

Access to Public Sector Information

- a view from the European
and the German perspective

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by

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Access to public sector information

Primary EU law

Art. 11 FRC:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Access to public sector information Primary EU law

Art. 15 TFEU:

par. 1: In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies and agencies shall conduct work as openly as possible.

par. 3: Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined with this paragraph.

Access to public sector information Primary EU law

art. 42 FRC:

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Access to public sector information
Secondary EU law

- **Regulation 1049/2001/EC of 30 May 2001 regarding public access to European Parliament, Council and Commission documents**
- **Regulation 1367/2006/EC of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies**

Access to public sector information
Secondary EU law

Environmental sector:

- **Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment**
- **Directive 2003/4/EC of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, amended by Directive 2013/37/EU of 26 June 2013**

Access to public sector information
Secondary EU law

- **Directive 2003/98/EC of the Parliament and of the Council of 17 November 2003, amended by directive 2013/37/EU of 26 June 2013 on the re-use of public sector information**
- **Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an infrastructure for Spatial Information in the European Community**

Access to public sector information

EU law - jurisprudence

ECtHR:

- Judgment of 26 March 1987, appl. no. 9248/81, Leander vs. Sweden
- Judgment of 19 October 2005, appl. no. 32555/96, Roche vs. UK
- Judgment of 14 April 2009, appl. no. 37374/05, Tarasag and Szabadsajogokert vs. Hungary
- Judgment of 25 June 2013, appl. no. 48135/06, Youth Initiative for Human Rights vs. Serbia
- Judgment of 28 November 2013, appl. no. 39534/07, Österr. Vereinigung vs. Austria

ECJ:

- Judgment of 1 February 2007 – C-266/05 P, ECLI:EU:C:2007:75 (Reg.1049/2001/EC)
- Judgment of 14 February 2012 – C-204/09, Flachglas Torgau, ECLI:EU:C:2012:71(Dir. 2003/4/EC)
- Judgment of 18 July 2013 – C-515/11, Deutsche Umwelthilfe, ECLI:EU:C:2013:523
- Judgment of 19 December 2013 – C-279/12, fish legal, ECLI:EU:C:2013:853 (Dir. 2003/4/EC)
- Judgment of 3 July 2014 – C 350/12P, ECLI:EU:C:2014:20398 (Reg. 1049/2001/EC)
- Judgment of 2 October 2014 – C 127/13P, ECLI:EU:C:2014:2250 (Reg. 1049/2001/EC)
- Judgment of 16 July 2015 – C-612/13P, Client Earth, ECLI:EU:C:2015:486 (Reg. 1367/2006/EC)

Access to public sector information
Germany - legislation

- **Freedom of Information Act
(Informationsfreiheitsgesetz IFG)**
- **Law on re-use of information
(Informationsweiterverwendungsgesetz –IWG)**
- **Law on consumer information
(Verbraucherinformationsgesetz VIG)**
- **Law on environmental information
(Umweltinformationsgesetz UIG)**
- **Law on access to spatial data
(Geodatenzugangsgesetz)**
- **Legislation of the Länder**

Access to public sector information
Germany - legislation

Sec. 99 Code of Admin Court Procedure:

(1) Authorities shall be obliged to submit certificates or files, to transmit electronic documents and provide information. If the knowledge of the content of these certificates, files, electronic documents or this information would prove disadvantageous to the interests of the Federation or of a Land, or if the events must be kept strictly secret in accordance with a statute or due to their essence, the competent supreme supervisory authority may refuse the submission of certificates or files, the transmission of the electronic documents and the provision of information.

Access to public sector information Germany - legislation

(2) On request by a party concerned, the Higher Administrative Court shall find by order without an oral hearing whether the refusal to submit certificates or files, to transmit the electronic documents or to provide information is lawful. (...)

The application shall be filed with the court which has jurisdiction for the main case. The latter shall assign the application and the main case files to the adjudication bodies with jurisdiction in accordance with section 189. The supreme supervisory authority shall submit the certificates or files refused in accordance with subsection 1, second sentence on request by this panel of judges, transmit the electronic documents or provide the refused information. It shall be subpoenaed to these proceedings. The proceedings shall be subject to the provisions of substantive classification of information. (...)

The members of the court shall be obliged to maintain confidentiality; the grounds for the decision may not provide an indication of the nature and content of the secret certificates, files, documents and information. The regulations of the classification of information for staff shall apply to the non-judicial staff. Unless the Federal Administrative Court has ruled, the order may be independently challenged with a complaint. The Federal Administrative Court shall rule on the complaint against the order of a Higher Administrative Court. (...)

Access to public sector information Germany – jurisprudence (FAC)

IFG:

Judgment of 3 November 2011 – 7 C 3.11 – (legislative process, burden of proof)

Judgment of 27 November 2014 – 7 C 18.12 – (material supplies for MP's)

Judgement of 25 June 2015 – 7 C 1.14 – BVerwGE 152, 241 (legislative process, duty of the p.a.)

Judgment of 17 March 2016 – 7 C 2.15 – BVerwGE 154, 231 (unproportioned effort)

Judgment of 20 October 2016 – 7 C 20.15 – (public security)

Judgment of 20 October 2016 – 7 C 6.15 – (unitary official act – costs)

UIG:

Judgment of 29. June 2016 – 7 C 32.15 – (Art. 10 ECHR, international relations)

Judgment of 23 February 2017 – 7 C 31.15 – (eligibility of municipalities)

Thank you for your attention!