the Information Act sets out the definition of data of public interest – as a main category of data to be accessible through the right of access to data of public interest:

- data of public interest: *information or data other than personal data, registered through any method or in any form, pertaining to the activities of and processed by the organ or person performing state or local government duties and other public duties defined by law, or generated in the course of performing their public duties, irrespective of the method or form in which it is recorded and regardless of its singular or collective nature; in particular, data concerning material competence, territorial competence, organisational structure, professional activities and*

⁴ See the official English translation here: https://njt.hu/translation/J2011T0112P_20200101_FINrev.pdf

⁵ According to Section 39 of Act CLI of 2011 on the Constitutional Court, the decisions of the Constitutional Court are – unless otherwise provided by law – binding on all. The Court’s decisions are hugely influential on the practical application of the Information Act.

⁶ Decision No. 32/1992 (V. 29.) AB

the evaluation of their performance, the type of data held and the laws governing its operation, as well as data concerning financial management and concluded contracts;

However, the Hungarian legislation not only acknowledges the possibility of accessing data of public interest but it also allows for the access of data that is – by definition – does not fall under the definition of data of public interest (such as personal data, business secrets of non-public entities or individuals, etc.) by defining the category of data accessible on public interest grounds:

- data accessible on public interest grounds: any data, other than data of public interest, the disclosure, availability or accessibility of which is prescribed by an Act for the benefit of the general public;

Unless otherwise indicated, in this report „data of public interest” and „data accessible on public interest grounds” will be jointly referred to as „data of public interest” as rules to their access – in most cases – are identical.⁷

3) „everyone, without discrimination on any ground, to have access, on request”

As stated before, both the Fundamental Law and the Information Act guarantees the right of access to public documents to everyone. In addition to the above-mentioned Articles, paragraph (2) of Article XV of the Fundamental Law states that „**Hungary shall guarantee fundamental rights to everyone without discrimination and in particular without discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status**”, which also enshrines non-discrimination principle in the highest level legal norm in Hungary.

Moreover, paragraph (1) of Section 26 of the Information Act provides that „*[a]ny person or organ performing state or local government functions, or performing other public duties defined by law (hereinafter jointly “organ performing public duties”), shall allow any person to have free access to data of public interest and data accessible on public interest grounds under its control if so requested, with the exceptions provided by this Act*”.

It can be concluded that Hungary guarantees the right of access to public information to anyone upon request without having to substantiate any reasons or legal grounds for such request.

Article 3 - Possible limitations to access to official documents

According to Paragraph 1 of Article 3 of the Convention the Parties may limit the right of access to official documents if such limitations are set down precisely in law, provided they are necessary in a democratic society and proportionate to the aim of protecting the interests listed in points a)-k). Access to information contained in an official document may be refused if its disclosure would or would be likely to harm any of these interests, unless there is an overriding public interest in disclosure.

⁷ See more in Section 28 of the Information Act.

1) „set down precisely in law, provided they are necessary in a democratic society and proportionate to the aim of protecting the interests...”

Paragraph (2) of Section 27 of the Information Act provides that the right to access data of public interest or data accessible on public interest grounds **may be restricted by an Act, with the specific type of data indicated**, if considered necessary for the purposes of:

- a) **national defence** – on the basis of *point a) Paragraph 1 of Article 3 of the Convention*;
- b) **national security** – on the basis of *point a) Paragraph 1 of Article 3 of the Convention*;
- c) **the prosecution and prevention of criminal offences** – on the basis of *point c) of Paragraph 1 of Article 3 of the Convention*;
- d) **environmental protection and nature preservation** – on the basis of *point j) of Paragraph 1 of Article 3 of the Convention*;
- e) **central financial or foreign exchange policy**⁸ – on the basis of *points a) and k) of Paragraph 1 of Article 3 of the Convention*;
- f) **external relations, relations with international organisations** – on the basis of *point a) of Paragraph 1 of Article 3 of the Convention*;
- g) **court proceedings or administrative authority procedures** – on the basis of *point i) of Paragraph 1 of Article 3 of the Convention*;
- h) **intellectual property rights** – on the basis of *points f)-g) of Paragraph 1 of Article 3 of the Convention*.

The Information Act therefore only provides a specific legal framework for grounds that – in line with the Convention – could justify possible restrictions, provided that such limitations are necessary for one of these above-mentioned purposes and prescribed in an Act.⁹

It also should be noted that such limitations can be considered constitutional only **if conditions laid down in Paragraph 3 of Article I of the Fundamental Law are also met**; in order to meet the strict standards laid down in the Fundamental Law, the fundamental right to access to public information may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right. The constitutionality of an Act containing such restriction could be contested in the Constitutional Court by both individuals and – in particular – the Commissioner for Fundamental Rights).

In addition to the above listed limitations, **the Information Act itself provides a specific ground for limitation safeguarding the decision-making process** of an organ performing public duties as part and in support of its decision-making process within the limits of its powers and duties. This limitation is also in line with Article 3 of the Convention, as point k) of Paragraph 1 allows for a limitation safeguarding the deliberations within or between public authorities concerning the examination of a matter.

In this case – according to Paragraph (5) and (6) of Section 27 of the Information Act – access to such data may be denied for ten years from the date the data in question was compiled or recorded.

⁸ Paragraph (4) of Section 27 of the Information Act states that „[a]ccess to data of public interest may also be limited on the basis of a legal act of the European Union with a view to safeguarding vital economic or financial interests of the European Union, including monetary, fiscal and tax policies”, therefore this specific limitation may apply to limitations specified in a legal act of the European Union as well.

⁹ Acts can only be enacted by the National Assembly.

A request to access data underlying a decision **may be dismissed after the decision is adopted but within the same ten-year time limit** referred to in Paragraph (5) of Section 27, only if

- the data underlies future decisions,
- or access to it would jeopardise the lawful functioning of the organ performing public duties, or would jeopardise the performance of its duties without any undue external influence, such as, in particular, the free expression of the standpoint of the organ which generated the data during the preliminary stages of its decision-making process.

The time limit for the restriction of access to certain specific data underlying a decision as specified in paragraph (5) of Section 27 may be reduced by law (*meaning a time reduction – which would be favourable for applicants – may be prescribed in any lower level legislation, such as a government or ministerial or local government decree*).

It should also be noted that pursuant to Paragraph (1) of Section 27 of the Information Act **no access to data of public interest or data accessible on public interest grounds shall be provided if it has been classified under the Act on the protection of classified data**. If the request for access to data of public interest is refused by the controller on the basis of Paragraph (1) of Section 27, and the requesting party turns to court for the judicial review of the dismissal of his or her request, the court shall initiate an **administrative authority procedure for the review of the data classification** with the Authority and shall simultaneously suspend the court proceedings.

2) „would likely to harm any of the interests” (...) „overriding public interest in disclosure”

Paragraph (5) of Section 30 of the Information Act states that, if the controller is vested with discretionary authority by an Act with respect to the refusal of requests for access to data of public interest, **the grounds serving for refusal shall be interpreted restrictively**, and the request for access to data of public interest **shall only be refused if the underlying public interest outweighs the public interest of allowing access to the data of public interest**.

The Information Act therefore strictly limits the application of any restriction prescribed by an Act by requiring a proper balancing between the various interests at stake. It should be noted that given the fact that the possible limitation for the decision-making process is laid down in an Act (in the Information Act itself), the balancing test should be carried out accordingly.

The **Constitutional Court has also established in its long-standing case law that under the right of access to public information the principle of transparency is not an exception but a general rule**, therefore a refusal may be lawful only if it is for a reason specified by an Act, and if the framework for restriction of a fundamental right in the Fundamental Law is complied with.¹⁰ The Court has also declared that “[i]t is not the citizen who must prove his authority to obtain the information but it is the organ created for serving the public which must justify – invoking appropriate statutory grounds – the refusal to communicate the required information”.¹¹ Thus, in a **democratic society the principal rule is the publicity of data of public interest**; accordingly, the restriction of the publicity of data of public interest is to be considered exceptional.

¹⁰ Decision No. 12/2004. (IV. 7.) AB

[http://public.mkab.hu/dev/dontesek.nsf/0/af42e78db63fc81ec1257ada00527c07/\\$FILE/en_0012_2004.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/af42e78db63fc81ec1257ada00527c07/$FILE/en_0012_2004.pdf)

¹¹ Decision No. 32/1992 (V. 29.) AB

In order to ensure that the right to access of public information is granted to the greatest extent – even if there is an underlying public interest that would outweigh the public interest of allowing the access – Paragraph (1) of Section 30 of the Information Act lays down that if a document containing data of public interest also contains any other data that the requesting party may not access, the data that must not be accessed shall be made unrecognisable on the copy. This provision enacted the so-called „*data principle*” in the Information Act, which means that the Hungarian freedom of information legislation is *data-driven* (and not document-driven). **Even if a limitation applies in a specific case** (which is – as stated above – an exception and not the general rule by default), **parts of the concerned document that are not covered by the exception should be released to the public.** In every case, an assessment should be made accordingly, and the non-limited parts shall be not be redacted.

Article 4 - Requests for access to official documents

The Convention states that an applicant for an official document shall not be obliged to give reasons for having access to the official document. Applicants may remain anonymous except when the disclosure of identity is essential in order to process the request. Formalities for requests shall not exceed what is essential in order to process the request.

1) „shall not be obliged to give reasons”

The Information Act does not require any legal grounds to be substantiated when requesting an official document. It also should be noted that the Constitutional Court – in the last three decades – has developed a strict interpretation of the provisions laid down both in the former Constitution of Hungary and the current Fundamental Law concerning the right to access of public information. The Constitutional Court has emphasized – and in many cases, re-iterated – that **under the Fundamental Law, it is not required to substantiate any grounds in order to access public information.**¹²

2) „may remain anonymous except when (...) essential in order to process the request”

Paragraph (1b) of Section 29 of the Information Act lays down that „*[t]he organ performing public duties and processing the data shall not be obliged to fulfil the request for data if the requesting party fails to indicate his name, its identity, in the case of other than a natural person, or the contact information through which it could be notified and informed in connection with the request for data*”.

It should be highlighted that the processing of personal data of the applicant is not required by law, and therefore it is only applicable if the organ performing public duties decides that such processing activity is necessary in order to fulfill the request. If a public organ decides that such data processing is necessary, it may only process the **name** (if not a natural person, the **identity**) of and the relevant contact information of the applicant through which the applicant could be notified, informed, etc.

¹² See more in: Constitutional Court Decision No. 21/2013. (VII. 19.)
<http://public.mkab.hu/dev/dontesek.nsf/0/0425EE5146E787BAC1257ADA00524CCB?OpenDocument>
 also in Decision No. 5/2014. (II. 14.) AB
<http://public.mkab.hu/dev/dontesek.nsf/0/7292EF4C34019243C1257ADA00524B8C?OpenDocument>

In addition to that, in many cases the National Data Protection and Freedom of Information Authority (hereinafter referred to as „Authority”) has expressed that even if the processing of personal data of the applicant is permitted to a certain extent, **the related data processing operations cannot include the possible verification of the applicant’s identity** (such as by requiring the applicant to show, copy or transfer in any other way his or her ID card to the public body, etc).¹³

Paragraph (2) of Section 28 of the Information Act states that the processing of the personal data of the requesting party is permitted only to the extent necessary for fulfilling the request [*or assessing the request on the basis of the conditions referred to in section 29 (1a), or paying the fee determined for the fulfilment of the request – see later*]. According to the principles (such as *purpose* and *storage limitation*) relating to processing of personal data laid down in the relevant data protection legislation,¹⁴ personal data of the applicant can only be processed for no longer than is necessary for the purposes for which the personal data are processed.

Personal data should be deleted

- if the request is fulfilled – provided that provisions laid down in Section 29 do not apply –, no later than the request is fulfilled;
- if the request to be fulfilled requires a pre-determined fee be paid – provided that provisions laid down in Section 29 do not apply –, no later than the fee has been paid;
- if provisions laid down in Section 29 apply, no later than one year after the request.

3) „formalities for requests shall not exceed what is essential in order to process the request”

The Information Act allows for a wide range of means on how a request of access to public information can be submitted to a public organ. According to paragraph (1) of Section 28 of the Information Act data of public interest shall be made available to anyone upon a request presented **orally, in writing or by electronic means**.

Also, Paragraph (4) of Section 30 of the Information Act states that request for data of public interest made by a person whose native language is not Hungarian shall not be refused because it was written in the requesting party’s native language, or in any other language he understands, therefore there are no formalities either on how the request should be formulated.

Article 5 - Processing of requests for access to official documents

According to the Convention public authorities (organs) shall help the applicant throughout the process of the request, particularly identifying the document (or the controller of the document provided that the public organ does not hold the requested document). Requests shall be dealt with promptly and in a timely manner. Refusal on the technical – not substantive – grounds are only acceptable if the request is too vague or if the request is manifestly unreasonable. As a general rule, refusals shall be justified and the applicant has the right to receive – on request – a written justification for the refusal.

¹³ See in case: NAIH/2015/4710/2/V

¹⁴ Article 5(1) b) of *Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)*

1) „shall help the applicant, as far as reasonably possible, to identify the requested official document”

Paragraph (3) of Section 28 of the Information Act provides that **if a request is unclear**, the controller shall call the applicant to clarify the application. It should be emphasized that it is clear from the Hungarian wording of the Information Act that if a request is unclear, the public organ performing public duties **is obligated** to call for a clarification. **It should also be noted that under the Information Act it is not possible to refuse a request on the grounds of it being unclear.**

2) „shall be dealt with by any public authority holding the document” (...) „wherever possible, refer the application or the applicant to the competent public authority”

As a general rule, Section 26 of the Information Act obligates the relevant organ performing public duties to process and handle requests of which concern a document (data) that is under its control.¹⁵

In exceptional cases there may be uncertainties about controllership, especially when the document (data) concerned had not been generated by the requested organ performing public duties, or when the organ does not hold the requested document (data) at all. The Authority has held in many cases that – according to the general principles of the Information Act and also with a view to the constitutional function of the right to access of public information laid down in the Fundamental Law – if such uncertainty arises during the processing of a request, the organ performing public duties – along with the refusal of the request on the grounds of not being the controller of the document (data) concerned or not controlling document (data) at all – **shall inform the applicant** on which organ performing public duties (which controller) should be consulted with the request, provided that such information is readily available to the organ performing public duties or if the possible controller can be easily identified by the consulted organ.¹⁶

The basis of this obligation is enshrined in Section 32 of the Information Act that provides that organs performing public duties **shall promote and ensure that the general public is promptly provided with accurate information**.

3) „requests (...) shall be dealt with on an equal basis”

As stated before, Paragraph (2) of Article XV of the Fundamental Law states that „**Hungary shall guarantee fundamental rights to everyone without discrimination and in particular without discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status**”, which also enshrines non-discrimination principle in the highest level in the norm hierarchy of Hungarian law.

Also, it should be noted that the National Assembly has also passed detailed legislation on equal treatment by enacting the *Act CXXV of 2003 on equal treatment and the promotion of equal*

¹⁵ Controllership could be determined in accordance with Points 5-6. (definition of *data of public interest* and *data accessible on public interest grounds*) and 9. (definition of *controller*) of Paragraph (1) of Section 3 of the Information Act.

¹⁶ See more: <https://www.naih.hu/informacioszabadsag-ajanlasok/file/505-a-nemzeti-adatvedelmi-es-informacioszabadsag-hatosag-ajanlasi-az-igenyelt-kozerdeku-adatot-tenylegesen-kezelo-szervezetre-vonatkozotajekoztatasi-kotelezettsegrol>

opportunities (hereinafter referred to as „AD Act”). According to Section 4 of the AD Act the principles of equal treatment shall be observed by organs performing public duties, such as the Hungarian State, local and national self-governments (and their organs), official authorities, defence forces and law enforcement organs, etc. Paragraph (1) of Section 7 lays down that direct discrimination, indirect discrimination, harassment, segregation, victimisation, and any instruction given to that effect **shall constitute a violation of the principle of equal treatment** as provided for, in particular, in Chapter III of the AD Act. Moreover, it must be highlighted that the concerned list is not exhaustive which further proves the legislator’s willingness to combating discrimination. Nonetheless, Section 8 of the AD Act includes a non-exhaustive list (naming point t) of any other status, characteristic, or attribute) of protected grounds which is compatible with the standards laid down in international human rights law.

From the above considerations it can be concluded that all the relevant Hungarian legislation prohibits any form of discrimination by guaranteeing fundamental rights without discrimination on any status.

4) „a request (...) shall be dealt with promptly (...) the decision shall be reached, communicated and executed as soon as possible or within a reasonable time limit”

Paragraph (1) of Section 29 of the Information Act states that the organ performing public duties and processing the data of public interest shall fulfil the request for access to such data **as soon as possible, but not later than 15 days from receiving the request**.

The Information Act sets „*as soon as possible*” as a general rule while also laying down a reasonable 15-day time limit for requests. The wording of the Information Act and the relevant case law also indicates that the above mentioned time limit shall be counted in **calendar days** rather than working days (meaning all days, including weekends shall be counted).

Paragraph (2) of Section 29 of the Information Act allows for an additional 15-day extension only if the request concerns data large in number or in volume, or if fulfilling the request for data requires a disproportionate use of the labour resources needed for the performance of the core duties of an organ performing public duties. The applicant shall be informed on the extension within the original 15-day time limit.

According to Section 31 of the Information Act, if the time limit expires with no result, the requesting party may turn to court. The time expiry also allows the applicant to lodge a complaint with the Authority.

5) „request remains too vague to allow the official document to be identified” (...) „manifestly unreasonable”

The Information Act only allows for the request considered to be too vague to be clarified instead of it being refused on this ground. Under the Information Act it isn’t possible to consider a request „manifestly unreasonable”.

However, under Section 29 of the Information Act an organ performing public duties shall not be obliged to fulfil the request for data with respect to the part of the data that **had already been requested within the period of one year by the same requesting party and is aimed at an identical set of data**, provided that the data belonging to the identical set of data did not change. It should be noted that this provision is not obligatory, thus the application is merely optional for

the controller (aiming to reduce unnecessary workload by not having to answer requests that had already been fulfilled). If the controller decides on the application of this provision, it may process the personal data of the applicant for the above-mentioned time period [*see in Article 4, 2*].

6) „shall give the reasons for the refusal” (...) „written justification”

Paragraph (2) of Section 31 of the Information Act lays down that the **burden of proof for the lawfulness and the reasons for refusal shall lie with the controller**, meaning that the controller must give the reasons for the refusal. The long-standing case-law of the Constitutional Court has also clarified that the reasoning for a refusal must be **concrete and specific** where the controller includes the reasoning of the restriction of access in the case. The Court has also held that rules which confer a discretionary power on the data controller to refuse access to data of public interest are in themselves infringing the fundamental right of access to public information,¹⁷ and in many cases has re-iterated that this right **also includes the obligation the legislator to actively safeguard the right** by enacting „guarantee provisions” to assure that the that even if limitations apply, these rules cannot be used to circumvent the obligation to disclose data of public interest by a controller.

According to Paragraph (3) of Section 30 of the Information Act the refusal also contains information on the legal remedies that are available under the Information Act.

The controller shall keep records on the requests dismissed, including the reasons for them, and shall inform the Authority of them each year, by 31 January. The Authority publishes the statistics of refusals in its annual report.

Article 6 - Forms of access to official documents

If the application is granted, the applicant has the right to choose between inspecting the original or obtaining a copy of his or her choice unless the preference expressed is unreasonable. 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. The public authority may give access to an official document by referring the applicant to easily accessible alternative sources.

1) „has the right to choose” (...) „unless the preference expressed is unreasonable”

Paragraph (2) Section 30 of the Information Act lays down that **data shall be supplied in a comprehensible form and in the format and via the means requested by the requesting party**, provided that the organ performing public duties and processing the data is capable of fulfilling such a request without disproportionate difficulties. Paragraph (3) of Section 29 of the Information Act also provides that the applicant has the right to be provided with **a copy of the document** (or a part of a document) containing the requested data, **irrespective of the form of storage**.

It should also be noted that the above-mentioned burden of proof for lawfulness also lies with the controller if it considers that the request cannot be fulfilled via the means requested by the applicant [*see in Article 4*].

¹⁷ Decision No. 21/2013. (VII. 19.) AB [41]

However, in **exceptional cases and if provided by law**, the controller **may limit** the means of access. Section 15/A of Act LXXVI of 1999 on intellectual property states that in order to protect the rights of the author(s) the controller – instead of the form and manner requested by the applicant – **may allow** the access by inspection of the document containing the data of public interest in question. It should be highlighted that this restriction is only **optional** for the controller and does not exclude the possibility of the disclosure via the actual copy of the document.

2) „should nevertheless grant access to the remainder of the information it contains” (...) „omissions should be clearly indicated”

As it was demonstrated before, in order to ensure that the right to access of public information is granted to the greatest extent the Information Act is **data-driven** and not document-driven. **Even if a limitation applies in a specific case** (which is – as stated above – an exception and not the general rule by default), **parts of the concerned document that are not covered by the exception should be released to the public**. In every case, an assessment should be made accordingly, and the non-limited parts shall be not be redacted. As it was shown earlier, the burden of proof requires the controller to substantiate the grounds for refusal, which also covers the case of redactions (as a redaction is to be considered as a refusal in part).

The Information Act does not contain any provisions concerning the third sentence of Section 2 of Article 6 of the Convention, therefore in Hungary redactions (omissions) do not affect the disclosure of the data that is not covered by a limitation.

3) „may give access (...) by referring the applicant to easily accessible alternative sources”

Paragraph (2) of Section 30 of the Information Act allows the controller to fulfill the request by way of reference to the public source where the requested data are available, provided that the requested data had previously been disclosed electronically. Under this provision controllers may refer to the URL of the requested data instead of disclosing a copy of it.

Article 7 - Charges for access to official documents

As a general rule, inspection of an official document on the premises of a public authority shall be free of charge. A fee may be charged for a copy, which should be reasonable and they should reflect the actual costs of reproduction and delivery of the document. Fees shall be published.

1) „inspection (...) shall be free of charge”

The Information Act does not allow any fees to be charged concerning the inspection of a document in person by the applicant.

2) fee may be charged to the applicant for a copy (...) „which should be reasonable and not exceed the actual costs of reproduction and delivery”

Paragraph (3) of Section 29 of the Information Act provides that the applicant party may be provided with a copy of the document or a part of the document containing the data in question, irrespective of the form of storage. The organ performing public duties and processing the data **may charge a fee amounting to the costs incurred by the fulfilment of the request**.

According to Paragraph (5) of Section 29 of the Information Act when determining the fee, the following items may be taken into account:

- the **cost of the data-storage medium** that will contain the requested data;
- the **cost incurred by delivering** the data-storage medium containing the requested data to the requesting party.

If the organ performing public duties decides to charge a fee amounting to the costs incurred by the fulfilment of the request, it **shall communicate this amount** to the applicant in advance. Paragraph (3a) of Section 29 states that the applicant shall make a statement within 30 days from receiving the information on the fees to be charged, as to whether wishes to maintain their request or not. If the applicant still wishes to maintain their request, the amount of the fee shall be paid within 15 days.

The Information Act authorises the Government to determine in a decree all the relevant rules concerning the above-mentioned fees. The Government enacted the *Government Decree 301/2016 (30 September) on the amount of the fee payable in connection with requests for data of public interest* (hereinafter referred to as „Decree”) that contains all the relevant implementing rules regarding the fees to be paid. No other type of costs can be charged other than the ones are laid down in the Information Act and specified in the Decree. The Decree also sets out a **minimum** and **maximum** fee limit by laying down that a fee can only be charged if such fee would exceed **10 000 Ft**, but also the fee may not exceed **190 000 Ft** in any case.

Copy fees¹⁸

| TYPE | FEE (MAXIMUM) |
|---|---|
| hard copy (paper based) | from 10 pages , the actual cost of the paper based media, but a maximum of: A4 (black & white) 12 Ft/page; A3 (colour) 130 Ft/page; A3 (black & white) 24 Ft/page; A3 (colour): 260 Ft/page. <i>Under 10 pages, no cost can be charged.</i> |
| data copy (optical, eg.: CD, DVD, etc.) | the actual cost of the media, but a maximum of 580 Ft/media |
| other digital copy (HDD, pendrive, etc.) | the actual cost of the media |

If the equipment necessary in order make a copy (printer, photocopier, etc.) is temporarily or permanently unavailable to the organ performing public duties, the above costs will continue to apply, provided that only the costs that are substantiated and strictly necessary can be taken into account. The Decree also makes it clear that the burden of proof – see earlier – vested on the controller also applies in this case (accountability).

Delivery fees

The following costs may be charged in connection with the postal delivery of the copy made by the organ performing public duties:

¹⁸ When determining the maximum of these fees the Government collected the relevant statistical data of organs performing public duties in order to comply with the self-cost principle.

| TYPE | FEE (MAXIMUM) |
|---|--|
| inland delivery of any type of copy (regardless of the type of the media) | the fee for the postal service for for delivering official documents ¹⁹ |
| international delivery of any type of copy (regardless of the type of the media) | the fee for the postal service for registered items sent with an additional return receipt service within the framework of the universal postal services ²⁰ |

The case-law of the Authority

It should be pointed out that the Authority has developed a strict and narrow interpretation of the Information Act and the Decree by specifying that the possibility of charging fees reflecting labour costs is limited to exceptional cases. The Authority has also released recommendations on the application of the provisions on fees of the Information Act and stated that as a general rule, access to public information shall be granted **free of charge**.

The Authority has also held in many cases that in case of failure to notify the applicant on charging such fees within the time limit strictly set out in the Information Act, fees cannot be charged and the request shall be fulfilled free of charge.

Article 8 - Review procedure

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. An applicant shall always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review.

1) „shall access to a review procedure before a court”

Paragraph (1) of Section 31 of the Information Act provides that in the event that the request for access to data of public interest of a requesting party is **dismissed, or the time limit** or – if the controller extended it – the **extended time limit expires with no result**, as well as for the judicial review of the **fee determined for the fulfilment of the request**, the requesting party **may turn to court**. The review procedure is set out in Section 31 of the Information Act.

As it was pointed out earlier, **the burden of proof for the lawfulness and the reasons for refusal** – as well as the reasons based on which the amount of the fee is payable for fulfilling the request – **lies with the controller**.

The action shall be brought against the organ performing public duties that dismissed the request within **thirty days** from communicating the dismissal, the expiry of the time limit with no result, or the time limit for the payment of the fee.

¹⁹ Under Act CLIX of 2012 on the postal services official documents can only be posted via the Hungarian Post (Magyar Posta Zrt.). Annual fees are officially published in post offices and on the official website of the postal service.

²⁰ Also handled by the Hungarian Post (Magyar Posta Zrt.) as an universal service provider. Annual fees are officially published in post offices and on the official website of the postal service.

If the requesting party makes a notification to the Authority aimed at initiating the Authority's inquiry regarding the dismissal or the non-fulfilment of the request, or with respect to the amount of the fee charged for fulfilling the request, the action may be brought **within thirty days following the completion of the procedure of the Authority**. An application for excuse may be submitted in the event of failure to meet the time limit for bringing the action.

Any person who does not otherwise have the capacity to be a party may be a party to the court action. The Authority may intervene in the action in order to facilitate the success of the requesting party. Paragraph (6) of Section 31 of the Information Act states that **the court shall hear such cases as a matter of priority**.

In addition to the above – since a recent amendment of the Information Act that came into force on 31 December 2022 – **the Information Act also lays down specific procedural rules applying to freedom of information cases in order to speed up (accelerate) court proceedings. These rules include strict deadlines for the court to decide on the case and also limit the applicability of regular procedural provisions such as the postponement of the hearing or the suspension of the court proceeding.** The Information Act also sets out short time frames for appeals (15 days in the case of the second instance and 60 days in the case of the Curia) and also for the delivery and announcement of the judgement.

If the decision of the court is in favour of the request for access to data of public interest, the court shall, also determining the applicable time limit for fulfilling the request, order the controller to disclose the data of public interest. The court may modify the amount charged for fulfilling the request for access to the data of public interest, or may order the organ performing public duties to commence a new procedure to determine the amount of the fee payable.

Section 57 of *Act XCIII of 1990 on fees* provides that **court proceedings in connection with access to data of public interest** are free of any court procedural fees.

The procedure for the action shall be dealt with in accordance with *Act CXXX of 2016 on the Code of Civil Procedure*.²¹ When hearing the case the court can inspect the relevant documents by either inspection or obtaining a copy.

2) „or another independent and impartial body established by law”

2.1.) The Authority

As it was pointed out earlier, Paragraph 4 of the Article VI of the Fundamental Law lays down that the enforcement of the right of access to data of public interest **shall be monitored by an independent authority established by a cardinal Act**.

Paragraph (1) of Section 52 of the Information Act assigned this monitoring authority on the Authority by stating that any person shall have the right to initiate an inquiry with the Authority by submitting a notification of an alleged infringement relating the exercise of the right to access data of public interest (or data accessible on public interest grounds), or of an imminent threat of such an infringement. If commencing an authority procedure is not mandatory, **the Authority may commence an inquiry ex officio**.

²¹ See the English translation here: https://njt.hu/translation/J2016T0130P_20200401_FIN.pdf

The Authority is an **autonomous state administration organ** subject to Acts only, and cannot be instructed in its functions, and shall carry out its responsibilities independently of other organs and of undue influence. The tasks of the Authority may only be determined by an Act. The budget of the Authority forms a separate title within the budget heading of the National Assembly.

The Authority is led by a president (hereinafter referred to as „President”). The President is appointed by the President of the Republic on the proposal of the Prime Minister from among those Hungarian citizens **who have a law degree** and the right to stand as candidates in elections of Members of the National Assembly, and have **at least ten years’ professional experience in auditing procedures related to data protection or freedom of information, or hold an academic degree** in either of those fields.

The President is appointed for a – once renewable – term of nine years. The President **may not be a member of a political party, may not engage in political activity, and his or her mandate shall be incompatible with any other state or local government office or mandate.** The President **may not pursue any other gainful occupation, and may not receive remuneration for any other activity,** except for scientific, lecturing and artistic activities, activities falling under copyright protection, reviewer and editorial activities, and the activities performed in an employment relationship as foster parent. Also, the President may not be **an executive officer** of a company **or a member of the supervisory board** of a company, nor may he be a member of a company who is required to provide personal assistance.

The President shall make a declaration of assets, in a form identical to that of Members of the National Assembly, within thirty days of his appointment, and each subsequent year by 31 January, as well as within thirty days of the termination of his mandate.

The President **can only be dismissed for failing to comply** with his or her **duties regarding declaration of assets, or if he or she fails to resolve** the above-mentioned **conflict of interest** relating to his or her engagement in political activities or other mandates, occupation, activities, etc. specified in the Information Act.

2.2.) Procedure

The inquiry of the Authority **may be initiated within one year** from communicating the dismissal of the request, or from the expiry of the time limit with no result, or from the expiry of the time limit for the payment of the fee. **The inquiry of the Authority shall be free of charge; the costs of the inquiry shall be advanced and borne by the Authority.**

Submitting a notification to the Authority shall not give rise to any disadvantages to the notifier. The Authority may only reveal the person of the notifier if the inquiry cannot be carried out otherwise. If so requested by the notifier, the Authority shall not reveal his identity, even if the inquiry cannot be carried out otherwise. The Authority shall inform the notifier of this circumstance.

In the course of its inquiry, the Authority **shall be given access to, and may make copies of,** all data processed by the controller under inquiry that are presumed to relate to the case at hand, and shall have the right of access to, and may request copies of, such documents, including documents stored in an electronic data-storage medium.

The Authority **shall be given access to any data processing operation** presumed to relate to the case at hand, shall be authorised to enter any premises where data processing is carried out, and **shall have access to any equipment used for the data processing operations**, and **shall have the right to request written or oral information** from the controller under inquiry, and from any employee of the controller.

It shall also have the right to request written information from any organisation or person presumed to have any connection with the case at hand and copies of any data and documents, including documents stored in an electronic data-storage medium, presumed to relate to the case at hand; and **may request the head of the organ supervising the controller authority to conduct an inquiry**.

Within two months from commencing *ex officio* the inquiry or the day following receipt of the notification, the Authority shall conclude its procedure by

- establishing an infringement relating to the exercise of rights specified in the Information Act or an imminent threat of such infringement
- establishing that there has been neither an infringement nor the imminent threat of it.

The time limit does not include the period between the notification requesting the communication of the data necessary for the clarification of the facts and the fulfilment of the request, the time required for having the document related to the inquiry translated; and, the duration over which circumstances, other malfunctions or unavoidable events obstruct the operation of the Authority for at least a day.

The Authority shall inform the notifier and, if it took part in the inquiry, the controller or processor under inquiry, of the findings of its inquiry, the reasons for concluding the inquiry, the measures taken, if any.

If the Authority **finds that there is an infringement** relating to the processing of personal data or concerning the exercise of the right to access data of public interest or data accessible on public interest grounds, or that there is an imminent threat of such an infringement, **it shall require the controller to remedy the infringement and eliminate the imminent threat of such an infringement**.

The controller,

- if in agreement, shall take the necessary measures indicated in the notice without delay, and shall inform the Authority concerning the measures taken, or,
- if in disagreement, shall inform the Authority of its position in writing within thirty days from receiving the notice.

The Authority also may present a recommendation to the controller's supervisory organ. Within thirty days from receiving the recommendation, the supervisory organ shall inform the Authority in writing with respect to its standpoint on the merits of the recommendation, or the measures it has taken.

As further necessary measures, the Authority **may institute court proceedings** or **may draw up a report** and shall inform the notifier of the results of the measures or of further measures taken in accordance with its procedure.

[Please note that a different type of procedure of the Authority – the so-called authority procedure for transparency – is also provided in the Information Act to ensure that the obligation of the budgetary organs to publish their data on the platform of the Central Information Register of Public Data is fulfilled. For more detailed information, please refer to the measures related to Article 10.]

2.3.) The report of the Authority

According to Section 59 of the Information Act, if the Authority did not commence a court proceeding, it may draw up **a public report** which contains the facts revealed during the inquiry, as well as the resulting findings and conclusions. The president of the Authority shall only classify the report if it contains any classified data, or shall confirm its classification status.

The report of the Authority may not be challenged in court or before any other authority, but the findings of the report may be used in the court proceedings initiated by the applicant.

2.4.) Court action brought by the Authority

If the controller fails to comply with the notice issued by the Authority, it may bring an action before the court, due to the infringement in connection with data of public interest and data accessible on public interest grounds, within thirty days following the date of expiry of the time limit for providing the information **and seek the decision of the court to order the controller to act in accordance with the notice issued by the Authority**. The burden of proof evidencing that data processing is in compliance with the law shall lie with the controller in this case as well.

The court, upon request, **may order the publication of its judgment, including the identification data of the controller**, if it is necessary in the interests of data protection and the freedom of information, or in connection with the rights of a larger number of data subjects under protection according to the Information Act.

2.5.) Supervision of data classification

If the findings of an inquiry or other evidence substantiate that the classification of certain national classified data is unlawful, the Authority may commence an authority procedure for the supervision of data classification. If the request for access to data of public interest is refused by the controller on the basis of it being classified information, and the requesting party turns to court for the judicial review of the dismissal of his or her request, the court shall initiate an administrative authority procedure for the review of the data classification with the Authority and shall simultaneously suspend the court proceedings.

The purpose of the authority procedure for the supervision of data classification is to prevent the unlawful classification of data of public interest, which would unconstitutionally circumvent the access to data of public interest by the unlawful classification.

In authority procedures for the supervision of data classification, **the classifier shall be a party**. The administrative time limit in authority procedures for the supervision of data classification

shall be **ninety days**. The Authority shall examine that whether the requested data was classified in accordance with the laws on the classification of national classified data.²²

In its decision adopted in authority procedures for the supervision of data classification, the Authority shall

- **in the event of any infringement of the laws** pertaining to the classification of certain national classified data, **require the classifier to modify**, in accordance with the law, **the level or term of the national classified data, or to have it declassified**, or
- **establish that the classifier proceeded in accordance with the laws** on the classification of national classified data.

If the classifier finds the decision of the Authority unsubstantiated, it may contest it within sixty days following the date of communicating the decision (which has a suspensive effect on the entry into force of the decision). If the classifier does not turn to the court within **sixty days** of the communication of the decision, the classification of the national classified data shall cease on the sixty-first day following the communication of the decision, or the level or term of classification shall be modified in accordance with the decision.

3) „shall always have access to an expeditious and inexpensive review procedure”

As it was pointed out earlier, in Hungary applicants can either turn to court or initiate the **free inspection procedure of the Authority**. Although the Information Act *per se* does not prescribe an internal review procedure, the practical application of the law proved that organs with public duties would usually re-assess requests upon request of the applicant (*in particular when the controller had a different understanding of scope of the applicant’s initial request and the applicant provides further clarification, etc*).

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 – including education, providing information on responsibilities, document management, etc.

1) „shall inform the public about its right of access to official documents” (...) „educate public authorities in their duties and obligations”

According to Paragraph (2) of Section 38 of the Information Act the Authority is not just responsible for the monitoring, **but for promoting the enforcement of right to access of public interest and data accessible on public interest grounds**. To this end, the Authority has released several documents to promote the enforcement of the fundamental right in question and also made all the relevant information available on its website.²³

2) „provide information on the matters or activities for which they are responsible”

²² Under the Act CLV of 2009 on the protection of classified data, national classified data can be classified into four different categories („*Restricted!*”, „*Confidential!*”, „*Secret!*”, „*Top Secret!*”) if there’s a public interest that justifies such classification.

²³ See more here: <http://www.naih.hu>, also in English: <https://www.naih.hu/about-the-authority>

Paragraph (6) of Section 30 of the Information Act lays down that the organs performing public duties shall adopt regulations governing the procedures for fulfilling requests for access to data of public interest. This obligation seek to provide **internal rules that would help organs to fulfill their obligations in a timely and effective manner, while also helping applicants to exercise their rights.**

In a practical sense, organs performing public duties usually provide useful information on the access of their data of public interest on their websites.

3) „manage their documents efficiently so that they are easily accessible” (...) „apply clear and established rules for the preservation and destruction of their documents”

The *Act LXVI of 1995 on public records, archives and the protection of private archival material* (hereinafter referred to as „Archives Act”) sets out a complex legal framework for organs performing public duties **on their record keeping and document management** activities. These provisions include the obligation **to operate an internal electronic record-keeping system, the setting up of an internal archival plan**, including their possible scrapping, destruction or retention in the national archival.

Government Decree 335/2005 (29 December) on the general requirements for the records management of organs performing public duties also lays down specific rules to organs performing public duties, including the obligation of keeping records in an electronic registry in which records (and data of public interest) could easily and readily be identified. **The practical application of the Information Act shows that controllers would use these internal registries in order to identify the data (or the document) the applicant has requested.**

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.

„at its own initiative” (...) „to encourage informed participation”

Publication schemes

Section 32 of the Information Act provides that with respect to matters falling under their scope of duties, organs performing public duties **shall promote and ensure that the general public is promptly provided** with accurate information, **such as regarding the budgets of the state and local governments, as well as their implementation, the management of assets controlled by the state and local governments, the appropriate use of public funds and contracts concluded in connection with public funds, and special and exclusive rights conferred upon market actors, private organisations or individuals.**

The Information Act not only provides a legal framework for requesting access to data of public interest but also lays down rules in order to make certain types of data (and documents) proactively and automatically available on their official websites to the public.

Section 33 of the Information Act provides rules for the so-called „*publication schemes*”. Currently, the Information Act recognizes three types of schemes, a **general publication scheme** with data to be published by all organs, the **sector-specific publication schemes** with data to be published by certain organs, and the **organ-specific publication schemes** to be published by organs relating to their activities.

The general publication scheme – which is mandatory for all organs with public functions – is referred to in Annex 1 of the Information Act. The general publication scheme includes **organisational and staff information, data related to activities and operations,** and also **financial data.** The general scheme also applies to other types of organs such as national chambers of professions, the Hungarian Academy of Sciences, the Hungarian Academy of Arts, the National Office for the Judiciary and the Office of the Prosecutor General, etc.

Sector-specific schemes may be prescribed by law. Paragraph (8) of Section 37 of the Information Act also states that the Authority may make recommendations for drawing up or amending the sectorspecific and organ-specific publication schemes.

Organ-specific publication schemes may be rendered mandatory by the head of the organ subject to the obligation of publication, upon consulting with the Authority.

For the purpose of providing fast and easy access to data of public interest that shall be published electronically under the Information Act, the central electronic register published on the designated website, specifically created and operated by the minister responsible for the implementation of infrastructure requirements for administrative information technology systems, shall contain all the relevant descriptive data related to the websites, databases and records operated by organs that, under the Information Act, are subject to the obligation of electronic publication of data of public interest.

The Central Information Register of Public Data

A recent amendment of the Information Act (new Section 37/C of the Information Act) – in order to ensure the transparency of the use of public funds – also established a new register, the so-called Central Information Register of Public Data (hereinafter referred to as „platform”) that contains – for at least ten years from publication, and also in a machine-readable format, which allows bulk download and data to be sorted, searched, extracted and compared – the following data of all budgetary organs²⁴ with the exception of the national security services:

a) budgetary support provided pursuant to the Act on public funds, with the exception of situations where, before publication, the budgetary support is withdrawn or the beneficiary waives budgetary support;

b) contracts on supplies, works, services, sale and utilisation of assets, transfer of assets or rights of pecuniary value and granting concession, with the exception of data on procurements for defense and security purposes, classified data, and data on procurements, and contracts concluded as a result of procurements, under section 9 (1) b) of Act CXLIII of 2015 on public procurement;c)

²⁴ According to the *Act CXCV of 2011 on public funds*, public tasks shall be performed through the establishment and operation of budgetary organs. Budgetary organs are officially registered by the State Treasury. The said register is publicly available on the website of the State Treasury:

https://www.allamkinestar.gov.hu/Koltsegyvetes/Torzskonyvi_nyilvantartas/ktorzs

payments made for purposes other than the performance of their main tasks, and in particular, payments supporting associations, to professional and employees' representative organs of their employees, supporting organisations facilitating educational, cultural, social and sport activities of their employees and care recipients, and related to tasks performed by foundations

provided that their extent exceeds five million forints and they are implemented by them from Hungarian or European funds.

Government Decree 499/2022 (8 December) on detailed rules of the Central Information Register of Public Data lays down the technical rules of the platform, such as the registration procedure, the legal responsibilities of the controllers and the submittal of the data – via data sheets – referred to in the Information Act.²⁵

The platform will be publicly available from 28 February 2023 through the following website: <https://kif.gov.hu/>.

Authority procedure for transparency

To ensure the fulfilment of the obligation of publication through the platform, the Authority – also from 28 February 2023 – shall upon notification or *ex officio* commence a new type of administrative procedure (the so-called authority procedure for transparency) as it is set out in Section 63/A (2) of the Information Act.

According to Section 63/B (2) of the Information Act, the Authority – in its decision adopted relating to the obligation of – may establish the existence of the infringement related to the obligation of the organ subject to publication obligation including the case that the published data was inaccurate or incomplete, and shall order the organ to fulfil its obligation (including the publication of real data or the filling in of missing data from published data) within the time limit as a matter of priority but not later than by 15 days.

Section 63/B (3) of the Information Act lays down that if the organ under the obligation of publication does not fulfil its obligation within the prescribed time limit, the Authority may impose a fine. The amount of the fine shall range from **one hundred thousand forints to fifty million** forints.

For this procedure the *Act CL of 2016 on the Code of General Administrative Procedure*²⁶ and the *Act I of 2017 on the Code of Administrative Court Procedure* are also applicable.²⁷

²⁵ <https://njt.hu/jogszabaly/2022-499-20-22>

²⁶ See the English translation here: <https://njt.hu/jogszabaly/en/2016-150-00-00>

²⁷ See the English translation here: <https://njt.hu/jogszabaly/en/2017-1-00-00>

III. Declaration of Hungary – specific rules in relation to public funds

According to Paragraph (3) of Section 26 of the Information Act, unless otherwise provided by an Act, any data other than personal data that is in connection with the activities of and processed by organs or persons providing services that are mandatory by virtue of law, or under a contract concluded with any state or local government organ, or services which are impossible to be performed otherwise, **shall be deemed data accessible on public interest grounds.**

In connection to the obligations laid down in the Fundamental Law concerning the accountability for the management of public funds, Paragraph (3) of Section 27 of the Information Act also lays down that **a wide range of categories of data shall not qualify as business secret**, such as: **data related to the use of the central budget, the budget of local governments, and European Union funds, to benefits and allowances involving the budget, to the management, possession, use, utilisation and the disposal and encumbering of central and local government assets, and the acquisition of any right in connection with such assets**, as well as data, the accessibility or publication of which is prescribed on public interest grounds by a specific Act. Disclosure, however, shall not entail access to data, to know-how in particular, the making available of which would cause disproportionate harm with respect to the performance of business activities, **provided that this does not prevent the possibility of access to data accessible on public interest grounds.**

In addition to the above, **any natural person, legal person or an organisation without legal personality that establishes a financial or business relationship with a person belonging to one of the subsystems of the public finances shall – upon request – provide information to anyone with respect to data that is public on public interest grounds** (that is part of the above-mentioned list and that is in connection with such a relationship). If the party obliged to provide information refuses to provide the information, the party requesting information may initiate the procedure of the organ authorised to exercise legal supervision over the party obliged to provide information.

Section 5 of the *Act CVI of 2007 on state property* also qualifies all data as data public on public interest grounds that is related to the management and disposal of state properties. **An organ or a person managing or possessing state property shall be deemed as an organ performing public duties pursuant to the Information Act.**

From the above it can be concluded that Hungary not only adopted measures that give effect to the Articles 2-10 of the Convention, but also fulfilled its voluntary commitments pursuant to Article 2 of the Convention.