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Vaše značka:  
č. 106/1999 Sb.

Vyřizuje:  
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Věc: Příručka pro občany o svobodném přístupu k informacím  
a otevřenosti veřejné správy

Dalších **106** odpovědí  
na Vaše dotazy  
[s rozsudky]

Na základě zákona č. 106/1999 Sb. o svobodném přístupu  
k informacím Vám sdělujeme...

Protop 

**The Open Society, b.a.  
Prokopova 9  
130 00 Prague 3  
The Czech Republic**

**Our sign:**

**OTEVŘETE. CZ**

**Your sign:**

**Act N. 106/1999 Coll.**

**Handles:**

**O. Kužilek**

**Object:** A Handbook for Citizens on the Free Access to Information and the Transparency of Public Administration

## **ANOTHER 106 ANSWERS TO YOUR QUESTIONS (WITH JUDGEMENTS)**

*Under the Free Access to Information Act N. 106/1999 Coll. we announce to you...*

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## INTRODUCTION

*An active citizen...*

- *can find out what is going to be built in his/her neighbourhood,*
- *can learn how much money is spent on cleaning of town or village,*
- *can make inquiry about how much money is a house belonging to the municipality or to the state rented for,*
- *can find out to whom was a public property rented,*
- *can learn what advisors a minister or a mayor has,*
- *can acquire an overview of commissions in town, region...,*
- *can monitor the management of not only his/her municipality,*
- *can learn what he/she is interested in and did not dare to ask,*
- *can also show to officers which information is important to disclose,*
- *can follow who and how makes decision on his/her behalf,*
- *can know what is paid from the state money,*
- *can find out which of the representatives goes on business trips and where,*
- *can compare level of services of public officers in different towns,*
- *can get an overview of what other citizens ask,*
- *can...*

**The free access to information** is the prerequisite of the free decision-making process and democracy. In the Czech Republic it is guaranteed by **the Act N.106/1999 Coll.** The real owners of all information gathered and created by authorities are citizens. They can ask for them whenever they want. They can know why was a matter decided one way or the other so that they could knowledgeably and ergo freely decide to whom they will give the vote in the next election.

Thus the access to information makes a real undepreciated citizen from an anonymous person in the wheels of bureaucracy. The bureaucratic monopoly over information also gives exceptional power to the public officials as well as public administration employees. It thus creates the environment in which minor as well as extensive corruption flourishes. That's why the access to information and citizen's interest in them works as the remedy against ineconomy, inequality and abuse of status.

Nevertheless, the access to information is only one **part of "the public administration openness"**. The remaining parts are transparency in the decision making process (possibility for citizens to see how was a decision made including procedures, grounds, voting, and so on.) Participation in the decision making process (possibility to supply suggestions to a matter, to know what will be solved, etc.), and the right to disseminate information (e.g. balance of opinions in a bulletin published by municipality). It also involves the conflict of interests and anticorruption measures.

**This publication** is a follow-up to the "106 answers to your questions" booklet, published in 2001. Both these publications originated as a complex of questions brought by citizens in the consulting room of a server specialized in freedom of information [www.otevrete.cz](http://www.otevrete.cz) and the answers to them.

**In the first part** we present basics of the access to information, a sort of “ABC“. It was created as an extract from the previous handbook (106 Answers to Your Questions, the Open Society, b. a., Prague 2001) which in 106 answers surveyed the basic spheres of citizen’s and official’s interest expressed in our Consulting room throughout 2000-2002. Although there were 3, 000 pieces published and distributed free of charge to the interested people, it was hopelessly passed out. For that reason we reprint it in this edition only in the condensed shape as simple answers YES/NO (the first part of booklet). The entire answers are still available on the website of our project [www.otevrete.cz](http://www.otevrete.cz).

**The second part** of this publication responds in detail for the new requests from 2002-2004. The inquiries do not revolve around the access to information. They are more and more related to the wider concept of the “transparency of authorities“. You ask about minutes from the negotiations of authorities, about a municipality bulletin publishing, about the cross of interests. The interest of officials and public is more concrete, it often involves elaborately structured cases. The phenomenon of the access to information freedom and public administration openness can be nearly a detective discipline. The application of these rights on different situations brought by life (especially in villages) is various and sometimes surprising. The inquiries suggest that the level of unjustified withholding information at the Czech authorities, their secretiveness, unawareness of the legal situation and keeping to the long obsolete state of the “public administration closeness“ originated from the times of the Austrian- Hungarian Empire is still very high.

The most often type of authority that we are asked about are towns and villages. That is why the second part begins with them. The following are inquiries according to further aspects. It is so possible to find more inputs to one question in different groups of answers.

#### **List of abbreviations and symbols:**

**FOIA** The Act N. 106/1999 Coll. to regulate the free access to information as amended

**CHRF** Charter of Rights and Freedoms

**RCAP** Rules of Court Administrative Procedure, the Act N. 150/2002 Coll.



Marks a judicial judgement or opinion of another similar authority (Personal Data Protection Office). Unabridged judgements are available at [www.otevrete.cz](http://www.otevrete.cz). The judgement are denoted by the names of litigants or by the reference number.



Marks an illustrative case.

#### **Bibliography:**

Kužilek, O., Žantovský, M.; Svoboda informací (Freedom of Information), Linde, Prague 2002

Korbel, F., et al.; Právo na informace (Right to Information), Linde, Prague 2004

## ABC OF THE ACCESS TO INFORMATION

### A. Who can ask for information and whom?

*- Who can ask for information?*

Everybody has this right.

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*- To which authorities can be our request addressed?*

To all the public institution which handle public means.

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*- Does the Act N.106/1999 Coll. apply also to schools including colleges and universities?*

Yes. They have **full duty to inform**.

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*- Does the duty to inform apply also to the Police of the Czech Republic and to the municipal police?*

Yes.

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*- Is an institution receiving contributions from the State Budget obliged to provide information on its management?*

Yes.

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### B. For what kind of information to ask?

*- How is it possible to find out under whose competency the information is?*

Only by **familiarity** with given problem.

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*- Is the state administration body obliged to provide information from the town and country planning documentation from 1964?*

Yes, it is obligated to provide it on condition it has it.

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## **C. How to submit an application?**

### **D. The form of a request and answer**

*- Must I explain why I need the requested information and what I will do with it?*

No. Nothing like that is a condition of the request.

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*- Must I send the request by registered mail or does the ordinary letter suit the purpose?*

You can submit the application **anywise**. However, in case you expect a litigation, let your submission confirm on the duplicate.

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*- Can I ask a question only on the phone?*

**Yes.** The authority is obligated to answer equally as to a written request. Though, it is impossible to appeal and there are no deadlines set.

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*- Must the local authority provide information even to people who do not live in the community?*

**Yes.**

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*- What kind of data can the authority request from me?*

Only those that will be necessary for sending the answer, i.e. **address**.

---

*- Does the authority verify, e.g. in the Register of Companies whether a competent person asks on behalf of a legal entity?*

**It does not have to verify it.**

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*- Can I ask even for the form of provided information, e.g. for the photocopy of a certain document?*

**Yes.** The authority must comply in case it is feasible.

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## **E. Advance money**

*- Can the authority demand some advance money in the moment of submitting a request?*

No, it **can not**.

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*- How can I find out the amount of money for providing information which the authority can demand?*

There is a **price list** according to which it is possible to orientate ourselves. You can ask for estimated amount of the fee.

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## **F. How will be the application settled?**

### **G. Time-limit**

*- How long does it take to settle the application? From when to when is the time-limit for settling counted?*

The time-limit is “as soon as possible, but at the latest up to **15 days**“.

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*- Can the authority prolong the time-limit somehow? How will I find it out?*

**Yes**, but at most by 10 days. It has to announce it to the applicant.

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## H. Unsatisfactory reply

*- What if the authority conveys to me that I don't need the information in fact, because there is nothing special about that matter?*

Even this kind of absurd replies we can meet. As a matter of fact it is **the refusal** of an application.

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*- What if I receive only part of the requested information and the rest is somewhat "passed over"?*

It is the decision on **withholding** information. It is necessary to appeal.

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*- What if I do not receive anything from the authority (community, institution) within the time-limit?*

In that case **the legal fiction of negative decision** arises (§ 15 par. 4 ). It is possible to appeal against it.

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## I. Withholding

*- Must be the notification about withholding information written?*

Yes.

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## J. How is the authority supposed to handle providing information?

## K. Organizational proceedings

*- What is the set-up of providing information at the authorities?*

It is the concern of **each authority**. Providing of information can not be, however, restricted.

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*- Do all the workers of the authority provide with the information?*

It is a matter of **the authority internal regulations**.

---

*- Must I find out where and when does the authority provide information?*

The authority can not refuse acceptance of the request for information with only the reference to its organizational set-up, internal regulation or other working circumstances. The information must be provided **during the whole working hours** of the authority (not only the hours of attendance).

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## L. E-mail

*- I asked for information by E-mail and I got back so-called unofficial answer through E-mail as it was not written application.*

E-mail is a kind of **written** request.

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## M. What kind of information am I entitled to get?

*- Which information is possible to disclose as the internal instruction and personnel provision?*

E.g. plan of office evacuation, instruction for dispensation of consumable material, sign rules, etc. Whatever affect against whoever **outside the authority** is not the internal instruction.

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*- Is it possible to ask for a list of donations and sponsorships?*

Yes.

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*- Am I entitled to get from the municipal authority the information on what particular inquiries in the scope of the Act N. 106/1999 Coll. were raised during the previous year and how they were handled?*

Yes.

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## N. Community management

*- Am I entitled to know the management of the municipal music band (expenditures, incomes, motion of the account) during the past years?*

Yes and into all details.

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*- Is the local authority as the property owner obliged to provide with the information on what purposes are the means collected on rentals used?*

Yes. Income from the rentals is the community income.

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*- Must the authority tell me to whom and under what conditions is the community property leased?*

Yes, without any limitations.

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*- Must the authority tell me whether there are any obligations bound to the community property?*

Yes. Without any limitations.

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*- Can the authority provide the information on the rate of rent of its non-residential premises or properties?*

Yes.

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*- Can the authority disclose the purchase prices (or expert's assesment) for the real properties being sold?*

Yes.

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*- The authority is obligated to publish the report on management 15 days before the pursuance of the local authority session. Will they provide me with this information earlier upon my request?*

Yes, if it exists.

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## **O. Competitive biddings, inspections**

*- Are there provided information on public tenders?*

Yes. The transparency is an effective tool against corruption. The act regulating public tenders does not protect any information.

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*- Can the food-product inspection give the opinion of the cheese quality?*

**It can not**, it would be an opinion, not information. They will only inform whether the cheese meets the regulations.

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## **P. Trade secret, securities**

*- Is the authority obliged to disclose information on the trade contracts that a company, in which the community has the majority interest, made with other private entity?*

**Yes.** Moreover, the company is the public institution dealing with public means and therefore it has to provide all information at the request.

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*- Can I require the information whether the authority is a shareholder and of which companies, the information on value and amount of pieces of shares, on planning of their sale, on appointing of a share administrator?*

**Yes.** With the exception of so called “dynamic information“ **on the intentions of selling or buying shares.** It is the subject of protection under the Act to regulate securities.

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## **Q. Personality and privacy protection**

*- Can the authority disclose information on the names of users (tenants) of particular local flats?*

**It can not**, this kind of information represents the protected personal data (a name together with the concrete designation of a flat).

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*- Am I entitled to get a survey of advisors working at particular ministries and at the Office of Government?*

**Yes.** The information is concerned with a public person doing public or official work and as such it is not the subject of personal data protection.

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*- An applicant asks for information on the terminated hearings of administrative delict. Can the authority provide with the names of people?*

**Basically yes.** It is however impossible to mention them in the connection with other personal details, e.g. with address. Even certain part on the unfinished hearings is public. It is not possible to publish chastised offenders en masse (e.g. on Internet), though the compulsory entity is obliged at the request to disclose in particular case the name of offender, but only in

the period of time close to the decision of the offence (e.g. within one year since the decision of the offence was made).

---

## **R. What is the coverage of expenses like?**

*- What kind of payments can the authority demand?*

Only so called “**material expenses**“, that is the price of copies, floppies, postage in case of sending information by post (but not when is other notification sent) and so on. For retrieval it is possible to require a payment only in case of applications which are extremely long.

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*- Can the authority justify the amount of requested fee by the assertion that a worker prepared information working overtime?*

No.

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*- When can the authority require a deposit?*

Only at the **handover of prepared information** to the applicant.

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*- Can the authority ask for compensation of costs by C.O.D.?*

Yes, it is possible.

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## **S. When and how shall I send an appeal?**

*- How can we defend in case the authority decides to refuse the request for information? And where?*

**Appeal** at the same authority where you did not succeed with the application.

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*- What if I received only part of the information?*

There arose the **decision of denial** (so called fictitious decision) by the lapse of time. It is necessary to appeal.

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## T. When and how shall I take the information issue to the court?

### *- When to file an action?*

The decision on appeal comes into legal force **immediately after delivery**. If the applicant was refused, he/she can bring an action to the Administrative Court. It is proceeded according to the Act N. 150/2002 Coll., Judicial Rules of Administrative Procedure (JRAP).

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### *- At what court should we file an action?*

In the first stage there are competent **Regional Courts** under which the authority, whose decision is contested, falls. A cassation complaint (remedy against the Regional Court decision) is decided by the Supreme Administrative Court in Brno.

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### *- How quickly must I file an action?*

The action must be filed **within two months** from the delivery of appellate body decision. Default of time may not be waived in this case.

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### *- Can I serve as my own counsel in the court?*

**Yes**, in the first stage. You can also be represented by a solicitor or by a natural person which is competent to the legal acts in full extent. In the Supreme Administrative Court it is compulsory to be represented by a solicitor.

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## U. Any other questions?

## V. Compulsorily published information

### *- Must the authority publish information for which I can ask?*

**Not all of them.** The active publication of information (e.g. notification on the official board, a website and so on, is compulsory in the extent of § 5 par.1 FOIA).

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## W. Internet

### *- Which institutions must have information released on Internet?*

**All** the compulsory entities (authorities) including small villages, institutions receiving contributions from the State Budget and the trade companies established by

the authorities, regions and the state must have basic information on their activities on Internet (§5 par. 2 FOIA).

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*- Must be the local (regional) authority regulations on the website unabridged or are the “headlines“ sufficient?*

**No.** The law imposes relasing of “survey of the most important regulations under which the compulsory entity acts or makes decisions“. It is a matter of consideration which of them will be regarded as “the main“. On the website must be said where these regulations are available (it means that the authority has to ensure the possibility of their consulting).

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*- Must the resolution of the council session be always available on the website? If so, until what term?*

**No.** The minutes must be available 7 days after the session (Communities Act). It is up to the decision of an authority if the will publish it on the website as well (and get thus rid of work with processing the requests).

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## **X. Annual report**

*- Must even a small community prepare an annual report?*

**Yes.**

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## **Y. Minutes from the board, council and other bodies sessions**

*- Is it possible to provide the informations discussed in the commissions at the municipal authorities boards?*

**Yes.**

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*- The mayor refuses the possibility to make a copy of resolution even to the members of the council who want to learn what was discussed in the council or in the board in their absence.*

It is the matter of **violation of Constitution and laws**, it can also be an offence (§46) or a criminal act (§159 - Neglect by a public officer), assaulting the self-government and the violence of the basic democratical principles. The mayor should be withdrawn.

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*- Is the citizen entitled to ask for the grounds which the members of the council or board receive at the session?*

Yes.

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## **Z. The Other**

*- Is there provided information on actual penalties in the administrative proceeding given to legal entities?*

Yes. Final and conclusive decision on the sanction against a legal entity does not come under any kind of restriction.

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*- What is the relationship between the obligation of confidentiality of workers and the obligation to provide information under the Act N. 106/1999 Coll.?*

The obligation of confidentiality is not an **obstacle** in providing of information (§19 FOIA).

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*- The Rules of Administrative Procedure or The Building Act enable to take a look into the file only to the participants of the procedure. Can I ask for information on the procedure in case I am not a participant?*

Yes, you certainly can. The provision of the aforementioned laws does not restrict general access to information.

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*- Can the authority refuse information to the media in case it knows that it will be presented misinterpreted?*

No, in no case.

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*- Can the health department of the authority provide with the information on the previous complaints about a medical care institution?*

Yes, this information must be provided by the authority at the request.

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## TOWNS AND VILLAGES (separate powers)

*Note: The answers are in most cases based on the Communities Act which in the matters of access to information complies basically with the Capital of Prague Act and the Regions Act. In cases of disparity (e.g. in the sphere of participating in the decision-making process, e.g. possibility for a citizen to appear at a session of the council) we try to highlight the distinction.*

### Minutes and records of sessions

#### *Copy of the board and council resolution and minutes*

#### **1. Has a citizen or a member of the council right for the copies of the board and council resolutions and minutes, either in paper or electronic shape?**

The right for information includes also technical approach to information. Making the access to information harder through unreasonable technical obstacles is considered to be illegal denial of information.

#### **A. General approach – “for everybody“**

FOIA regulates the access to information for everybody, i.e. for both non-residents and residents of the community, for members of the council and for members of the village (town) board: everybody has the right to all information involved in the minutes and resolutions of the session (every document, in fact) of the council, board, committees, commissions. Information will be provided on the basis of selection principle according to §12 FOIA, i.e. only that information which is subject to the protection set by law (according to its characteristic) must be (can be) withdrawn (most often deleted), the other parts of documents or files it is necessary to provide. Most often it is personal data that is concerned, often it may be so called uncompleted or internal information, only exceptionally the trade secret or classified information. The access to information for everybody is from the point of procedure adjusted so, that it is necessary to file an application and the authority will it provide under the prescribed procedure in prescribed time-limit. There are thus no obstacles for providing requested information in the FOIA regime.

It is possible to get information from the minutes in whatever technical way including getting a copy. That is for example explicitly confirmed by the judgement in legal case of SOJ (Association of Jindřiš citizens) against the mayor of the village of Rodvínov:



Judgement N.10 Ca 232/2001-40:

*"Requesting copies of particular documents is based on the §14 par.3 let.c) provision of the law, and therefore it was the obligation of the local council, under which province according to the §109 par.3 let. c) it pertains to decide on providing information, to release the copies."*

FOIA explicitly presents the option of the memory media.

## **2. Above-standard approach – for a village (region) citizen and for a member of the council**

The Communities Act N.128/2000 Coll. (similarly also the Capital of Prague Act and the Regions Act) regulates the above-standard approach to some kind of information for community citizens (by inspecting - according to the § 16) and for members of the community local council (by inspecting - under the §101 or by whatever kind of request according to the § 82). It does not prescribe any restrictions of the general access to information (for "everybody"). The above-standard lies in the procedure of providing information (it is not necessary to file an application, the applicant is explicitly entitled – next to the standard forms similar to the FOIA – to inspect documents). "The inspection" has far-reaching impact: it presents widening of the scope of accessible information for the stated people on the scope of information for "everybody" under the FOIA. In the Communities Act there is not set the obligation (as in the rules of Administrative Procedure § 23 par.3) for inspecting of the providing body to do some regulations for the protection of some information. That is why the listed scope of people (citizens, representatives) has the access to all information included the minutes and resolutions from the council, board (the minutes made by representatives only), committees and commissions sessions in form of inspection.

For providing of requested information in the member of the council – authority worker relationship will be there at the same time used the Act N.128/ 2000 Coll. §82:

*„A member of the local council has during the fulfillment of his/ her function right to ask from the community employees, involved into the local authority as well as from the employees of legal entities, set up or founded by the authority, information in matters related to the performance of their function; the information must be provided within 30 days at the latest.“*

This provision is above-standard compared to general regime according to the FOIA as the representative **does not have to file an application with the elements according to the stated general act and his/her requirements must be handled by any authority worker (so without regard to the power of providing information, but on the contrary in his/her real powers)**. There will be not used the principle of selection according §12 FOIA. The information will be provided **free of charge and within the time-limit of 30 days** at the latest according to the demandingness. If then the representative asks the worker who files the minutes from the council, board sessions etc., he/she is obliged to comply with him/her immediately and to provide the requested documents in the claimed technical form (if such a form exists).

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### ***The council minutes, copy and the law obstruction***

**2. A released mayor and an administrative worker in a small vilage impede a member of council in the access to common documents as the minutes from council sessions are, and refuse to make copies. Is it legitimate?**

It is a matter of the impudent law violation which can be judged as the offence according to § 46 of the Administrative Infractions Act (it is possible to file a notice on the offence) and in case of permanent violating also as the criminal act according to § 159 of Negligent

Maladministration. It is also possible to claim a remedy at the regional authority in the scope of its supervision of the administration legitimacy of separate powers of communities.

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### ***Minutes of the local council session on the website***

**3. Can be or should be the minutes from the municipal council session on the website even if the "council session is not public" and only the representatives are enabled to inspect the minutes?**

According to the FOIA everybody (both resident or non-resident of the community) has the right for information from the minutes of the board session which for instance means an option of getting a copy of this minute (without potential personal data). The community representatives have in addition to that (under the Communities Act) the above-standard right to inspect this minute directly (e.g. without applying, without waiting, immediately).

The fact, that the board session is **not public**, means only that the session in process is not accessible for other citizens. However, it **does not absolutely mean** that the information discussed at this board would be **not public or not available for the public**.

The authority **does not have the obligation** to publish the minutes of the board **actively**, e.g. by releasing on the website or on the official board.



**An example:** Releasing of the most possible amount of data, minutes of body sessions (committee, board, commission, council)... is becoming more and more common. There are no obstacles against it. Many towns and villages act in this way and it is obvious that they do not only improve their informational image culture, but at the same time prevent also misunderstanding, conflicts and their own troubles with handling of requests and inquiries.

But in both cases, that is - at providing of information at the request and releasing on the website (official board), must the authority release (or make illegible the protected data, especially personal data or (exceptionally) classified matters etc.

Providing information, especially on website is less demanding, expensive, conflicting than their obstructing.

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### ***Resolution of the council, inspecting, or copies?***

**4. I asked for the resolution of the community board and council (in the form of copies or data files). The local authority announced to me on my appeal that the N.106 Act does not relate to the requested documents as it "crosses the provision of the Communities Act" – particularly the §95 par.2 and §101 par. 3. Is it true that the authority is not obligated to copy the council minutes for me?**

The request does not unfortunately relate to the written laws, but to the fact that people at the authority which you deal with, break these laws. The statement: "*these are the reasons for*

*which we are not obliged to copy the board minutes for your personal need"* and its justification is simply a nonsense. It is not any untransparent or ambiguous legal situation, but merely a **direct violation of the law**. The fact of explaining it as if it was legally justified, is just deception, jugglery of words.

The situation is in fact as follow: **everybody** has the right for bestowing both types of copies of documents by every local authority – by means of a request filed according to the FOIA. It means that these copies must be provided in the regime of InA or that the application must be handled within 15 days.. The authority can ask for covering of material expenses (the price of copies) or in the case of an extraordinary length also expenses for retrieval.

In addition to that, **the citizens of a given village** have the right to come whenever they want to come to the local authority premises and to take a look into the board minutes (§95 par.2 and §101 par.3 of the Communities Act). Equally, **the members of the council** have the right to come whenever to the local authority premises and to look into the board minutes (§ 95 par. 2 a § 101 par. 3 of the Communities Act). There is no contradiction nor conflict between these two acts. This legal opinion was confirmed by the judicial judgements: the judgement in the case of Lučina versus district authority in Karviná says in legal argumentation explicitly: "In order to any other act has the character of a special act which is prior to the general act (FOIA), must the former one be characterized by:"



Judgement N. 22 Ca 551/ 2000-21:

*"...the fact that it completely regulates conditions under which certain information are provided including the way and forms of their disclosing and the procedure of handling a request for their providing and to that extent that the general legal regulation of the conditions of granting information according to the Act N. 106/1999 Coll. (General in the sense that it covers all sections and spheres of the field of activity of compulsory entities) can not be applied beside them."*

It is obvious that the Communities Act does not regulate providing information comprehensively (e.g. it does not nearly mention providing information to citizens). That is why the Communities Act **is not and can not be special regulation on the providing information in the sense of § 2 par.3 FOIA** and therefore the use of the FOIA is not excluded nor restricted here.

The judgement in the case of K.P. living in Svojšín against the local authority in Svojšín says explicitly:



Judgement 30 Ca 115/2000:

*"The defendant was on the other side obligated to enable the procecutor inspection into the above mentioned minutes from the local council session or to send them copy of resolution (§14 par. 1, 3 let. c)."*

Your problem thus lies solely **in the sphere of law enforcement** and not in the shere of its clarifying. There is only one thing **you can do** and that is **to file an action** (within two months of the service of the reply to an appeal). It is similar to the situation of a thief who stole you a bag and is running away. You have not caught him/ her on your own and you have

to ask for help those who are assigned to law enforcement (police, court). It is obvious that the suit will be successful.

Furthermore, in case of a member of the council it is possible to assert § 82 c) of the Communities Act according to which you *"are entitled to ask from community employees included into the local authority, likewise from the employees of legal entities established or opened by the authority, the information in the matters relating to the performance of their function. The information must be provided within 30 days at the latest."* It is necessary to consider providing of information as something more than mere permission of inspecting. **Providing with the copies of basic documents to a member of the local council is such a fundamental and undisputable duty that we must express our utter astonishment over the local authority procedure.**

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### ***Electronic shape of records from session***

**5. I asked the municipal district authority for the steno records of the council session in the electronic shape if possible. The answer was that they do not have the steno record in the electronic form and they charged me the prize of the copy. Is it possible?**

According to the Act N 97/ 1974 Coll. to regulate archives, §6 and the directive of MV ČSR N. 117/1974 are both the legal entities and individuals obliged to register properly their documents, including electronic ones, to file and to discard them in the proper safe distraction proceeding. The electronic documents, i.e. also voting results are impossible to just delete, but it is necessary to inscroll them and to keep them during the period set by the rules of safe destruction, where there is the time–limit A/5 with the minutes, which means that they are impossible to throw away. So undoubtedly, the authority had originally the record in the electronic shape (how else could a steno make it nowadays?) and then the authority destroyed it illegitimately. Under the settled explanation of the conception of “information related to the powers“ it should supplement the electronic shape again and to provide it to the applicant. It is for instance claimed by the judgement of the Regional Court in Prague from the 3 December 2002:



Judgement N. 44 Ca 179/ 2002:

*"The Access to information principle stands for the possibility to inspect the data kept and used by the authority. The information is what in the moment of inquiry there is or should be at disposal at the authority. **Provided the authority finds out that it has not the information which according to its obligations set by the law rules should have, it is bound to supply and to provide it immediately.**"*

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### ***Audio record from the session***

**6. There is made the audio record of the municipal council session. Is it possible to ask for its providing?**

Yes, the application **must be** according to the FOIA complied with. **There is no legal reason for refusal of providing this information.** Even if the record is only so called “unauthorized material serving for internal needs“, there is no reason for the denial admitted by the Free

Access to Information Act or any other legal regulation. § 11 par. 1 of the stated act mentions only the information related “solely to internal instructions and personnel regulation of the compulsory entity“, which obviously is not this case. The record represents the “information related to the powers of the authority“ (§ 2 par. 1. FOIA).

Providing with such a record can not incompetently harm anybody.

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### ***A copy made by own camera***

**7. The authority refuses to make a copy of a document. There is even no option of making copy of the public session minutes with my own camera. How can I defence against this procedure?**

To force a citizen to make solely written extracts with common availability of copy technique at every authority premises would be only bullying and obstructing. In case of refusal of copying without any legal reason it is possible to consider disclosing of information (especially extensive one) as withholding, in fact . Then it is possible to appeal and then respectively to file an administrative action.

The judgement of the Regional Court in the town of České Budějovice for instance says:



Judgement N. 10 Ca 232/ 2001:

*"According to the Act N. 106/ 1999 Coll. to regulate the free access to information it is rightful to ask for the copies of documents; providing an extract from the document is not sufficient."*

The same situation occurs in case of using a camera, especially a digital one. This tool connects legal aspects of inspecting with copying. It is possible (in the diction of outdated regulations) to evaluate its usage as a form of inspection during which an applicant makes the extraction by his/her special technical equipment.



An example: A camera is comparable with using of own pen and paper. It is possible to label the camera as a "special technical equipment" for making extracts from documents submitted for inspection. Everybody has the right for such scanning of documents.

The Constitution of the Czech Republic stipulates in the cl. 2 par. 2 that: *"every citizen can do what is not forbidden and nobody can not be forced to do what is not imposed by the law"*. The same is set by the Charter of Rights and Freedoms in the cl. 2, par. 3. Consequently, if the law does not forbid taking photos of documents, the authority can not hinder it. The position of the office is to the large extent opposite: *"the state power can be claimed only in cases and within the bounds set by the law and in the way set by the law"* (cl.2 par. 2 ChRF and similarly also the cl. 2 par. 1 of the Constitution of the CzR). An official can and must do things set by the law and can not do anything more. A legal entity or a natural person can do everything what is not forbidden by the law. Provided the official impeded using of a camera, he/ she would clearly break the laws. In case of direct hindering to the applicant it would be an offence or a criminal act (according to the measure of physical attack, constraint or damage of somebody's else thing). If he/she hinders disclosing documents only of this reason, it

would be the same situation as if the documents were withheld of a different, legally absolutely groundless reason and he/she would have to bear the full responsibility for it.

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***Copy from the local council session only through a lawyer?***

**8. Do I have (as a property owner in the village) right to ask orally during the office hours for providing a copy , e.g. minutes from the local council session?“ The authority constantly forbids it to me, they hired a lawyer who wrote to me that I can ask for information only through him. Shall I not ask for information on how much the lawyer gets from public money for his services and to put it up on the official board as information for citizens about the management of the authority?**

As the property owner in the village **you have the right** to inspect the minutes of the local authority session. The inspection must be enabled immediately when the applicant comes to the authority premises (in the office hours) by whatever worker (secretary, mayor, administrative secretary and so on) who is physically competent to do it. Transmitting it to other person, to a lawyer,... is illegal.

The defence consists of lodging an application for supervising to the regional court: the regional authority is entitled under the § 123 of the Communities Act to ask for the performance of a task set by the law to it (in this case to enable an inspection); if the authority does not fulfil the task set by the law to it and after the warning of the regional court does not provide a remedy, the Ministry of Interior will upon the motion of the Regional Court ensure a substitute fulfilment paid by the authority if the unfulfilled task can not do anybody else.

You can at the same time file an application according to the Free Access to Information Act (in writing ), to appeal in case of withholding and then to file an action.

Or it would be possible to request by the action (by the motion for an opening of proceedings) directly so that the court decided on the fulfilment of a duty resulted from the law.

The purpose of the access to information is among others also the control of public means administration economy. To try to get the information how much does the authority pay for an “illegal lawyer“ and to give this information to the citizens would be an asset. For this kind of information you are fully entitled.

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***“Closed“ session of the local authority***

**9. Can the local authority summon so caled closed working sessions of the local authority, from which there are not any minutes, but at which there is practicaly all “cooked up“ beforehand?**

The local authority can not and must not hold any closed sessions. To camouflage this practice by any other vocabular description (meeting of the local authority members, professional workshop,...) does not have any legal relevance. A session is the council session in case of fulfilling fundamental features of the council session. It can not be crucial that there is no voting at this “closed session“. Voting is only one of the topping elements of the session, but not determinant. The significant is so that there were at such a meeting discussed the items which are then discussed at the “official“ session and if the object of the session is to find an agreement on the council decisions in these items. This kind of practice must be contested at the regional authority or respectively at the court.



An example: It is necessary to get some documents of such a “preparatory“ session ( some witness is sufficient, announcement on the summoning up, ...) , to claim the admittance at it and make records of the denial of this admittance, and to insist on it that it is the authority session even if it does not look like it. Then it is necessary to claim the protection of our civic right, i.e. the right to take part in the authority session. By the mentioned procedure (e.g. by dividing the authority session into two parts, during which there were at the first one discussed matters without the participation of public and at the second one there were fulfilled some other formal features as is the voting with the presence of public), was this right denied.

## Protected and unprotected information

(personal data, trade secret, confidentiality)

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### *Personal data – mobile phones numbers*

**10.** *Is it possible to provide with a list of the elected representatives of the town (mayor, his deputies, members of the board, members of the council,...) and the appointed chief officers on all levels (secretary, chiefs of sections and departments, ...) and their mobile phones numbers, or possibly the list of all community employees with the contacts, including official mobile phones?*

**The numbers of mobile phones are necessary to provide** in case that the mobile phones are allotted as service phones.

The mobile phones allotted by the authority as the service phones present "*working tools*" which is the official "*fully obliged to use for performing of intrusted tasks*". He/She is further obliged "*to provide information on the activity of self-government administrative unit according to special legal regulations in the extent given by his/ her job assignment*" (§ 16 of the Act N. 312/ 2002 Coll. to regulate the officials of self-government administrative units). All of that is the officer obliged to do in the scope of **working hours** (let me remind you that so called office hours or office days or hours of attendance de jure do not exist, this practice is the illegitimate interference into the contact of authorities with citizens and it is not possible to build on it).

This fact suggests that it is possible to take use of the telephone connection (either fixed or mobile) with the official for whatever kind of request, consultation, arrangement of a visit, ... and that everybody who wants to approach the authority in whatever matter has the right to it. It is not differentiable from the citizen's right to visit the authority premises and the official in person or from the written filing.

In the sphere that does not represent the human rights and freedoms according to the ChRF it is possible to adjust the contact with citizens with the regard to natural circumstances with the maintaining all the legal prerequisites – e.g. there should be ensured permanent opening hours of the filing room during the working hours (because of terms and so on). On the contrary during a proceeding session the official can not receive an unexpectedly coming citizen nor can not answer nor fixed, nor mobile phone. Similarly, the working time of highly encumbered officials is organized by arranging visits and so on.

In the sphere of human rights and fundamental freedoms it is possible to make such steps only on the basis of the principles expressed in the ChRF and on the basis of the law. The possibility of using phone connection to particular officials is set in fact by the access to information on the phone number ( fixed or mobile, similarly of the E-mail address, of the office number and address,...) and that is why it is necessary to judge the situation as the matter of the access to information linked with the authority competence.

Any law does not admit any restriction in this case. The telephone number can not be considered as information related to the "*explicitly internal regulations and personnel regulations of a compulsory entity*" (§ 11 par. 1 let. a) FOIA), because the communication

tool serves by its nature for operating outwards of the authority. This fact is confirmed by the judgement of the Municipal Court of Prague from the date of 25 March 2002:



Judgement N. 33/ Ca 81/ 2001:

*"The information related to the internal instructions and personnel regulations together with information arisen in the period of preparation of a compulsory entity decision are the information which do not influence anybody outside the compulsory entity."*

Equally, it is not a matter of protected personal data as it is the information related to the office and competence and not to a particular person of an official (§5 par.2 let.f) of the Personal Data Protection Act).



The Personal Data Protection Office says in its opinion of the problems from practice – N. 6/ 2002 *that the employers are entitled to fulfil their tasks and in the case of providing information according to special law (e.g. the Act N. 106/ 1999 Coll.) are bound to convey even to other person those personal data of the employee which are related solely to his/ her working activity and do not say anything about his/ her private life, under the condition that the employer will keep all obligations imposed by this special law (e.g. the Labour Code). The employer thus can provide without approval of the employee, if it is necessary for fulfilling his/ her tasks and if there is the absence of a provision to the contrary, his/ her first name and surname, academical degree, position, employee 's contacts to his/ her workplace (telephone number, fax number, E-mail address).“*

The official is during working hours always "at work", because the workplace does not have to be only the office in the authority premises.

The question is how and to what extent it is possible to take the mobile phone as a technical device with specific features according to the above-mentioned points of view. The core of the question is – how to evaluate situation, where the official has his/ her service mobile phone at disposal even for personal use, i.e. after working hours (basically for incoming calls as the outgoing calls should be of business nature too. It is possible to say that the working device here by the indiscerptibility of its large opportunities complicates easy judgement according to the aforementioned legal criterions. But this technical indiscerptibility can not stand above the constitutional guaranties, in my opinion.



An example: The technology itself offers a solution: mobile phones enable identification of the incoming call. It suggests that for purposes of official connection after working hours (during which the right for privacy and family life protection is conceivable) it is possible to make sure that the worker will identify if is called by somebody entitled from the workplace. The phones even enable automatic redirection or ignoring of the calls from other than from the (service) numbers set beforehand.

If somebody else calls, it is up to the official, whether he/she permits this “invasion into the privacy“ by receiving the call or whether he/she refuses it. He/She can refuse it even after he/she answers and finds out who is calling – for instance by referring to the working hours.

The situation is rather comparable to a personal visit or to a coincidental meeting on the street with whoever that can address the official or visit him/her out of working hours.

The privacy protection according to the cl. 10 of the ChRF is so possible. But the restriction of the fundamental rights in the interests of the protection of other right is possible only with the judgement of the criterion of necessity.



Findings of the Constitutional Court of the Czech Republic N. 280/ 1996 Coll.

That lies in “*comparing of the legislative tool restricting the fundamental right or freedom with other measures enabling to meet the same target, but not concerning the fundamental rights and freedoms, or rather concerning them less intensively.*”  
Such "other measure" is in this case the possibility of own mobile phone.

The authority thus provides at the request (and publishes it on the website in the connection with the item of 9th life situation according to the internal standards of public administration for disclosing selected information on the public administration in the way enabling the distant access" ) the phone contact of the officials, including allotted service mobile phones.

Providing of these information could and should be supplemented by the information that this phone number can be used only during working hours, unless the official is not too busy, in an extraordinary situation or after his/her explicit approval, or otherwise the official will be entitled to refuse the call phone. The situation will be different with the top officials – there will be the applicability different – the service phone can not be misused for an unreasonable disturbing.

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### ***Personal data – employment contract and the job description***

***11. Can I be acquainted with the employment contract of an administrative worker and her job description, the employment contract and itemized pay statement of a local authority worker (all kinds of services) including the statement of performed jobs and the remuneration for them and with the same for temporary workers? Even if I am a member of the council?***

Everybody has the right for job description of an administrative worker and for the statement of jobs performed by an employee of the local council (all kind of services). This kind of information does not relate to the privacy of workers at all. Neither information on financial remuneration of one-off and extraordinary type would be protected, it is a kind of information on the total extent of payments and on the reasons for their granting. From the finding of the Regional Court in Ostrava in the case of Mohelnice versus Jeřábková (N. Ca 248/2000) it is clear that the compulsory entities can not withhold providing information which only distantly or mediately concern their privacy, with the reference to the necessity of workers privacy protection. The withholding of information can occur in the case that the requested information really interlope privacy of workers. In the given case there was then decided that information, which specify the working task of an employee with the reasoning of his/ her exceptionality or special importance and information on determination of the height of special remunerations, is not possible to withhold with the reference to the legal stipulations protecting privacy.

Even as a representative you will not get the right for inspecting above-mentioned documents with the protected personal data. According to the Communities Act you are entitled only to this kind of information which is connected with the performance of the office of a representative. Human resources management of the authority does not relate to the performance of a representative (except for a mayor). However, you are entitled to know the height of salary considering the right of a representative to control the authority management. In the sphere of the general access (even of a non-representative) it is impossible to inspect, because the documents involve also protected personal data that would not be shielded at the inspection. For providing the above-mentioned unprotected information is therefore possible only form of copy, ..., where the protected data will be deleted, but the rest will be provided.

Even § 60 par.3 of the Labour Code does not hinder providing of this information.. That relates – according to the heading – employer’s references and working paper. It is part of the regulation which does not adjust providing of information. That is why there is fully in force the FOIA and other explicit protections of information as e.g. the personal data protection or privacy data protection, set by the Act to regulate personal data protection or by the Civil Code.

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### ***Personal data fom the contracts approved by the council***

**12. Is it possible to consider some information e.g. on the barter of estates between the authority and a natural person as protected by the Personal Data Protection Act? And if so, how can they be part of an official decision, whose full text am I as a citizen entitled to inspect?**

The personal data protection is partly being broken there, where it is a matter of data stated compulsorily under a special law (here under the Communities Act and the Act to regulate the records of ownership rights), and partly it is necessary to perceive this protection distinguishly according to level of publishing. Different level of publishing is the negotiating at the council (including the possibility of citizens to inspect), the different one is releasing the information on Internet or on TV.

The legal act at the disposal with immovables must involve data set by the cadastral regulations and must be also approved by the local authority beforehand. The local authority must pass this act with all those necessities that are indispensable for the contract validity. What was approved by the authority must be part of the resolution. Every citizen of the community is entitled to inspect the resolution. That’s why these unomissible necessities lose the character of protected personal data, but only for this purpose. Therefore it is impossible to publish further these personal data, e.g. on Internet. The information on a property act must be in that case supplied by anonymous data, e.g. only initials without address, date of birth and so on. It is as well confirmed by the utterly authoritative decision of the Supreme Administrative Court from 14 January 2004:



Judgement N. 7 A 3/ 2002:

*"As for the extent to which it is possible to withhold providing of personal data, the Supreme Administrative Court assumes that the personal data are sufficiently protected by making illegible in the authentic text and that is why it is impossible to withhold providig the full self-contained part of the text containing these data."*

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### ***Information on a person engaged in a public office***

**13. *Is it possible to ask the particular authorities for information on advisors working at particular ministries and at the Government Office? They are paid from our taxes.***

Until recently it was a complex explanatory question. This question was owing to the [www.otevrete.cz](http://www.otevrete.cz) project, the initiator of this publication, recently formulated in the amendment of the Personal Data Protection Act. It is beyond doubt that in the democratic society the public has the right to know this information. The primary is that the cl. 17 of the ChRF guarantees the right for access to information. This right can be restricted only by a law and only if *"the provision is necessary for the protection of rights and freedoms of other people in democratic society"*. It is opposed by cl. 10 of the ChRF protecting against *"unjustified publishing of personal data"*. The data of the type who is a minister, who is a representative, what kind of education he/she has, whether he/she was punished, are undoubtedly data published **legitimately**. Nobody casts doubt upon this fact. It is also the same in case of government advisors. The interest of the public in who, in what area and with what qualification counsels the ministers, is also absolutely legitimate. So, it is in no case the matter of *"unjustified withholding information"*. The justifiability of the publishing is set by the public status of a person in question and by the fact that this data is in given case related to its public activity mainly and only slightly of its privacy. The information on the education of a minister is thus not a protected personal data as it does not give evidence of a person only, but it speaks firstly about fulfilling of this public office. The information on that aspect of a person in public office used for performing public or official activities, does not come under the term of personal data restriction – in past it was possible to infer it from the international obligations and the constitutional order of the Czech Republic, now it also is set by the Personal Data Protection Act in the § 5 par. 2 let.f) : *"in case it provides personal data to a person engaged in a public office, to an official or a public administration servant, which give evidence of his/ her public or official activity, of his/ her working or official position"*.

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### ***Rewards for the council members***

**14. *Can the municipality provide with the information on the amount of financial reward of particular members of the municipal council since 1997 until present, i.e. a name and a sum in each case?***

**Information on all the types of rewards for members of the council (included the past ones) are public and are necessary to be provided on demand.**

The above-mentioned rewards are relatively precisely **set by the legal rules** (the Communities Act, the government decree N. 358/2000 Coll. to regulate the rewards for the performance of function for the council members; previously was this area regulated by the prior regulations – Communities Act of 1990, the previous governmental decrees). The basis of the answer should be specification (extent) of these rewards for a particular community according to these regulation. Part of the rewards is optional and in the scope of the limits set by the mentioned regulation it is approved by a council or by a community board. This decision is a political issue for which must the elected body bear its full political responsibility.

The rewards are divided into two parts: rewards of released members and rewards of unreleased members of the council.

The amount of rewards of **unreleased members** of the council is approved by the council (§84 par. 2 let. r)) of the Communities Act). The amount is approved in the uniform extent, the respective regulation does not enable it otherwise. The § 5 par. (2) let. d) of the Act N. 101/ 2000 Coll. to regulate the personal data protection thus says: *"in case of legally released personal data in accordance with a special legal regulation. However, it does not touch the right for private life of the data subject"*. In this case is such a special regulation the Communities Act which sets that the council session is public and its minutes and resolution are also open to the public. The releasing of information on reward can not be further considered as the interference into a private or personal life.

Moreover, in case of inquiry by a member of the council even the personal data protection could not cause that he/she would not have the right for such information. It would be thereto entirely absurd for a member of a body not to be allowed to inspect its own resolution.

Besides, the unreleased representatives get rewards from the authority according to number of hours which they spend while performing the function of the representative (council sessions, boards and so on). The amount of this reward depends on the authority decision. Even this information must be open to the public, and that also individually – how much performance by whom was stated and how much was paid for it.

The situation with rewards of **released members** is similar, though with differences. Their amount is decided by the board in case the council did not stipulate this for itself (the situation is in that matter identical with situation of rewards of unreleased authority members). The board session is not public, nevertheless the minutes containing the resolution is naturally open to the public. To leave some personal data “aside“ , e.g. in a closed supplement to a resolution is tolerable only in cases of explicitly protected personal data, e.g. measures towards a psysical body in the sphere of social support.

To some extent the rewards present personal sphere of released members of the authority. They have the identical character as a regular salary, hence – in most cases – they are the basis of personal income. The limits of these rewards are set by the public legal regulations. These are structured in detail, so for each size of the village there is known the extent of these limits, with a slight difference. So, it is not a matter of an unknown information, but rather specifying of a generally familiar information.

The principle of setting the amount of a reward in case the board makes the decision, is basically such, that the **members of the board decide about themselves**. It suggests one of the most important issues of the democratic power: these who make decision must be subject to the public control. It is not permissible so that in the moment when the representatives decide about themselves, there would not be possible some inspection (it is tolerable due to the privacy protection in case they decide about somebody else – e.g. the example of the social support).

**Here is the personal data protection principle equal to the public responsibility principle and the personal data protection is then continuously decreased.** The disclosing of information on rewards does not present even in case of released authority members

inadequate or illegitimate interference into the private or personal life. It is also suggested by the new provision of the Personal Data Protection Act § 5 par. 2 let. f).

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### **Information on the job description**

**15. I asked by E-mail for information on the job description of the authority official and I was refused. They rationalized it by § 11 par. 1 let. a) that the information is related to personal data of a compulsory entity. Is that correct?**

It is not. **You have the right** for the requested information. Everybody is entitled to get information on the job description of the authority officials. Not only we can not find a regulation enabling refusing of this information (e.g. § 11 par. 1 let. b). FOIA stipulates as facultatively protected so called "internal instructions and personal regulations", but the job description of officials, who should fulfill the service for public in the first place, does not present neither of it. On the contrary, the regulation § 5 par. 1 let. b) demands on the authorities to publish the "description of their organizational structure" which consists of the description of powers and working positions (tasks).

Equal opinion we can find also in the judgement to the case Jeřábková versus the Municipal Authority in Mohelnice:



Judgement N. 22 Ca 248/ 2000

*"The information on what working tasks an authority official did ... can not be the information on an employee in the sense of § 60 of the Labour Code. The provision of § 2 par. 3 of the Act N. 106/ 1999 Coll. thus did not hinder providing of the requested information on the reasons of paying the extra remunerations."*

And furthermore: *"The Regional Court so did not find any legal reason for not complying with the request of the petitioner for providing of information on the particular extraordinary or extra important tasks fulfilled by the chiefs of the authority sections; in that extent then the petitioner has the right for getting a copy of respective decisions with the regard to the provision of § 14 par. 3 let. c) of the Act N. 106/ 1999 Coll."*

Your further steps should be following: It is necessary to appeal within 14 days since the postal delivery of the mentioned Decision. The wording should be approximately this one:



An example: On the date ... I asked the authority in ...for providing this information... On the date ... I received from the authority decision on refusing of disclosing this information. The refusal is justified by ... (quote from the Decision)“.

Such reasoning is not supported by the law. That is why I appeal against this decision.

Lodge the appeal in writing (on paper) at the local authority premises (it is not possible to lodge the appeal only by E-mail) and let acknowledge the service of it (e.g. on a copy).

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## **Trade secret, invoices**

**16. Is it possible to call some part of an order, invoice, delivery note, job statement (in the scope of a compulsory entity commission) as the trade secret, or the information under the § 11 par. 2 let. a) ?**

It would be theoretically possible to label “some part“ of the stated documents as trade secret. Nevertheless, it would have to be labeled by an entrepreneur (not the office providing information) and first of all **it must really accomplish all five attributes of the trade secret according to the Commercial Code**. In most cases it is not true – e.g. it is not possible to claim that in respective trade circles it is not known how long certain jobs last (the job statement), how much certain material costs, ...

With a bit of imagination it is possible to fancy a company that would label as the trade secret a new technology of its own on which would be then based a different composition of the invoice items or of a job statement,... And further necessities would have to be fulfilled – e.g. the company would have to protect this matter against releasing systematically and actively (they conceal it) and would have to ask it itself from the beginning on the partner – the compulsory subject (of the authority). At the same time it is possible to say that not everything which is deduced from the final price is possible to label as the trade secret, because on the basis of the § 9 par. 2 of the FOIA these data can not be protected. The judgement of the Municipal Court in Prague in the matter of a civic association named Defence against the Municipal Authority of the Capital of Prague:



Judgement N. 33 Ca 80/ 2000-32:

*"So that it was a matter of trade secret according to the quoted provision of the Commercial Code it is necessary to fulfill all the features set by the law, e.g. it must be:*

- a) a matter of trade, production or technical character related to the company,*
- b) a matter of at least a potential value,*
- c) are not commonly available in the respective circles (can be available e.g. in the professional scientific circles),*
- d) are to be in compliance with the will of the entrepreneur concealed (the entrepreneur must express this will in a sufficiently visible way),*
- e) the entrepreneur ensures the concealment in an appropriate way (and by that he/ she also expresses the will to conceal the matters). In that case the petitioner asks for information known to the administrative body, which is not a trade subject, from its activities, that is the list of facilities of the trade company permitted by the administrative body with the statement of the place and time for which was the approval issued. The stated information is not of the trade character in the court opinion and the condition of the concealing of these matters of the commercial companies is not fulfilled here."*

By the information according to the § 11 par. 2 let. a) is meant the information provided by a person to the compulsory entity beyond the scope of the law. Providing of an invoice, a delivery note, job statement,... is the obligation which arises for the compulsory entity and for the supplier directly and unexchangeably from the commercial relationship on the basis of the Commercial Code, but also from the obligations arising from the reasons set by the

Accountancy Act, in case of authorities also by the Communities Act. It is therefore not possible to withhold this information with the reference to the stated provision of the FOIA. That is for example confirmed by the judgement of the Municipal Court of Prague from the 31 August 2000:



Judgement N. 33 Ca 80/ 2000:

*“It is not possible to refuse providing of information for the reasons according the § 11 par. 2 let. a) of the Act n. 106/ 1999 Coll. to regulate the free access to information, i.e. that the information was handed over to the compulsory entity by a person to which the law does not impose such a duty and which does not agree with providing of information, in case that it is the information familiar for the administrative body from its activities.”*

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### ***Information on the authority orders, cross of interests***

**17. A member of the watch commission is the owner of a detective agency. He gets commissions from the municipal authority (exacting of claims) and is compensated for it. Can I ask for information what sum and for which he received?**

Yes, you are entitled to get this kind of information. The § 9 par. 2 of the FOIA speaks about it explicitly. Lodge an application according to the stated law (preferably in writing). In case you do not receive the information, lodge an appeal and then enter a lawsuit.

At the same time I point out the § 83 of the Communities Act: *“(2) A member of the local council where the facts indicate that his/ her participation in the discussing and deciding of a particular matter in the community bodies could mean an advantage or a harm for himself/ herself or for a close person, for a physical body or a legal entity whom he/ she represents on the basis of the law or of the power of attorney (the cross of interests), is obliged to announce this matter before opening of the session of the local body which is going to discuss the respective issue. This local body must decide whether there is a reason for excluding from the discussion and decision-making process in this matter.”*

The judgement of the Regional Court in the town of Hradec Králové from 25 May 2001 says:



Judgement N. 31 Ca 189/ 2000:

*“The information on the extent of financial measures provided to an entrepreneur from the town or village budget can not be in any case considered to be trade secret, and consequently neither information on the price for the work done, which is payed from the incomes received from the tax payers. Right this fact highlights the public character of authorities and the fact that entrepreneurs are not connected with their sources by any creative link which could only by hint lead to the idea that it could be the matter of trade secret including the budget money. As the breaking of the trade secret can not be in any case considered as providing of information on the extent of measures from the state budget or from a territorial unit budget.”*

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### ***Report on the results of the Tax Office inspection***

**18.** *The Tax Office found out during the inspection that the local authority broke the budgetary discipline during drawing the state subsidies for the housing construction. Are the "Report on the inspection results" and "Payment assessments" for refunding of grant and penalty, issued by the Tax Office the subject to concealment? Can be these documents disclosed? Can the authority representative ask for their inspecting and demand their copy? Has also a citizen these rights?*

In case of inquiry at the Tax Office it is not possible (according to the § 11 par. 3 of the Free Access to Information Act ) to provide any other information except of the inspection result, e.g on the fact if and how there were broken any rules (i.e. only this information which is directly related to the fulfillment of its inspection task).

In case of inquiry at the checked local authority, the above-mentioned provision does not relate to it and the authority is obliged to provide this information to each applicant, not speaking of a representative. The stated documents are not subject to any secrecy and can (or should be) disclosed.

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### ***Allowance organizations, "confidentiality" of contracts***

**19.** *Am I entitled to inspect the leasing contracts for the tenancy of estates? The director of an allowance organizations claims that these contracts were made between this organization and a private subject which does not wish this contract to be inspected by a third person. How and whom can I ask for this information? Am I entitled to see a complete leasing contract for a particular estate including the name of the leaseholder and its further data?*

**Budgetary and allowance organizations are the compulsory subjects and are bound to provide information.** This type of subjects comes under the informational duty set by the FOIA. The requested characteristics under the § 2 par. 1 ("*public institution administering public means*") is fulfilled in both conditions. The public institution is that kind of entity whose foundation and the management (administration) regime we can deduce from the public law, especially (but not exclusively) from the administrative law rules, so from the rules used for description of the public administration practice. The public administration does not mean only authoritative decision-making on the rights and duties, but involves also the administration of the public properties (both the material and the non-material). Also the second condition can be considered as fulfilled: e.g. the Act N. 59/ 2000 Coll. to regulate public support in the § 3 let. d) contains the apt (and relatively wide ) definition of public means. Furthermore, according to the Budget Structure Provision N. 111/ 27 947/ 1996 belonged into the public budgets also the funds of budgetary organizations established by a central public administration body, budgets of the budgetary organizations established by the authority, budgets of the district authorities and the budgetary organizations established by them and that by the time of including the district authorities budgets into the state budget. The classical users of the means from the public budgets are allowance organizations of the

state, regions and villages, either endowed by the juridical subjectivity or not, that get subsidies from the public budgets (among these belong schools, public hospitals, libraries and other cultural institutions and many others).



Example: For getting the information it is necessary to submit an application according to FOIA. Only then it will be clear what legal arguments the director will use, in other case you are only in the sphere of unbinding conversation.

A wish of a natural person so that the contract that he/ she made with the authority or its organization, was not inspected, is not legally significant. The authority and its organization are not tied by it at all.

Further, the § 9 par. 2 FOIA restricts even the possibility of enforcing the trade secret on the set circle of data.

You are thus entitled to see the complete leasing contract for a particular estate together with the leaserholder name, but further personal data of a natural person (the date of birth, address) should be protected (withheld, blackened out).

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***“Confidential „ information, contracts with compulsory subjects***

***20. I am asking for information on the loan taken by the authority. The mayor answered that he can not say neither the creditor’s name, nor the content of the contract on the discharging of the loan between the creditor and the authority, because the creditor did not wish to be named, which is allegedly included in the contract. Is it in accordance with the Act N. 106/ 1999 Coll.?***

It is in contrary both to the Free Access to Information Act and also to the Communities Act. Taking of a loan is a reserved sphere of activity of the local authority which always has to negotiate in public and whose resolutions and minutes must be accessible for the public. It suggests that the authority can not conclude a loan contract, in which the confidentiality about the name of the loan provider would be set. The information hence must be provided to the applicant and in case the applicant is also the community member, he/ she has the above-standard access to it by the possibility of inspecting the minutes of the local authority (where should this matter be recorded under the Communities Act). In case that the loan was not accepted with the approval of the local council, it might be invalid or challengeable act, with possible sanctions on the persons who admitted it, perhaps even a criminal act. Agreement on the confidentiality in the contract is invalid as all authority contracts are public documents. It is necessary to appeal to the municipal (local) board, or to lodge the administrative petition, where in this case the success is guaranteed.

### *Claims, rental rates, ...*

#### **21. Is it possible to ask the authority for the information on loans and rentals of the communal property including the data of claims and names of defaulters?**

If somebody hires a communal property, then this fact is under the FOIA accessible in public to everybody who asks for this information. The applicant must be provided with a complete information except of personal data of individuals who are the adverse parties of these contractual relations. However, the data of legal entities (companies), to which the communal property was rented, will not be protected. So you are for instance entitled for contract copies (with deleted address, birth identification number of a tenant – a natural person), the rate of rental, overview of payments, debts, including the statement of what debt is bound to what property, ...)

In case of **requiring this information by a member of the council**, then this member has more rights according to the Communities Act § 82:

*„A member of the local authority is during discharge of his/ her office entitled to*  
*b) raise questions, remarks and suggestions to the community board and its particular members, to the committees chairmen, to the authorized representatives of legal entities established by the authority, and to the heads of institutions receiving contributions from the State Budget, and to the structural components established or created by the authority; a written response must be delivered within 30 days.*  
*c) ask the authority employees classed into the local authority as well as from the employees of legal entities established by the authority for information on issues related to the discharge of their office; the information must be provided within 30 days.“*

The personal data protection is in such case significantly limited.



Example: A representative is entitled to learn 100% of the information of all documents, accounting statements, inventories and similar documents related to all the rentals of the communal property. He/ She is entitled to get to know for his/her own need all the personal data or other protected facts in these documents and so even the names of defaulters. The representative must be, however, aware of it that after getting such information (esp. the personal data) he/she is obliged under the 101/ 2000 Coll. to regulate the personal data Act, to keep the right for the private and personal life of subjects protection.

The Personal Data Protection Act says:

*§ 5 (3) If the administrator processes personal data on the basis of a special law, 12) then is obliged to keep the right for the private and personal life protection of the data subject.*

Specifically: the information acquired in this way can not be further disseminated wantonly beyond the scope of the discharge of his/ her office. He/ She can bring this information to the council session, interpellate with it, state it in the requests and suggestions to the community bodies, he/she can inform on it particular citizens of the community. But he/she can not for

example publish the debtors on the website available for everybody or provide with this data the media for the purpose of dissolving. He so can not dissolve or to enable dissolving of this particular personal data in a way not corresponding to the reach of his position of the authority representative. It can be supplied by e.g. opinion of the Personal Data Protection Office N. 2001/1, forbidding disclosing of the rental defaulters.

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### ***Decision of the sale of apartments, transfer of the informational duty on the mandatary***

**22. *The tenants of the council flats were informed on the planned sale and acquainted with the conditions (settling of debts, ...). Are they entitled to know about the way of sale (who, when, why, on the basis of what made the decision)? Where to ask for this information?***

The tenants as well as the other citizens of the community are positively entitled to get the information on the decision of the way of sale of communal property. The authority is obliged to provide with all information to everybody, even without a given reason, that has for making of this decision. The judgement of the Regional Court in Ostrava from the date of 25 April 2002 says:



Judgement N. 22 Ca 222/ 2000:

*„The information related to the acquiring of the real estates of communities including the questions related to the financing of these property transfers, are related to the powers of the community whose bodies are the compulsory entities in the sense of § 2 par. 1 of the Act N. 106/ 1999 and therefore they are bound to provide such information at the request of a natural person or a legal body.“*

For the information you can ask the authority, which is - in case of claiming that they do not have some information (since it is too detailed and it is in possession of a real estate agency) – obliged to ensure providing of this information by a designated real estate agency. If the authority transferred its activity on this agency, it could not transfer it without the undetachable duty to inform. It is the same as if an administrative agency is charged with administration of a house. It is unseparably (on the basis of legal rules) connected with the duty to inform the tenants e.g. on the calculation of the services, even if it will not be explicitly said in the contract. The real estate agency must hence discharge the full extent of the commission including the informational duty related to the performed activity.



Example: If there is a text in the contract of mandate: *“The mandatary is obliged to act during the discharge of the activities with the exercise of professional care according to the valid legal regulations and norms“*, the mandatary should provide also with the information which would provide a compulsory entity for which the mandatory acts. There are also other relations pertaining to each action that a vicarious deputy is supposed to pursue.

Though, a written request for information must be processed also by the authority within the set time-limit. It is up to the authority to obtain documents from the entity deputed to perform some of its activity. The same you can require from the real estate agency that is also obliged to provide the same information on the basis of representing the authority part of which is the informational duty.

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***The amount of rental in the non-residential premises***

**23. *Must the local authority provide the information on the particular amount of the agreed rental in the non-residential premises in possession of the authority? Or can the authority refer to the "trade secret" according to the Commercial Code? Is the respective official of the authority obliged to inform whether this information is stated in the authority board resolution and enable the inspection of this resolution? What if I am not the citizen of the given community – I do not have permanent address here?***

The municipal authority (community) as a compulsory subject is bound to provide you with the stated information. It is not possible to refer to the protection on the basis of a trade secret. The question is whether this information can be considered as a trade secret (e.g. in the relation to the duty of the community under the § 38 of the Communities Act, according to which *"the communal property must be used functionally and economically in the compliance with its concerns and tasks"* – It is impossible to negotiate a price lower than the usual so that the characteristic of the trade secret would not be fulfilled (under the Commercial Code).

Firstly this information is explicitly excluded from the trade secret in the § 9 par.2 of the FOIA: *"In case of providing of the information which relates to using of the state budget means, the territorial unity budget, a fund established by the law, or to the disposal with the property of these entities, providing of information on the extent and on the receiver of this means is not considered as violating of trade secret."*

The respective authority official is obliged to inform you whether this information is stated in the local (municipal) board. At the same time it is possible to say that it has to be stated there or otherwise it would be a faulty act (uncertain). The practice of stating this kind of seemingly "confidential" details only in supplements to which the resolution refers, is false, or these supplements must then create the inseparable part of the resolution and must be provided together with it.

You are also entitled to get from this resolution all the information (including the supplements, explanatory note and similar documents).

The technical way of getting this information can be different, you have the right for a copy, at your request you must be enabled to take a look into this resolution. Only in special cases (personal data) this kind of data could be left out (in the copy) and for this reason also the inspection limited.

You must be provided with the described information even if you are not the citizen of a given village (town) – you do not have permanent address here. The handling of your request will occur according to the regime of the FOIA.

The community citizen has in contrary to a "general applicant" the above-standard right – first of all the right to inspect the community budget and the final balance sheet of the past calendar year, the resolutions and the minutes from the local authority sessions, the minutes from the authority board, the committees of the local council and the commissions of the council board and to make extracts from them, all of that out of the FOIA regime, e.g. right

away during the visit of the authority premises, without submitting an application and without any payments of expenses.

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### ***Information on the allocation of flats and non-residential premises***

**24. *How to get a list of flats allocated to the representatives? In the board or council resolution on the website we can often find the expression: "is imposing on the Housing Departement ... to allocate to the approved applicants", without stating a name (and surprisingly the address is usually the same with the address of a representative). Is it possible to ask for information who was allocated a particular flat? How is possible to control the allocation of non-residential premises – is it e.g. possible to ask for information on the business relationships between the community and a XY company? What to do in case the official provides with untrue or incomplete information?***

The information on who was “allocated“ a flat (you probably mean to whom the authority rented a flat that is in its possession), should not be withheld. The personal data protection though requires only providing of essential part of information. It is thus impossible to provide with a data from which the full identification of a said person arises - i.e. the first name, the surname, the place of residence. For example, the information - “The leasing contract for the “3+1“ flat was concluded with Mr Josef Novák“ - does not represent a protected personal data or an interference into a privacy, because it is not a matter of providing the address or other data expressing personal circumstances. If in addition to that the flat was allocated in the scope of a public competitive bidding, the very center of the “public“ competitive bidding suggests that its result must be public. It is possible to claim that the agreement of the applicant for a flat on releasing the fact that he/she succeeded is given by his/her participation in the public competitive bidding in accordance with the judgement of the Municipal Court of Prague in the case of Mrs Nahodilová versus Prague 4:



Judgement N. 33 Ca 50/2001

*“...disclosing of the requested data, e.g. information on the amount of the first rent set on the basis of the competitive bidding carried out by the administrative body, is not the information on the property owned by the new tenant, which would break the new tenant’s personality protection (§ 11 of the Civil Code), but it is the publicly accessible information.“*

Moreover, there is an aspect of decreased information protection with people engaged in public office (e.g. § 5 par. 2 let. f) of the Personal Data Protection Act). The representative who is a member of the body making decision on the allocation of a flat or influencing the allocation of the flat, can not in any case be protected from the point of providing information on that how was his/her case decided (unless it is an explicitly sensitive personal sphere, e.g. health).

So, the best way of getting information is to apply for it – i.e. to apply for the overview of the members of the authority who were in some period “allocated“ flats.

In case of information on allocation of non-residential premises, there is no legal reason obstructing providing as it is always about the relationship to an entrepreneur or a legal entity. That is why the personal data and privacy protection is of no importance here. Neither it is possible to refer to the trade secret (according to the provision § 9 par. 2 of the FOIA).

In case of providing untrue or incomplete information it is possible to lodge an appeal, since in both cases it is a matter of not providing the information, though in the form of withholding the fact that only part of requested information is provided. But the law prescribes that at the withholding of certain part of requested information there must be explicitly made a decision explaining this step. It is for example confirmed by the Supreme Administrative Court decision from the date of 14 January 2004:



Judgement N. 7 A 3/ 2002:

*"The Act N. 71/ 1967 Coll., the Rule of Administrative Procedure applies even to the decision-making on withholding (partial withholding) of providing information according to the Act N. 106/ 1999 Coll. The provision of the § 47 prescribes the necessities of administrative decision. There is particularly one duty for the administrative body which arises from its par. 2, and that is to state the provision of a legal rule according to which the decision was made."*

In case the decision is not made, the legal fiction arises under the § 15 par. 4 of the Act and it is possible to appeal within 15 days since the expiration of time for providing. If the appeal fails, it is necessary to lodge an action.

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### ***Payers of fees***

**25.** *As a representative I ask the local authority for releasing the number of payers for garbage – i.e. permanent residents and the number of payers of dog fees and the total amount of annual payments. The information was withheld with the reference to the Act N. 337/ 1992 Coll. to regulate the administration of taxes and fees with the remark that the tax and fees administrator (worker in charge of it) is bound to secrecy according to the § 24 of this act.*

**The answer, which you received, is entirely false.** You are entitled to get the required information and the questioned official of the local authority is obliged to provide you with it without unnecessary delays. He/She is not bound to the mentioned secrecy, or rather the secrecy does not relate to the given situation. The worker who granted you the mentioned information, broke his/her work duties as he/she did not proceed in compliance with the legal regulations.

Absurdity of the stated explanation arises firstly from the fact that all the stated types of the confidentiality protection are aimed at the protection of individual data on the particular individuals or legal entities. As soon as the information is overall (made anonymous), it is impossible to exercise this protection. Such procedure would be in discrepancy with the article 15 par. 4 CHRF.

The same is possible to infer by a careful analysis in the level of common laws. Concretely: You applied as a representative, so it is proceeded under the Communities Act in the first

place. Secondly, it is possible to support by the Free Access to Information Act (see later). You are entitled to ask for information the authority bodies as well as each worker of the local authority, and these are obliged to provide you with the requested information:

*“§ 82 A member of the local council is during performance of his her office entitled:  
b) ask questions, remarks and suggestions to the authority board and its particular members, to the chairmen of committees, to the authorized representatives of legal entities established by the authority, and to the heads of allowance organizations and structural components established or founded by the authority, information on matters related to the performance of their office; the information must be provided within 30 days at the latest. “*

Your inquiry is then possible to take as the use of both stated paragraphs under the letters b and c. In the first of them the requested subject is community (its bodies), in the second case the requested subjects are the concrete workers. Only that aspect, which complies with your request, is necessary to apply.

In case they do not comply, then the officials violate the § 16 of the Act N. 312/ 2002 Coll. to regulate the officials of the territorial self-government bodies. That's why there can threaten the notice, after repeating even immediate termination of employment (§ 46 and then the Labour Code with using the § 1, par. 2 of the Act to regulate officials).

The confidentiality is the legal institute of personal character – it is related only to a particular natural person. It is not related to the authority bodies, neither to the community as a whole. It is confirmed also by the § 19 FOIA as well as by the decision of the Municipal Court in Prague of 30 April 2002:



Judgement N. 33 Ca 100-103/ 2001:

*„According to the Free Access to Information Act can not the entity obliged to provide information refuse providing the information in the sense of § 19 cit. Act with the reference to the duty to keep confidentiality set by a special legal regulation like e.g. the § 12 par. 2 let. f) of the Act N. 552/ 1991 Coll. to regulate the state control or the § 53 par. 2 let. b) of the Act N. 166/ 1999 Coll. to regulate the veterinary care. The duty set in the stated legal regulations is related only to the control workers, but not to the administrative body, which according to the Act N. 106/ 1999 Coll. has duty to inform. “*

The matter of confidentiality for the case of inquiry to a particular worker (official) is solved especially in the § 24 of the Act to regulate administration of taxes and fees:

*“(3) The workers of tax administration can:  
d) provide with the overall data on the amount of the tax duty, situation with underpayments, permitted delays, instalments and remissions, the amount and the patness of transposed sums, ... at particular taxes to their receivers, to which belongs profit from these taxes according to the legal budgetary ascertainment. “*

They are thus obliged to provide information requested by you to the authority, so in this case to you, who exercise your right of authority representative according to the Communities Act.

Equally, it would be possible to infer that the confidentiality does not apply to the given case from the § 24 par. 10 of the Act to Administrate Taxes and Fees:

*“Without stating concrete data, especially names, can a worker of the tax administration use generalized information for the scientific, publishing and pedagogical activity.”*

Furthermore, it is impossible to infer the confidentiality for the given case with respect to the § 19 FOIA:

*" The § 19 – enabling the access to information or providing information under the conditions and in the way set by this act is not violating of the duty to keep confidentiality set by special laws."*

In case that the above-mentioned arguments will not change anything in the given case, it is necessary to appeal in the regime of the FOIA and then to enter a lawsuit for fulfillment of duty according to the § 82 of the communal procedure.

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### ***Application for subsidies, disposing of oral request for inspection***

**26.** *The mayor of a small village claims that he repeatedly applied for subsidies and has not received anything so far. Am I entitled to take a look into the applications?*

*The mayor answered me following: “On the basis of your application for providing information I announce to you that particular information will be given to you in case you ask in writing. “ How shall I proceed?”*

You are entitled not only to take a look, but also to get copies of all these documents (requests for subsidies). Though, they can be of large extent. The most reasonable in the given situation will be to apply for stated information in writing. The mayor obviously points at it that the request (probably oral, was not concrete enough).



Example: Try to be concrete in the written request: e.g. write that you ask for providing information on what subsidies, grants, subventions and other types of financial or material contributions the authority asked the state, self-government or other subjects for the year of 2003. On the one hand you must ask for providing information in the form of enumeration, on the other in the form of copies or other disclosing of information on particular requests.

At the same time, in case the compulsory entity supposed that it is not clear from the request what information is demanded, or considered the request too general, it is good to mention that you ask for disclosing of all requests in form of inspection so that you could specify your request. In case the first requested information is not provided and there is not enabled an inspection, it will be necessary to appeal and enter a lawsuit which is impossible to lose. In case the inspection is enabled, it will be sensible to take use of it and after acquainting with the documents to ask for copies of some of them (then to identify them explicitly, e.g. by heading and date).

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***Information on condition of communal property (a residential house)***

**27.** *Can a tenant of the council flat, which is going to be privatized, require information on measurements (thermal coefficient of windows) made due to a complaint about low-quality windows, freezing through and mildew, and on the progress of the claim?*

You have the right **for all the information that are in possession of the authority and that are not protected** (e.g. personal data of other people). None of the information you described obviously is not and can not be protected. If you ask for them in accordance with the FOIA, **the authority is bound to provide you with them within 15 days.**

According to that in what form and where is this kind of information kept (paper, electronic, ...) will they be provided.

(This is only perspective of the public authority from the right of access to information point of view, deduced from the authority obligation to provide with the information also on the administration of own property. Next to it, you surely have at your disposal the procedure given by the relationship owner-tenant, according to the Civil Code and the provisions regulating the rent of flats.)

**Releasing of compulsory information – duties and costs**

**28.** *The authority does not publish (on the website or otherwise) any compulsory information. The mayor states that he saves money in this way. Does he break the § 5 par. 1 and 2 of the Act N. 106/1999 Coll.?*

The mayor breaks the above-mentioned provision of the law. What is more, he/she does not save anything, as disclosing compulsory information on the website does not need any financial cost. It is also connected with the government decree N. 364/1999 Coll. to regulate cooperation of the government and public authorities at providing duties of authorities under the FOIA, whose § 2 says:

*“To the village which is not town and will not have even after January 1, 2002 the possibility to release information in the way set in the § 5, par. of the act, the district authority will render the assistance with releasing of this information in the way enabling the long-distant access (e.g. sending a data message) including regular updating; nevertheless it is not obliged to release such information on its own technical equipment.”*

The district authorities were cancelled and that is why should be this duty taken over by the local authority with widened powers as the performance of a delegated powers. The Act N. 320/2002 Coll. to regulate the amendment and the cancellation of some acts in the context of termination of work of district authorities states in the Cl. CXIX:

*“1. Provided a special law sets powers of district authority or district national committee, and these powers were not transferred upon territorial self-government units, these powers are performed by the local authority of the community with the widened powers as the performance of delegated powers.”*

Moreover, the mayor (the authority) violates the Act N. 365/2000 Coll. to regulate informational systems of public administration. What I recommend is to address the Ministry of Informatics of the Czech Republic with this issue and to ask for carrying out of control according to the § 4 par. (2) of the stated act:

*“The ministry a) controls observing of duties set by this act by the public authorities. During the control it is proceeded according to the special law.”*

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**Releasing of resolutions and supplements on the website**

**29.** *The authority releases blank resolutions, but not their supplements containing the factual substance. Allegedly, some of the data are not possible to release under the law (personal data, trade secret, ...).*

Publishing of information on Internet, e.g. of resolutions and supplements that are according to other regulations available for e.g. the community citizens, is not yet imposed on the villages or regions. However, it is appropriate, when the authorities do it.



Example: The Vysočina Region releases on the website all the source material for the council and board sessions, so not only resolutions.

First it is necessary to adapt the documents according to protection of involved information, e.g. to make personal data anonymous (either leave them out, or to substitute them by an anonymous abbreviation, e.g. XY), or to use only the initials provided they will not enable clear identification of a person. The documents made in this way anonymous are possible to be disclosed on the website. It does not present any problem.

However, it is not necessary to make the information anonymous, provided there is stated only name and surname without possibility to read from the information to given name further personal data (the name itself is not a personal data). It is necessary to consider also combination with other publicly accessible sources as telephone directory,... In case it is possible to find out from the released information, to which particular person they are related, then the releasing must be restricted.

This kind of adjustment of resolution is quick. It is good, when the possibility of disclosing is taken into account when the document is being prepared and the protected data are marked in the document beforehand (especially in the electronic one).

It is not necessary to make anonymous such personal data, that are enabled to be publish by some exceptions set in the Act N. 101/ 2000 Coll. to regulate the personal data protection. Such are primarily the data, that are according to other laws stated in the given context in the publicly accessible registers (e.g. in the Register of Trades, in the Register of Companies) or they were released legitimately on the basis of other law (e.g. the data on the candidates into the local council on the basis of the Electoral Act).

In some cases it is reasonable to state only synoptic data instead of a group of anonymous data.



Example: In the minutes of Safety Committee of the Municipal Authority in Prague 6, released on webside there are quoted only total numbers of recommended leasing contracts for policemen in Prague 6, although there are names of policemen together with personal data, social reasons and other characteristics in the official minutes.

Provided these claims are fulfilled, all the resolutions, including supplements, grounds and other materials, can be released without doubt. In exceptional cases of combining more regulations, trade secret or other particularities, it is sensible to consult a specialist.

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### ***Releasing of by-laws and their registering***

#### ***30. Is the municipality, the municipal part, bound to release overview of its by-laws on the Internet, when it is bound to keep their publicly accessible register?***

The authority by-laws should be basically available on the authority website, but there is not an explicit obligation set. The provision of the § 5 of the FOIA says that there must be an overview of the most important regulations, including the announcement about where are they available (it is possible to take a look into it also in the long-distant way). At the same time there is on the basis of the Act N. 365/ 2000 Coll. to regulate informational systems of public administration, issued in the charge of Ministry of Informatics, the obligatory standard for releasing selected information on public administration in the way enabling long-distant access. In the item N. 14 there is recommended to establish active references to such regulations.

The authority hence should have its regulations on its website transparently accessible. Though, in case that it has not, it is difficult to use some simple legal way for a remedy. The interpretation that the overview of by-laws is publicly accessible register, is not excluded, though it will be difficult to enforce it in the particular case.

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### ***Releasing of compulsory information on the website***

#### ***31. How to make the authority to establish the website and to provide legal information on it?***

The regional authority is entitled to force the local community to do what is set by law:

*“§ 123 (1) The supervision over separate community powers performance is carried out by the regional authority 36b) in the delegated powers and by the Ministry of Interior. The supervision is carried out subsequently and there is probed the agreement of generally binding by-laws of community with the laws and the agreement of resolutions, decisions and other measures of the authority bodies with the laws and other legal regulations.”*

What is important is the provision of the art. 2:

*“(2) The regional authority is entitled during the performance of supervision to:  
c) demand from the authority fulfillment of the task imposed upon it by law; in case the authority does not fulfill the task imposed upon it by law and after the warning of the regional authority will not ensure a remedy, on the proposal of regional office of the Ministry of Interior it will ensure a substitute performance at the authority expenses, provided the unfulfilled task can be carried out by somebody else; in the justified cases there can be the exacting of costs ceased.”*

Hence it is possible to appeal to the regional authority under the stated provisions and to ask for a remedy.

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## ***Sanctions for not releasing of the obligatory information on the website***

### **32. *What are the sanctions for not releasing of the obligatory information?***

The FOIA does not set any sanctions, but imposes e.g. the obligations under the § 5 (obligatorily published information). The Act N. 365/ 2000 Coll. to regulate the informational systems of public administration sets that the standards issued by the Office for the Public Informational Systems (OPIS) are obligatory, and not observing the OPIS standard can be sanctioned by a penalty up to 1 million CZK. The part of the standard are the obligation set in the § 5. However, the sanction upon a self-governing community are usually not imposed by the state administration (the Ministry of Informatics), as the sanction is not set directly by the law in this case.

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## ***Official board***

### **33. *What is the difference among the official board displayed somewhere with various documents and the official board, which is part of the web presentation of a town or a village, and the notice board, which also serves for displaying various kinds of information? Is it permissible to display advertising on the official board?***

The official board is in possession of various offices, especially all the administrative offices, villages, regions as well as courts, distrainers, frontier crossings, Broadcast and Telecast Council, ... Only some of the official boards are exactly defined, e.g. the Communities Act N. 128/ 2000 Coll. says:

*“§ 112 – the public authority sets the official board, that is put in the place, which must be publicly accessible usually for 24 hours a day. The official board is usually placed on the building in which is the local authority based.”*

The legal regulations set explicitly only the facts which is the local authority obliged to release on the official board. The principle that the public authorities may do only what is explicitly enabled by law, suggests that there can not be anything else on the official board except of things set by legal regulations.

The legal regulations then impose on different offices to publish some documents and informations on this official board (e.g. according to the Water Act – the information on the quality of drinking water, ...)

The official board on the website is a part of the web named like it by keeper without being imposed by any legal regulation and the keeper most likely tries to meet the agreement with the content of the official board set by legal regulations. But there are often placed also further information and thus it is shown that they are of highly official character and that – to some extent – they are sure to be true and authentic. It can be considered as the voluntary service to that part of population, which uses Internet, but without any legal bindingness and enforceability.

And finally, a notice board is simply a notice board – it can be set by everybody, in some extent even by every authority for the purpose of providing some information to the public which the keeper considers to be appropriate. But no authority can promote any products, services,...

### ***Information from the self-government bodies***

**34.** *How to get information from the self-government bodies (municipal council, municipal board) on the activities, reports, resolutions, personnel structure of committees (control, financial) of the council and municipal board? They are refused with statement that it might be classified facts or information of personal character (e.g. the control of authority cars management, in the home for seniors,...)*

The procedure of getting this information does not differ from other getting information. It is necessary to file the application. Provided it is not handled in a proper way, it is necessary to **appeal**. Provided it is not handled in a proper way, it is necessary to **file an action**. The courts usually decide quickly and correctly and return incorrect decisions to the new consideration.

**All the documents from the authority bodies sessions**, or information in them, i.e. from the sessions of the council, committees, board, **are publicly accessible, e.g. it is possible to ask for them**. The access will be restricted only to that information which or the protected character – personal data, classified facts and exceptionally some others.

In case the information is asked for by a community citizen, he/she has more rights (according to the Communities Act): he/she can come to the authority premises without keeping a formal procedure and ask right away for *looking into into the community budget and into the final balance sheet for the previous calendar year, into the resolution and minutes from the local authority sessions, into the resolution of the authority board, of the committees of the local authority and the commissions of the authority board, and to take extracts from them* (i.e. including the right for making a copy, for which can be, however, required settlement in the common height). Provided the information is required by a member of the council, he/she can inspect the minutes of the board in the same way.

**The structure of the office, the staffing of the authority and especially of the authority bodies, the agenda of the bodies sessions**, all of that are all **publicly accessible information**, that **can not be refused**. The problem is that the authority representatives violate laws and impede such information illegitimately. The only option then is to take use of the legal possibility and tool and to push through our own right.



Example: The municipal part of Prague 6 releases on its website [www.praha6.cz](http://www.praha6.cz) complete staffing of the committees and commissions, dates of their sessions, and gradually also the minutes from the sessions.

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### ***Information on public order, inspecting the accounting books, coverage of expenses***

**35.** *Am I entitled to get information on a public order financed partly of the community budget and partly of the subsidies of the Ministry for Regional Development? The request for information was submitted in writing at local authority premises in form of structured questions. The authority refused to provide with the information with the explanation, that*

*the order was decided by the local council and due to it is not necessary to provide me with further information. I appealed against this decision. The local council dismissed my appeal with this explanation written by the mayor: "the appeal was dismissed by the local council".*

*Is the local authority entitled to require the coverage of expenses in such case? (I got an invoice for 400,- CZK consisting of wage and material cost and postal expenses for the correspondence informing me how my request would be handled.*

*Am I entitled to ask for providing information in form of direct inspection of the accounting books of the local authority or to require also copies of selected records from these books? I have been refused to dip into the accounting books so far with the explanation that the records have the character of trade secret.*

**You are entitled** to get the requested information. The fact that the order was decided by the local authority at its session does not change anything and does not concern your right for information anyhow. The authority decision on the appeal dismissal is according to your inquiry obviously incorrect and moreover made after the time –limit, hence void (legally non-existing).

The correct further procedure is entering a lawsuit.

The local authority is entitled to demand the coverage of costs **only for providing of information**. The payment which is required, as described by you, does not have any support in law and is beyond phantasy.

Furthermore, you have the right to ask for granting information in form of direct inspection into the accounting books of the local authority as well as the right to require copies of selected records from these books. It is necessary to lodge an application in this sense according to the FOIA and to enforce your request in legal way. The judgement of the Regional Court in České Budějovice from the date of October 24, 2001 says:



Judgement N. 10 Ca 232/ 2001:

*"According to the Act N. 106/ 1999 Coll. to regulate the Free Access to Information it is legitimate to ask for the copies of documents; then it is not sufficient to provide with an extract from the document. At the same time it is necessary to keep the legal restriction following the data protection ensured by other legal regulations, and to exclude the protected data out."*

The records naturally do not have the character of trade secret. Only a business entity can have a trade secret, but not a community. As far as trade secret of entities trading with community is concerned, it is significantly limited by the § 9 par. 2 FOIA and I do not suppose it in the context described by you.

There is nothing left except of exercising the civil rights and proceeding a legal way. Recently the judicial proceedings have not been lasting years, but sometimes (mere) months.

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**Grounds for decision (expert opinions, professional judgements)**

**36. The local council was approving 1.2 million of CZK for reconstruction of the bridge in possession of the town only by oral information that the emergency condition is described in a professional judgement. The representative asked for the photocopies of the judgement (professional or expert judgement and the bridge bill), and for the budget. The authority withheld providing of the documents.**

It is a matter of violation of the Communities Act and the regulations of the access to information.

According to the § 82 of the Communities Act a member of local council is in discharge of the office entitled to:

*"b) raise inquiries, remarks and suggestions to the authority board and its particular members, to the chairmen/women of committees, to the authorized representatives of body corporates established by the authority, and to the heads of institutions receiving contributions from the State Budget and the structural components established or created by the authority; the written answer must be delivered within 30 days, c) ask for information from the employees of the community classed into the local authority as well as the employees of legal entities established or created by the authority, on the matters relating to the performance of their office; the information must be provided within 30 days."*

There is no restriction to this right in the case described by you. The requested judgement, the bridge bill, the budget – all of that must be provided with a member of the council. In case it did not happen, it is necessary to defend yourself. The proceeding, though, is not quite easy. The only certain way is to enter a lawsuit.

Your partner in the sense of the above-mentioned par. c) is right the respective employee of the authority which must follow the law and not the instructions of a superior in case they are in violation of the law. Both the employee and the official put themselves at risk of administrative delict sanction by the obstructing the office task to provide with the information, and in the case of a large extent it could be considered even the criminal act under the § 159 of the Criminal Code (negligent maladministration).

At the same time, every citizen has the right for the stated information in the regime of the FOIA. Even in this regime there does not exist a legal reason for withholding the requested information. I recommend to submit a formalized application for the above-mentioned information and after its withholding to proceed with the use of all legal possibilities.

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**Informational duty delegated to representative**

**37. Is it possible to demand the data for calculation of services in council flats from an administrative or processing company? Can a person involved in calculation ask for them, or can it only be the control authority of the municipal part?**

The answer for this question depends on it whether the requested information is in possession of a compulsory subject, i. e. the authority or an administrative or processing organization or both, and whether it is e.g. the allowance or budgetary organization of the community. In case the information is at disposal, then both the authority and the aforesaid type of organization are obliged to disclose it to everybody who asks for it (except of personal data and the information on privacy of other people). The described information does not fulfill any characteristics, due to which it could be withheld. The requested data present information on how a compulsory subject administers its, i.e. public property.

In case the processing is carried out by a private company (administrator, company recording and measuring the consumption of public supplies), then it is possible that the authority does not have the data available. It is not set by the law, the authority can leave the calculation only on the administrating company.

However, in the given case the matter is adjusted right in the regulations on the calculation of heat energy, where the access to information is adjusted directly for customers (so not for "everybody" according to the FOIA). The consumers are entitled to get acquainted with this data and the lessor is bound to provide it to them. Provided the lessor (the authority) delegated its rights and duties to the administrator, then this (contractual) duty is up to the administrator. The processor has this duty only in case it is imposed in contract with the administrator.

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### ***Inquiries of citizens***

#### **38. *Must be there on the agenda of the local council session involved also item : "Inquiries of citizens"?***

The Communities Act in the § 16 par. 2 let. c) says that a community citizen is entitled to "*express his/ her opinion to the discussed matters at the local authority sessions in compliance with the rules of order*". There is not set any duty to include the item: "Inquiries of citizens" into the session schedule, but at every authority session the citizens must be given the opportunity to express their "*opinions to discussed matters*".

With the more detailed analysis we can see that the center of the term "express oneself to discussed matters" suggests that it must be enabled to express opinion to these matters so that it would be possible to take citizen's opinion into account in the discussion. Therefore it is not possible to postpone the contribution to a matter until time when the matter is already discussed, i.e. as some other, later item. It is so necessary so that the authorities would enable to the citizens to express themselves in each item.

It is possible so that the matter was adjusted by the rule of order by involving the item: "inquiries of citizens", or "interpellations", ... At the same time there must be given a space for expressing of citizen's opinion before the discussion of every matter. The rule of order can adjust only the extent (e.g. 3 min. for statement), the way of entering the discussion, the possibility of stopping the statement in case the speaker does not keep the discussed matter, the way of equal selection of contributions in case the time is limited, ... However, the local council can not decide about the very possibility of citizens to express themselves to a discussed matter by voting.

The Capital of Prague Act adjusts the same matter (also for municipal parts) in other way – it provides citizen with the right to express his/her opinion, so not only “to discussed matters“. In Prague it is hence possible to restrict citizens to implement this right at particular item and to force them to have an overall contribution only in one item of the session.

The purpose of the local council session is primarily to enable the citizens to follow clearly and directly the authority policy. There undoubtedly belongs also the possibility to ask questions and to get as little as possible formal answers to them.



Example: The rules of order of some authorities contain e.g. the explicit "Interpelation" item, with the set invariable time, in which a citizen can ask a question and a relevant member of the board answers him/ her immediately if possible. He/She can, however, answer also in writing.

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***Request for information right away at the local authority session***

**39. Can the rule of order in the item enabling citizens to have a contribution at the council session, restrict the possibility of citizens to ask for information so that the application has to be handled?**

The authority obligation to provide citizens with information right away at the authority session is described rather freely, and there is not set explicitly the immediate relationship between the right of a citizen to express his/her opinion at the authority session and the authority obligation to inform on the negotiation of the community bodies right at the council session. The FOIA does not exclude the request for information to be submitted at the council session. It is not possible to exclude by a legal regulation of the authority (e.g. by the rule of order) that there will be provided the relevant information right at the council session. It would contradict the principle of appropriateness if the restriction of the access to information could be justified only in case it was demanded by any other equally protected concern. I hence assume that it would be possible to dispute the rule of order. So it might be possible to dispute the "banning" of answering the request, but in this way it will not be possible to enforce the request to be answered immediately.

The contesting of the rule of order should be made by submitting to the regional authority according to the § 123 and consequential communal procedure.

From the FOIA point of view it is possible to say that a request arisen at the authority session on the basis of citizen's possibility to express his/her opinion is the kind of oral request for information and the authority is obliged to handle it. In consideration of recording the session it is possible to consider such a request as submitted in writing. Though in case of remedies the law requires a written application.



Example: At the authority session it is possible to submit an oral request and at the same time to submit its written form to the mayor or secretary. This procedure has the character of a political appearance including a kind of spectacularity, when it is possible to achieve the same formal result (submitting the request for information) also in a “quiet way“. Though, it is entirely justified just in the case of a politicaly significant matter.

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### **Opinions or information**

**40. Are the particular members of the local council obliged under the Act N.106/1999 Coll. to regulate the Free Access to Information to provide with the own opinion of the solution of a specific matter?**

The answer consists of three aspects:

1) The access to information is impossible to confuse with the access to opinions. The FOIA is not focused on anything else than providing information, i.e. such data which already exist and are at disposal of the compulsory subject. All interpretations agree upon it that the law does not apply to providing the opinions, searches, analysis, i.e. anything what would be created as late as under the influence of the inquiry (except of simple classifying and searching tasks). Similarly, it is not possible to request something what does not even have any “tangible“ form, but is only in the stage of people’s thought.

At the same time it is true that provided a particular opinion (analysis,...) has already been at the authority created, then it is at citizen’s request available. It is asserted e.g. by the judgement of the Supreme Administrative Court from the date of January 14, 2004:



Judgement N. 7 A 3/ 2002:

*“Legal opinions of employees of the compulsory subjects are not possible to be considered as internal nor new information in case it is already existing data of a compulsory subject (e.g. in the form of a suggestion or a decision)“.*

2) In case there is not a member of the council delegated to provide with the information, it is not his/her duty (but it does not stand for the mayor and his/her deputies). Usually there is a worker or an official delegated to provide information. If there is not anybody delegated, then the mayor is obliged to do it.

3) The members of the council have right to provide anybody with whatever information that are at their disposal, except of the protected ones. It is not possible to impede them in it, it is not possible to probe which of them provided the information, ... (see art. 17 of the CHRf in the par. 2 and 4 which speaks about the right to disseminate ideas and information).

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### **Reference to published information, retrieval (composition) of requested information**

**41. I asked for imparting of financial incomes of members of the board, paid by the local authority for a particular period. They referred me to the applicable legal amendment (the government decree N. 358/ 2000 Coll.) and to the minutes where the amount of rewards for the membership in the council and in the board was approved. I can have a dip after a call arrangement. With the incomes of the board members paid for another activity for community than the membership in the board is, I was referred to inspect the invoices at the local authority accountant. Is such a look into the accounting records, invoices, ... the proper form of handling the application? I wrote in the application that I insist on providing information in form of overview in writing.**

**The reference to applicable legal amendment** accomplished by the Government decree N. 358/ 2000 Coll. would be possible to consider as handling the part of the application in form of referring to the published information under the §6 par. 1 FOIA. However, this decree sets only possible extent, or unit reward related to the number of population. The exact data are therefore only in the particular resolution of the authority bodies. This decree does not involve the requested information and the application was not handled by the reference. It is hence necessary to demand further such information (appeal, lawsuit). In this case it is appropriate so that the authority would provide with the copies of respective extracts from these resolutions. It will be probably one or two resolutions per year, so not much searching or writing out.

In the second case, i.e. rewards for other activities, it is necessary to consider the matter-of-fact point of view: it can not be true that the only source of the requested information are invoices to these expenses. According to the accounting rules they certainly must be involved also in further synoptic documents (e.g. some outline of the authority expenses). From such information file it is then again possible to provide requested information without any difficult searching. I therefore recommend also in this case to resist withholding information in a simple way.

However, it is necessary to find some ballance between providing already existing information and creating new information, as the following analysis shows:

FOIA defines various technical possibilities of providing information:

*"§ 14 (3) c): ...in writing, by looking into the document including the possibility to make a copy, or on the memory media."*

Legal text thus does not set univocally who will make the decision and which of these possibilities will be used. The judicial practise inclined to the interpretation that this text creates **the right** of an applicant to obtain information in the form, for which he/she asked, provided it is technically possible.

It results for example from the judgement in the legal case of the SOJA petitioner (Assotiation of citizens in the village of Jindřiš) against the defendant mayor of the village of Rodvínov.



The judgement N. 10 Ca 232/2001-40:

*" The application was in the judged case handled by making extracts from the leasing contracts. This procedure is not correct. The objects of the matter were copies of leasing contracts. Demanding of copies of particular documents rests on the provision of § 14 par. 3 let. c) of the Act, and that is why it was the obligation of the local authority, into which competence under the § 109 par. 3 let. c) it belongs to make decision of providing information, to release the copies."*

The recent decision of the Municipal Court of Prague in case of Mr Drbohlav versus the Municipality of the Capital of Prague also relates to this matter:



Judgement N. 5 Ca 80/2003-26:

*"The court assumes that all the information requested by the petitioner are available for the first instance administrative body, although it is not obliged, and does not do it, to keep lists or registers of permitted advertising facilities or buildings, i.e. although this information "is not ready". Nevertheless, it is possible to suppose that the Building Office keeps files of its decisions made in particular calendar year. So according to the court opinion it is possible to seek out the decision upon which the respective building office in 2002 issued the building permission for particular advertising facilities or buildings and to seek out further requested facts from the content of these decisions, i.e. the locality, in which the advertising facility or building is based and the validity period of the building permission... The court is not familiar with the facts, that would exclude the above-mentioned procedure, and points out that neither the defendant mentioned any such facts in the reasoning of the contested decision."*

The court thus infers that as soon as there is a duty of compulsory subject emerging from a legal regulation to work systematically with the requested information, then it is legitimate to ask for any extract from this information, feasible on the basis of systematic processing. It is unquestionable that the authority is able to get the requested information for accounting reasons. Therefore it is obliged to provide also the applicant with it.

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#### **Grounds for the news media**

**42. The work materials for public session of the council are provided to the regional press at the same time as to particular representatives (about 10 days before the session). Do I have as a citizen the right (in case I ask) for sending these materials in the same extent and in the same time as the press receives it? The citizens were told at the council that the press is bound by a kind of "reticence" and the citizens are not entitled to ask for the materials until the session.**

The request heads to analysis of time-periods for providing information and to the sphere of information provided under the FOIA. The time-periods in the FOIA are, as in the Rule of Administrative Procedure, set as the deadlines – "within 15 days at the latest". The authority is thus obliged to provide requested information as soon as possible, but until the end of the set deadline. As long as the information is provided to an applicant in certain time-limit, then it is obvious, that it is possible to provide it to another applicant, too. Everybody has the same right for the access to information. As soon as the information is provided to the press, it is impossible to refuse it to anybody else. A restriction with the reference to an agreement on "embargo" is not admissible. On the contrary, it would mean a serious interference into the freedom of speech, as there would be impeded the possibility to speak about the matter by anybody else except of the authority.

Another question is whether it is the kind of information, which the authority is obliged to provide at the request. It is possible to "impose embargo" only on such information that are not out of other reason the subject of providing according to the FOIA, e.g. because they are incomplete.



Example: It is possible (after agreement with editors) to impose embargo on a prepared speech of Mr President, because only through its presenting it can be considered as a "complete information". A text provided beforehand is hence a relationship lying out of the regime of the FOIA, inferred from the general active duty of authorities to inform public on their work, especially through the news media (art. 17 par. 5 ChFR).

Though, the grounds for the council session of a definite character (e.g. the board resolution, explanatory note to the board resolution, the council resolution suggested by the board, ...) are complete information. And equally the different matter-of-fact grounds. They must be therefore provided as late as they are provided to the press.

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### ***Information for the news media, for citizens, objectivity of community bulletin***

**43.** *Once in 2-3 weeks sends the authority to the editors information from community life, not only from the authority, but also on associations, culture,... Is a citizen entitled to ask for sending the same information? It is not a matter of official information – but the form of press release, in fact; these materials are short articles, supplemented by photographs (sometimes published word for word by the newspaper, sometimes the newspaper adjust them, or ask for more detailed information on the phone). In case of publishing, they are publicly accessible, but in case they are not interesting for the press, they will not appear anywhere, and as if they did not exist. Moreover, the news are based on the texts, published on the authority website and are mostly shortened for the newspaper needs. Is the authority obliged to comply with this request?*

Sending the articles for the press is informal matter. Nevertheless, the true is that in the sphere of public administration it is possible to do only that, what is permitted by the law. The Art. 2 of the Constitution, par.3 says: "The state power serves all citizens and is possible to exercise it only in cases, within the bounds and in the ways, set by law." It is so the performance of separate powers under the Communities Act § 7 (1): "The community administers its matters separately (hereafter only 'separate powers')."

Specifically, it is the performance of the separate powers according to the prov. § 5 par. 4 FOIA: "The compulsory subject can release information under the par. 1 also in other ways, and with the exceptions set in this law it can publish also further information."



Example: The information of the authority does not send any independent private person (e.g. a private publisher of a local periodical, independent on incomes from the authority – on the contrary – it is sent by the editor of periodical published by the community) and for that reason it is a matter of the performance of separate powers. So, as long as it is the authority or its body (councillor, see the Resolution of the board N. 149/03: The board appoints Mr Zdeněk Ryšavý an administrator of the website of the village of Okříšky ([www.okrisky.cz](http://www.okrisky.cz)) as well as the chief editor of the local bulletin named: Zpravodaj z Okříšek), then it is the performance of separate powers of the community, and the applicant is legally justified to get access to all the information related to the powers of compulsory subject.

In case the drafts of the articles were sent by a citizen as his/her optional, private activity (he/she could be a voluntary correspondent of the news editors), then it is of course not possible to ask him for further providing his/her private correspondence with the editors. Though, I must warn of the possibility of such "escape" in case that the citizen is a councillor charged with the above-mentioned task, as it is highly probable that the editors accept this news for that very reason that they have hallmark of officiality, so it is not necessary to verify them from other independent source. So, I do not recommend to render this news as purely private initiative, it would lead only to unnecessary collisions.

A certain paradox of the above-mentioned situation is the display of the fact that the freedom of information (openness of public administration) has influence on the reasonable reappraisal of technical and organizational measures, through which the compulsory subjects perform their powers.



Example: In this case it would be correct to proceed in this way: If there is processed in the scope of authority medialization an extract of article (material) published on community website and then sent to the press, it should be placed into the column named e.g. "Sent to the press". In case there is a possibility of taking news out of the community website, then the applicant could get them automatically. In case he/she did not take use of that service and asked for such information either orally or in writing, then it is proper to proceed under the § 6 FOIA (referring to already published information): *"Duty to refer to the published information (1): In case the application points to providing already published information, then the compulsory subject can as early as possible, but at the latest within seven days, to announce to the applicant the data enabling retrieval and obtaining already published information. (2) In case the applicant insists on providing already published information, then the compulsory subject will provide it."*

Only after repeated request for direct providing the information would be provided: at the personal visit the respective text will be printed from Internet and provided for the material expenses, i.e. for the price of print and paper. If it was to be sent, then in the same way against covering the material costs and postage. The time-limit for handling such application is as short as possible, but at most 15 days.

So it is necessary to consider if such or similar procedure will not bring only advantages, e.g. the possibility to show off in the column press what was published about the community and where.

Finally, it is necessary to point out another aspect of the agenda from the point of freedom of disseminating information (freedom of speech): a person, passing the information to the press on behalf of the authority and with its authorization, i.e. with the use of public measures and public authority, is obliged to respect art. 17 CHR, i.e. to pay attention to the balance of released information. Analogically, it would be possible to infer this duty from the Broadcast and Telecast Act N. 231/2001 Coll. § 31, par.3: *"...so that there would be observed the objectivity and balance principles, and there would not be not any political party or movement or their opinions or opinions of particular public groups made favourable one-sidedly, with respect to their real position in the political and social life, in the complex of broadcast programme."*



Example: Conditions of tender for publishing a bulletin of one community and consequently also the contract on publishing (with the contribution from the community budget) involves the provision that the bulletin is issued according to the principles of periodical of public service, i.e. particularly provides with the objective and well-balanced information necessary for free opinion forming.

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### ***Clogging the authority with inquiries***

**44.** *A dismissed mayor (now representative) of a small village is not able to cope with it and clogs the authority (through members of his family) with the requests for information (e.g. whether the meals of school employees are subsidized from the authority budget, and he wants to know the way and amount of subsidy, for which reason the board decided to pay invoice to a company, the news of attorney office, number, sort and way of handling things, which there was necessary to ensure after the appointment of new mayor and are connected with the ending of activity of previous mayor, information related to the data on managing of the school, how many kilos of plastic bottles were there collected in the past year and how much the authority earned on it). The information, requested for various periods, were mostly dealt with by the dismissed mayor. Must the authority answer these inquiries, although it is clear clogging of the office? Is it possible to ask for reimbursement?*

All citizens are entitled to get the above-mentioned information. There is no reason to withhold them to him and the authority must answer these questions. The motive of the request for information is not important.

There are other aspects important for a solution of your problem:

On the one hand it is possible that in part of the demanded information it was not case of existing information at the disposal of the authority, but case of the attitudes of community representatives, opinions, creating of new information and so on. The interpretation of the key term "*information relating to the authority powers*" (§ 2, par. 1 FOIA) is presented in that sense, that the authority is obliged to provide information that the authority already has and not that it does not have yet. And the term "information" contains to some extent also the form (configuration) in itself. There is thus a space for a reasonable consideration and agreement on what the authority can draw out or copy from various documents without investment of disproportional effort, and what presents vast search and writing out of the amount of documents into other document. It is impossible to set a boundary of the mere providing information, involved in the documents, from making searches, analysis, ... to which the FOIA does not apply.

Nevertheless, it is necessary to point out, that this reason for withholding is possible to apply only in truly well-grounded cases. A judicial decision e.g. corroborated that the building office is obliged to provide information of the type : "inventory of permitted advertising facilities", even if it does not keep such inventory continuously.

But more important is to free yourself from "fighting" and after that you will see that it is possible to solve that matter in other way. All the requested information you can release in that way that the applicant will present himself at the authority premises and he can have a look into the documents at his/her request, in the process of which you can copy for him/her

what he needs. So he himself can look up the requested details. It is possible that in a similar non-conflicting and open way this fight will vanish.

As for the charging – in principle you can ask only settlement of expenses for copying (usual price), or sending the copies by post (postage) in case you ask for requested information.

## II. COMPULSORY SUBJECTS (types)

### Trade companies, budgetary and allowance organizations

#### *Information from the companies established by the authority*

#### **45. Are the trade companies established by authorities obliged to provide information?**

Yes. The authority can establish a limited company according to the Communities Act:

*"§ 35 a (1) The authority can constitute and establish legal entities and structural components of community for the separate powers performance, provided the law does not determines to the contrary."*

These legal entities can be established by the authority in the spheres quoted exhaustively in the § 35, par. 2:

*"The community with separate powers is in compliance with the local conditions and habits in charge of creating conditions for social care development and satisfying of needs of its citizens in its territorial district. It is primarily concern of satisfying the housing needs, health care, transport and connection, need of information, training and education, general cultural development and public order protection."*

These establishments fulfill the definition of compulsory subject under the FOIA:

*"§ 2 The duty to inform (1): The compulsory subjects that have under this law duty to provide information relating to their powers, are government bodies, self-government bodies and public institutions administering public means."*

According to the theories of Administrative Law it is so called "public establishment", comparable e.g. with Public Transport Company or so called "public institution",... As the compulsory subject with the full informational duty it is bound to provide the public with all information in the regime of FOIA, except of this which uses a particular legal protection, e.g. it is excluded from general accessibility by the law. It is particularly matter of trade secret (which is, however, further loosened according to the § 9 par. 2 FOIA), personal data,...

Needless to say, that the duty to inform is often surprising matter for representants of such a company. They still assume that it is possible to transfer public means into so called private area and to disengage from all the rules typical for public sphere. But it is not so. The promoter is the compulsory subject, too. Therefore it is obliged to provide all the information on given company, which it has (and it does not derogate the duties of the trade company to provide information). The obligation to release information thus goes for all types of organizations established by the community. They often do not do it. But it is necessary to demand information from them.

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### ***Trade company established by the authority***

**46.** The council of the municipal part established SKM Agency, s.c., a company in 100% owned by the community and this company was by contract of mandate entrusted with managing of all houses, apartments and non-residential facilities in possession of town. There is a group of representatives connected with the board in the board of directors and in the board of supervisors. SKM, s.c. refuses to provide many information, even though they are related to the community property and they pose as a private company. The authority on the contrary often claims that do not dispose of given information, as it is only at SKM, s.c. disposal, or that the information was by SKM, s.c. marked as confidential. This procedure directs against not only citizens, but also the representatives. The information is necessary for comparing the effectivity of property administration. The local authority is denied of control above the vast majority of the property.

The stock company managing the housing and commercial premises stock perfectly fulfills the definition of compulsory subject under the FOIA:

*"§ 2 Duty to inform*

*(1) The compulsory subjects, obliged under this act to provide information related to their powers, are the government and self-government bodies and public institutions administering public means."*

It is so called "public institution", comparable with e.g. Public Transport Company, ...

For representants of such a company the duty to inform is often surprising. They assume that it is possible to transfer public means into so called private area and to disengaged from all rules typical for the public sphere. But it is not so. To persuade these representants about their legal duty need not to be easy. There is not any hierarchy and force tool, than either political responsibility of the promoter or assertion of the law power by legal proceedings.

Besides, it is necessary to mention, that under the Communities Act, the members of authorized representatives and employees of organizations established by municipal part are obliged to provide with the information to members of local council. In this regime it would be possible to file an action immediately. Furthermore, it is necessary to remind, that at transferring of factual activity of compulsory subject on other person, there arises also the transfer of informational duty.

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### ***Allowance organization***

**47.** *Is an allowance organization established by ministry the compulsory subject in the sense of § 2 par. 1 of the FOIA? Which is the appellate body in case of not answering the request for information? How to call the defendant properly?*

Ministries can establish only such organizations that follow public purposes and that handle public means. They are thus mostly compulsory subjects. As the public institutions will be considered all the structural components of the state and all the government funds in the sense of § 3, § 4 of the Act to regulate the wealth of the Czech Republic and its acting in legal

relationships, unless they are the government bodies, all the allowance organizations established by the structural components of the state and all the government funds according to the § 1 let. d), f) of the budget rules (Act N. 218/2000 Coll.).

In case of allowance organization (either established by a central government body, or by a territorial self-government body) it is possible to consider the relation of establishing as the relation of superiority. That is why it is a promoter who decides of the appeal, in this case the ministry.

Nevertheless, we recommend to formulate the complaint so that it would not be refused for this formal aspect. It should hence mark as defendant also the authorized representative of the allowance organization. This aspect should be justified in the proposal. It will be up to the court, which of the defendants it will consider as the right one.

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### ***Allowance organization***

**48. Does the Act N. 106/1999 Coll. fully apply to the allowance organization – departmental research institute of the Ministry of the Environment?**

Yes. The allowance organizations are fully subjected to the FOIA on the basis of the §2, par. 1, as they are "*public institutions administering the public means*".

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### ***The Czech Consolidation Agency, The Land Fund***

**49. Is the Czech Consolidation Agency a compulsory subject, too? And the Land Fund of the Czech Republic?**

The Czech Consolidation Agency is the compulsory subject according to the § 2, par. 1 of the FOIA (public institution administering public means).

Recently published book: Korbel F., et al., RIGHT FOR INFORMATION (Prague, Linde, 2004) says: "*It is impossible to enumerate all the 'public institutions administering public means' for their number and transience. On the basis of the previous interpretation relied on the judgements of the Constitutional Court and the theory of Administrative Law it is possible to observe in general that particularly following belong among them:*

- a) *public institutions (e.g. public schools, public hospitals, public social, health and old-age institutions, the Academy of Sciences, the Grant Agency, the Institute of Government Administration and other budgetary and allowance organizations),*
- b) *public enterprises, differing from the public institutions by at least partial business purpose, although their main object is not maximization of profit (e.g. the Czech TV, the Czech Radio, the Czech Press Agency, the Czech Consolidate Agency, CzechInvest – the Agency for support of enterprise and investments, the Stock Centre, the Management of the roads and highways of the CzR, the Management of water carriage of the CzR, trade companies with the majority property and deliberative interest of public power, provided they are established for reaching a public purpose*

- and administer public means at least partly – e.g. in the scope of operational subsidy, ...),*
- c) public funds (the National Property Fund, the State Environmental Fund, the State Agricultural Intervention Fund, the Viticultural Fund, the Transport Infrastructure Fund, the Housing Development Fund, the Children and Youth Fund, the State Cultural Fund, ...)*
  - d) public foundations (foundations and beneficiary associations administering public means),*
  - e) other public institutions (e.g. confederations of villages under the § 49 of the Communities Act, that are the separate legal entity).“*

The Land Fund of the CzR is also the compulsory subject with full informational duty. It is confirmed by the judgement of the Municipal Court in Prague:



Judgement N. 33 Ca 38/2000

*“The Land Fund of the CzR is a public institution administering public means and therefore it is a compulsory subject in the sense of the § 2 par. 1 of the Free Access to Information Act. “*

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### ***Who provides information?***

**50.** *Who provides information in case of the companies established by the town community if the request is delivered to the municipal (local) authority, but is related to particular members of bodies of the companies established by the town?*

This duty on behalf of the compulsory subject is carried out particularly by members of the authorized representatives in the range of their powers. It will be particularly members of the managing board, while a member of the supervisory board will not be in most cases entitled to act on behalf of the trade company, and so also not to provide information. It will have to be done by a council member – an authorized representative, or a worker authorized to do it, e.g. the director (person who is entitled to act on behalf of the compulsory entity). However, in case that the same person is the member of the authority board, and by that title is also the member of the company body, then a member of the council can ask him/her for information according to the Communities Act. Other citizens, though, can not ask him/her (personally) for information under the FOIA – they must turn to the authority as the promoter, or as it was mentioned above – directly to the trade company.

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### ***Releasing of compulsory information by established organizations***

**51.** *To what types of established organization does apply the provision of §5 of the Act N. 106/ 1999 Coll. to regulate the duty of releasing information?*

To all types.

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***Restriction of the access to information with the established organizations***

**52. *Is it possible to restrict the right for information in case of established organizations, as for example with the private subjects?***

It is not. Their position is fundamentally different. The general right for the access to information does not apply to private subjects at all, therefore the principle that there are provided all the information except of the protected ones, does not apply to them. They are subject to the opposite principle – they provide only what they are ordered to provide by law. In case of organizations established by the state and of self-government entities, it is not possible to speak about restriction similar as with the private entities, simply because they are not private. The only restriction is possible only on the basis of laws - e.g. personal data or (a legitimate!) trade secret.

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***Trade secret with the established organizations***

**53. *In what extent does the trade secret protection apply to these organizations?***

The trade secret is exercisable for these organizations as well as for any other enterprise – so they must fulfill all of the five compulsory necessities according to the Commercial Code. In brief: I hardly can imagine any particular trade secret of a trade company established by the local or regional authority to satisfy needs of citizens.

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***Organization established by the authority – Botanical garden***

**54. *Is the Botanical garden of Liberec a compulsory subject? I wanted to know the number of its employees and number of employees with the limited working ability. The director announced me that he is not obliged to answer.***

The Botanical garden is the allowance organization of the city of Liberec. That is why it fulfills very well the characteristics given in the § 2 par.1 FOIA:

*“§ 2 The duty to provide information (1): The compulsory subjects, obligated to provide information related to their powers under this law, are the government bodies, the territorial self-government bodies and the public institutions administering public means.”*

It is therefore necessary to appeal against the director’s notification.

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***Allowance organization – town theatre***

**55. *Can I ask the municipal authority for information on the lettings of theatre (allowance organization managed by the school department, working as a cultural and social***

*organization, whose promoter is the municipal authority), e.g. information on the price of letting to particular renters?*

You are entitled to get all the mentioned information. In the described cases it is even impossible to apply the trade secret from the side of renter (see prov. § 9 par. 2 FOIA). The above-mentioned organization is a public institution administering public means according to the § 2 par. 1 FOIA and therefore it is the compulsory subject which has to provide information to the public. You can equally ask this information from the promoter.

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### **Personal data – salaries and bonuses**

**56.** *Is it possible to inquire about salaries of a government allowance organization? I asked a query to the Czech Geological Service about the amount of annual financial bonuses of the management members. The director refused to grant this information.*

The Czech Geological Service is a departmental research institute of the Ministry of the Environment. It is a compulsory subject, as it complies with the characteristic of a public institution administering public means (§ 2 par. 1 FOIA). It hence must provide all information at the request, except of the specified ones. As the specified ones we can in the given case consider only the information of the personal data type, characterized by the Act N. 101/2000 Coll. It will be every information that is possible to relate to a particular person. For we can not consider "the management" mentioned by you as public officials, to which partial restriction of the protection in the relation to their public or official activity would be exercisable, the stated protection will remain in the full extent.

You thus can get only the overall information, e.g. the total sum of the annual bonuses for the whole group of management. You have also the right for information on the justification of extra bonuses (see the judgement in case of the town of Mohelnice versus Mrs Jeřábková).



The Judgement N. 10 Ca 215/2001

*"The information on the reasons for determination of extra bonuses and particularly important working tasks does not present personal data, and the Act N. 106/1999 Coll. does not relate to it, as it is information on activities whose fulfillment is assessed by the municipal council or board. Equally, for the same reason, the Personal Data Protection Act can not impede providing information on the total amount paid for bonuses, as the FOIA contains also the provision in the § 12 where the conditions for restricting the right for information are set."*

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### **Union organization**

**57.** *Do the union organizations belong among so called compulsory subjects?*

The union organization is not a compulsory subject under the § 2 par. 1 FOIA with full informational duty. However, it is not possible to exclude that it will be the compulsory

subject according to the § 2 par. 2 of the FOIA with partial informational duty in cases of deciding of the people's rights. But we would be able to judge it as late as in the connection to a particular application of this kind.

## Schools, hospitals

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### **Universities, annual report**

**58. Do the universities release their annual report on March, 1, or as late as on May, 15 ? (according to the Act N. 106/ 1999 or under the Act N. 111/1999 and the Ministry regulations?) Or, are those two different reports?**

The university works out the annual report on its activity in the sphere of providing information according to the § 18 par. 2 of the FOIA, i.e. that they include it into the annual report released by them on the basis of the Act N. 111/98 Coll. to regulate the higher education within the deadline according to the Ministry of Education provision.

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### **Rector**

**59. I asked the rector by E-mail on results of a negotiation about an organizational change at the university (prolongation of library opening hours). I did not get any answer. Is he obliged to respond within 15 days, or does not the law apply to such a request? Shall I appeal within 15 days in writing, and shall I do it to the rector again?**

An application submitted by E-mail is a written application. The rector himself/herself is not a compulsory subject, however he/she was obliged to assess the request as the request to the university (compulsory subject) which he/she leads. The rector or any other delegated person should answer within 15 days according to the FOIA. In case he/she does not do it, it is necessary to lodge an appeal.

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### **Members of academic senate**

**60. Are also the senators of the academic senate obliged to answer?**

A member of the academic senate is not a compulsory subject under the FOIA. Only the university or a faculty is a compulsory subject. The academic senate is a body of the compulsory subject, likewise the board is the body of the authority. A request for information that a member of the body receives, should be passed to a worker or official, delegated to provide information.

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### **Schools**

**61. Are the public schools (elementary, secondary, universities, ...) the "compulsory subjects" in the sense of the Act N. 106/1999 Coll., § 2, par. 2?**

All public schools **from the elementary ones to universities** are the compulsory subjects.

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### ***Church schools***

**62.** *How is it with the church schools included into the network of educational institutions of the Ministry of Education of the Czech Republic? Is it possible to ask for a copy of the entrance examination test?*

The question of full informational duty under the § 2 par. 1 or only partial informational duty under the § 2, par. 2 with the private and church schools is still the matter in dispute. However, in case of information related to the admission to a school, i.e. of partial informational duty, which is inferred from decision-making of the rights and duties, in this case of the right for education, then all schools without any exception have this duty. It suggests that schools **are obliged to provide with all the information relating to an applicant entrance exams including the form of a completed test.**

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### ***Compulsory releasing of information by schools***

**63.** *Is a public or church school included into the network of educational institutions of the Ministry of education obliged to release compulsory data (§ 5 par. 1), so e.g. the procedure of appeal against the decision of not admitting to school? Is the school bound to publish the information on Internet?*

Yes. All schools must also fulfill the duties under the § 5 par. 1 and 2 to the extent of their informational duty. In case of a limited informational duty they must for example publish information on the remedies against their decisions that relates to the decision-making of the rights and duties set by law.

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### ***Releasing of criteria for assessment of entrance test***

**64.** *Is the duty related also to the releasing of criteria for assessment of entrance test, school results,...*

This duty applies also to releasing of criteria for assessment of entrance test, provided such criteria exist, as it is a matter of "regulation, under which the compulsory subject acts and decides". A survey of these regulation is necessary to publish on the website and to mention where they are available for inspection. In case of school results there would be a question if this information applies to a decision-making of the rights and duties entrusted by law. If not, there is not duty to provide this information at the request in case of private and church schools. However, the public schools must provide it.

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### ***Information on education, including the specialization of teachers***

**65.** *Can I ask the local board for information, what education, including their specialization, the teachers of my son in the school established by the authority have? Is it a matter of the protected personal data?*

You have the right for this information. It should be provided by both the school (which is also the compulsory subject under the FOIA), and the authority, that as an employer surely has this information.

The Personal Data Protection Act does not hinder this providing, because according to a stable interpretation the data on public activity of public people are not considered to be protected (this interpretation is in the time of issuing this brochure confirmed by the amendment of July, 24, 2004, which embodies it explicitly into the act in the wording: "*in case it provides personal data to an official or employee of public administration on a publicly active person, that testify of his/ her public or official activity, of his/ her title of office or work position*"). Likewise, it is not a protection of privacy, because the information on the achieved education undoubtedly does not present any protected area of privacy. Moreover, every good school itself should nowadays release this information on its website.

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### **Hospitals**

**66. Is the district hospital compulsory subject for providing information according to the Act N. 106/1999 Coll. in case the regional authority is its promoter? The requested information is of economic character (annual and semi-annual reports).**

Yes, the district hospital is the compulsory subject under the FOIA, because it is a public institution administering public means (§ 2 par. 1 FOIA). It is thus obliged to provide information as the annual and semi-annual economic reports at anybody's request.

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### **General Health Insurance Company (GHIC)**

**67. Can I ask for information on the management of the GHIC on the basis of the Act N. 106/1999 Coll. to regulate the free access to information?**



*GHIC is the compulsory subject under the § 2 par. 1 of the FOIA, as it was univocally decided by the Constitutional Court (judgement N. III. CC 671/02). That is why the CHIC has the full informational duty, and hence it is at the request obliged to provide with all the information in its possession except of the protected data set by the law (e.g. personal data of insurants).*

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### **The other health insurance companies**

**68. Can I ask for information the other (branch) health insurance companies?**

The other health insurance companies are the subject of at least so called partial informational duty in the sense of § 2 par. 2 of the FOIA on the basis of the provision of the § 5 par. 1 and 2 of the Act N. 280/1992 Coll., according to which the health insurance companies, and thus also GHIC (the Act N. 551/1991 Coll.) as the legal entities and as the bearers of the general health insurance decide on the basis of the authority entrusted to them by law on the rights

and duties of physical bodies and legal entities in the sphere of public administration (§ 4 par. 1 let. a) of the Act N. 150/2002 Coll., the Court Rules of Administrative Procedure), which are things defined in the § 53 of the Act N. 48/1997 Coll. to regulate the public health insurance as amended. At least this so called partial informational duty under the § 2 par. 2 of the FOIA can be applied here.

Nevertheless, only the court practice will show, whether also the other health insurance companies have **the full informational duty**. Although they are not established by the law, they are **founded on the basis of the law**, and the fact that they handle only partly public means of the given type (the collected compulsory premiums), is not crucial. It would have to apply as well the universities, hospitals or social institutions established on the basis of the respective laws and connected to the public budgets. Although there is not principal jurisprudence to this question available, as the Constitutional Court let it up to the considering of the general court in the above-mentioned judgement, I am convinced that every health insurance company presents so extensive group of insurants, that it is correct to consider it as “public“ than to claim, that it is a group of people narrowly bounded to that extent, that it should be considered as “non-public“. It is given by the measure of regulation of this type of institution in the CzR, which (perhaps correctly) ensures that it can not be a small, unstable subject for a small circle of insurants. Therefore I infer that **every health insurance company is the compulsory subject** according to the FOIA, to wit with the full informational duty (under the § 2 par. 1 of the FOIA).

### III. HANDLING PROCEDURE

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#### ***Formal requirements on the request for information***

#### **69. Does this application (submitted by E-mail) have all necessities?**

The municipal council of XXX – the chief officer of the administrative department – Ing. Vladislav XXX

Matter: competitive bidding N. 2002/DO/XX

*I am interested in getting information that would help to fit out our ZZZ system with such functions that will satisfy our respective customers, so that their choice would be in favour of our (national) company. That is why I am interested in the final classification of offers in the Announcement... Emplacement of companies.*

*Will you, please, send me competitive offers (copies) and the minutes from the selective commission including its resolution. I am asking for this information under the Act N. 106/1999 Coll.*

*Yours sincerely,*

*XX, managing director, e-mail: xxxzavináčabc.cz*

The application fulfills all the formal requirements of the Act for submitting a request for information:

- 1) From the submitting it is obvious, to which compulsory subject it was addressed, and who asks for information. At the submission, that was done by a telecommunication device in accordance with the § 13 par. 1 of the Inf A, there was as well quoted relevant identification of the applicant (first name, surname, address, E-mail address) – and thus **the requirements under the § 14 par. 2 of the FOIA were fulfilled.**
- 2) The application is comprehensible; it is obvious from it, which information is requested, it is not formulated too generally – so there are **fulfilled the requirements under the § 14 par. 3 of the FOIA.**
- 3) The requested information apply to the powers of a compulsory subject – the Municipal authority of XXX.

Considering the fact that the compulsory subject did not provide with the information within 15 days after the submission of the application, nor made a decision, it is possible to assume that it made a decision of withholding the information. It is possible to appeal against this decision within 15 days from the date, when the deadline for handling the application passes.

(This analysis is engaged in the very course of handling the application for information and does not deal with the question, which of the requested information from the sphere of information on tenders would be legally possible to withhold. But at this point it is possible to say that all the requested information is likely to be provided.)

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### ***Shape of application***

#### **70. *How does an application look like? Is it submitted orally or on a form?***

There two main ways of submitting – oral and written. Both of them can be realized also by making a phone call, by fax, or by E-mail. There are not any forms prescribed, but the office can offer them for facilitation without obligation. Another way is e.g. an application for information submitted at the session of a compulsory subject body.

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### ***Formulation of an application***

#### **71. *Am I entitled to obtain all the information relating to the authority transactions with a private company by inquiry of this type: "I ask for providing with the copies of the entire correspondence (post, E-mail, fax, invoices) that our authority exchanged with the X company during the last...months."? It is allegedly a trade secret.***



Example: I do not recommend an inquiry formulated so widely. It will lead to a dispute over the concretization of requested information. I recommend to demand e.g. information on the extent of provided measures, in concrete on the price paid for the provided services in the given periods, on the contract – in the form of providing copies of relevant documents (invoice, contracts). Only truly delimited sphere of information set by the law could be excluded from these documents by the authority. The restriction should have form of Decision with properly described explanation, including a concrete legal judgement of the alleged trade secret.

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### ***When does the information apply to the authority powers?***

#### **72. *How is it possible to find out, whether it is true that the requested information does not apply to the powers of a body?***

The information applies to the powers of an institution, provided this institution deals with the given matter on the basis of its duties. It is not crucial, whether the authority creates the requested information or whether it only decides of it, but it is important, whether the authority works with it. As it is said in the judgement of the Regional Court in Prague in case of Friends of Hasina civic association versus the District authority in Nymburk:



Judgement 44 Ca 179/2002:

*"The access to information principle means the possibility for a citizen to have a look at the data lying in the office, with which the authority works."*

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### ***Information relating to the powers***

**73.** *The authority refused to provide me information (copy of correspondence with a government body) with the reasoning that "it is information relating to other than a compulsory subject and for that reason they can not provide the information without their approval". That second authority was the Broadcast and Telecast Board where it is disputable, whether it belongs among the "compulsory" subjects.*

Provided the authority refused the information with the quoted reasoning, then it means univocal violation of law. The law does not know such a reason for withholding information. The authority could withhold only the information that was provided by a private subject without being obliged by any law (§ 11 par. 2 a). Provided the authority proceeded e.g. under the Act to regulate public tenders, then most of the requested information is demanded by this law, and therefore any exception does not apply to it. Provided it applies to the information from the Broadcast and Telecast Board, it is not possible to refer to the stated exception under the § 11 par. 2 let.a), as the Board itself is the compulsory subject.

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### ***Information relating to the powers***

**74.** *I asked the local authority for the information on a letter (it was read on the local radio) of the Environmental Inspection about building waste dump. The request was put away under the Act N. 106/ 1999 Coll., § 14 par. 3 let. b) (it supposedly does not come under the authority powers, i.e. under the powers of the mayor). The community has population of 300 people. Would it be possible to put it away?*

**The answer**, you received, is **not correct**. Putting away in the given case would be possible only in case the demanded information did not apply to the authority powers. But this is in the given case out of the question. The letter refers to the community, as it refers to the solution of a waste dump in its area. **The information applies to the authority powers and the authority is obliged to provide it.** It is proved by the fact that the letter was read on the local radio which is possible to consider as the performance of separate powers.

Lodge an **appeal** (which is possible only in case that the first request was in writing – if not, submit the application again and repeat the whole procedure). In the appeal you should write that you did not receive requested information on the submitted application within the set time-limit. Write that, although you were informed on the putting away under the § 14 par. 3 b), but this presents for the purpose of appeal either the act which is not decision, and then it is a matter of fiction of negative decision according to the § 15 par. 4, against which you lodge your appeal, or it is incorrect wording of unjustified decision, against which you appeal. For the reason of carefulness you state both the reasons for the appeal, and it is up to the appellate body to consider it.

You must lodge the appeal at your local authority and let acknowledge of its service (e.g. on a copy). The appellate body is the mayor (in case he/she claims **incorrectly** that it is the performance of delegated powers, the local authority would send an appeal in the line of government administration, i.e. for example to the Environmental Department of a respective

regional authority). In case you do not receive an answer within 15 days, or you will get a decision of refusal of the appeal, it will be necessary to file an action (within 2 months).

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### ***Appeal sent by E-mail***

#### **75. *Is it possible to send the appeal only by E-mail?***

Yes, if it is necessary for meeting a deadline, but within 3 days there is necessary to supply it with a more certain form of appeal. The Rules of Administrative Procedure applies to appealing in detail (ct N. 71/ 1967 Coll.):

*"§ 19 Submission (1): Submission is possible to do in writing or orally into the protocol or in electronic form signed by guaranteed electronic signature. 1) On condition that the submission is within 3 days supplied in the way mentioned in the first sentence, it is possible to do by technical devices, particularly through teleprinter, telefax or public data network without use of guaranteed electronic signature."*

Therefore it is possible to lodge an appeal by common E-mail (or fax) only then if it is within 3 days supplied by a written form or by electronic form with guaranteed electronic signature, or orally into the protocol. The new Rules of Administrative Procedure (2004) prolongs the time-limit for supplying with other form to 5 days (§ 37 par. 4).

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### ***Electronic signature***

#### **76. *Is the appeal against withholding information sent by E-mail and signed by electronic signature according to the Act to regulate electronic signature considered as written and therefore valid?***

Yes, as follows from the § 19 of the Rules of Administrative Procedure (see the foregoing question), it is possible to appeal by E-mail with the guaranteed electronic signature.

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### ***Is the appellate body the same person?***

#### **77. *I ask for information the school with legal personality that is an allowance organization established by the authority. The application was decided by the headmaster. Is it possible so that the same person as the head of the body would decide of the appeal?***

Yes, it is possible. It would be a procedure according to the § 16 par. 2, the last clause. However, there is still not stabilized opinion, whether there should not be in case of school, established by the authority, proceeded according to the first clause, i.e. that the superiority is equal with the relationship of promoter- established allowance organization. The appeal would be then decided by the authority (authority board). Though, the appeal is lodged there, where was a request for information submitted. It is not applicant's business to probe who is the right appellate body.

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## ***Relationship to the Rules of Administrative Procedure***

**78.** *How is there provided information on the administrative proceeding according to the Rules of Administrative Procedure, where only justified person can inspect the documents.*

It is not true, that the Rules of Administrative Procedure claims that "only" a justified person is allowed to inspect the information in the documents. The provision of § 23 (in the new Rules of Administrative Procedure from 2004 § 38) adjusts only inspecting. Inspecting is only one of technical forms of the access to information. Only for this form of inspecting there is used the above-mentioned special provision of the Rules of Administrative Procedure, so the applicant must prove a "legal interest or any other serious motive". Other forms of the access to information (providing a copy, providing an extract from the documents,...) proceed under the FOIA. They are not anyhow restricted by the Rules of Administrative Procedure. The same situation applies to similar procedural norms, as there is for example the Building Code. The aforementioned legal state is confirmed by many judgements. The most representative of them is the Resolution of the Constitutional Court from the date of December, 18, 2002:



Resolution of the Constitutional Court N. III. ÚS 156/02:

*"The special legal regulations on providing information are characterized by complex adjusting of conditions, under which there are some types of information provided, including the way and form of their disclosing and the procedure of the handling the applications for their providing, to wit so exhaustively that the general regulation of the conditions of providing information under the Act N. 106/1999 Coll., can not be applied next to them.*

*However, the § 133 of the Building Act is not a special regulation on providing information. The quoted provision adjust special conditions for providing information, relating to the town and country planning and the Building Code in the form of inspecting the territorial planning documentation and into the construction documentation, and in that sense it supplements the Act N. 106/1999 Coll., which in the provision of the § 1 sets basic rules for providing information and which is not restricted, as far as providing information is concerned, to the mere inspecting of document. The aforementioned suggests that providing information by the compulsory subjects on the basis of their powers in the sphere of the territorial planning and the Building Code is subject to the legal amendment included in the Act N. 106/1999 Coll., and that in the process of providing the requested information in the form of inspecting territorial planning documentation and the construction documentation it is necessary to observe the conditions set in the § 133 of the Building Act."*

## IV. COVERAGE OF COSTS

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### *Advance money for coverage of costs*

#### **79. What is meant by the coverage and what by the advance money according to the provision of § 17 of the FOIA?**

This unlucky provision of the FOIA originated in the form of quick motion to amend in the Parliament. The presenters of the motion had the interpretation mentioned later on mind. Nevertheless, the wording causes interpretation troubles, and is often used for discouraging of applicants.

In all publications we can find the opinion based on the views of other authorities: **It is not possible to ask coverage beforehand** – so in the point of accepting the application. Firstly, it is not possible to know beforehand whether and to what extent the information will be provided, nor what amount of costs it will need. And secondly – and that is the main argument – it is not possible to underlie exercising of the fundamental right according to the art. 17 of the Charter of Rights and Freedoms by putting down a deposit already at the point of submitting the application. The access to information is the right respected and protected so highly that it is not possible – and particularly at the beginning of the process of asking – to condition it unnecessarily.

As the advance money it is thus considered the possibility of the authority not to ask the whole amount of coverage right at the point of passing the information, but for passing the information suffices to pay only a part – i.e. a deposit for the coverage at the point of passing completed information. It is part of the payment, asked at the point of passing information, and the applicant is obliged to pay the rest of the coverage later. There is thus taken into account a situation of an applicant facing the necessity to pay unexpectedly a high amount of money. He/She is so given the option to show his/her will of picking up the information later and paying for it by putting down a deposit. In other words – the right for information is put higher here than immediate exacting of full payment, and the expression of willingness to pay the coverage is sufficient.

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### *Paying of the deposit beforehand*

#### **80. Is it possible to ask applicant for paying of a deposit beforehand, or as late as the information is prepared for passing?**

As the deposit is there meant part of the coverage paid at the point of passing the information. However, it is not possible to ask it beforehand. It is thus illegal if the authority asks a deposit at the point of submitting the application, and claims that the information will not be looked for unless the money is put down.

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### Coverage of costs

**81.** *I asked the authority by E-mail for several items of budget (particularly what is included under certain items of the budget, it is entirely common matter). As a response I got demand for paying the coverage, as the information must be sought out and processed. Is there any chance to oppose the charge?*

The question suggests that providing of information should be done in the same way as submitting the application, i.e. by E-mail. That is why the coverage of costs for copying and delivering of the document vanishes.

As for the expenses for seeking the information, the professional law literature agrees upon this (and the courts often take this opinions into consideration): the coverage for seeking out under the § 17 FOIA is possible to demand only in case the request markedly exceeds the common interest of public in information (in other words, if seeking out was so vast and demanding matter that it would affect the other work of the authority). Your inquiry suggests that it is not so, and therefore the authority should not ask for the charge at all.

In no case it is possible to ask any coverage or deposit beforehand, i.e. to condition by that the accepting and handling the application.

It is possible to recommend this procedure: To monish the authority that the demand of the charge is not legitimate, as the application is not extensive in any way, and that you insist on disposing of the application within the set time-limit, and that you at the same time ask in the sense of § 17 par.2 of the FOIA for the confirmation of the supposed amount of coverage of expenses. In case the information is not provided in the set time-limit, then it is necessary to lodge an appeal, and then to file an action if necessary. In case the authority announces to you within the time-limit, that the information is already prepared, and that the condition of passing it is the coverage of costs, then it is necessary to say, that the situation is confused (unclear provision on the coverage costs was implemented into the act in the scope of political compromises and DIY of the members of Parliament).

The publication of Korbel F., et al. .: THE RIGHT FOR INFORMATION says: *"Only with the application of wider legal context he/she can consider an immoderate demand as void for violating price regulation (which is here the maximum price set according to the § 17 par. 1 of the Act) in the sense of § 589 of the Civil Code , he/ she must object this void against the compulsory subject (it is a matter of relative invalidity under the § 40a of the Civil Code) and to consider the information as provided illegally by a fictitious decision in the sense of § 15 par. 4, against which he/ she can appeal... The applicant may theoretically submit to this illegal demand and to pay it voluntarily, and after providing the information object the invalidity in the same way and to ask for refund from the title of groundless enrichment under the § 451 of the Civil Code or from the title of responsibility of a compulsory subject for an incorrect official procedure under the Act N. 82/ 1998 Coll. by the suit according to the third part of the Rules of Civil Procedure. In case the applicant does not consider the cost coverage as duty emerging from the private law relationship, but from public law decision (the character of this coverage is still disputable), he/ she could appeal against the cost decision, and respectively the administrative suit. In case he/she considered the coverage by the form as a*

*decision, but by the substance as the obligation emerging from the civic law, he/she could appeal against the cost decision, then file an action according to the fifth part of the Rules of Civil Procedure. Equally, to file an action against illegal action of the administrative body can be also considered as a separate procedural procedure, as long as we considered illegal conditioning demand of coverage for other illegal act in the sphere of public administration, which is not a decision."*

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### ***Coverage of costs according to the FOIA and the Charges Act***

**82.** *Is there to the information provided from the official files, registers, books, records, entries or documents in the aforementioned way applicable the Act to regulate administrative charges (50 CZK per page) or the provided information coverage tariff according to the Free Access to Information Act?*

In case the information is provided according to the FOIA, in other words if it is a general requirement of disclosing information, then the FOIA is preferred and the procedure described in it, including the coverage of costs. These are set in the § 17 par. 1 : *"in the amount that can not exceed costs connected with...procuring copies"*. The authority hence can ask only the usual price, e.g. 1. 50 CZK per a piece of A4 copy.

Only in case the copy is procured in the scope of other regime than the FOIA, i.e. in those cases when the applicant does not proceed under the FOIA, because the particular situation of providing with a copy to a defined circle of people is described in a special law including a reference to the Administrative Charges Act, then there is an administrative charge used. But I must point out that in case of a photocopy it is not 50 CZK, but on the basis of authorization in this item: *"in case of copies made by the photocopiers the administrative body reduces the charge according to this item for 70 %"*, in this case it will be 15 CZK per a copy.

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### ***Coverage in case of disclosing information***

**83.** *I asked for information, but the local authority withheld it, and at the same time they ask me for coverage of financial costs connected with handling the application (seeking the information out, printing at the printer, postage). Shall I pay?*

Paying of coverage under the § 17 of the FOIA is admissible only in case of the information having been provided. It is not necessary to respond anyhow to this part of the local authority decision. All over the Europe there is paid only the provided information, and not handling the application as e.g. decision of the Commission against Germany from September 9, 1999 shows:



Judgement of the European Court in case of C-217/97:

*"FRG does not enable charging only in situation of the information having been really provided, and thus did not fulfill its duty arising from the art.5 par. 2 of the Regulation N. 90/313."*

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***Cost Coverage for incomplete, twisted or misleading information***

***84. I asked for a document the local authority permitting a waste dump. I was delivered by registered letter with report on receiving and handover of the building site that takes this waste dump into account, but is issued by a building company, so it does not permit the waste dump. Shall I pay for such information?***

Of course, not. Actually, you did not get the requested information in the set time-limit. It caused a fiction that the authority had made a negative decision.



Example: Within 14 days from the deadline expiry you should appeal against withholding the information. Write in the explanation what you asked for, and that you did not obtain it. That you received something what you did not ask for, and so the application was not complied with. That is the reason why you appeal against the fictive withholding of requested information.

In case you do not get an answer or you get what is in principle withholding, it will be necessary to file an action.

### **Information on building procedure**

**85.** *There is being done an extensive renovation of building at the neighbouring estate, but I am not the participant of the proceeding. The building office will not provide me with any information. Is it legitimate?*

It is not. Even from the building proceeding there must be provided information to everybody. It is aptly expressed by the judgement of the Regional Court in Prague from the date of 21 May, 2002:



Judgement N. 44 Ca 34/2002:

*"Providing information in the sphere of territorial planning and building procedure is subject to the amendment involved in the Free Access to Information Act..."*

*Only for technical form of "looking" into a document there set a variation by the Building Code which is by the aforementioned judgement described as following: "At providing information in the specific form of looking into document, it is necessary to respect the conditions set in the § 133 of the Building Act. This court conclusion is based on the fact that the Free Access to Information Act is a general norm adjusting the free access to information and the duties of compulsory subjects at fulfilling of this right. The provision of the § 133 of the Building Code is the lex specialis for this Act, but only for cases adjusted in this provision.*

*The text of the provision of § 133 of the Building Code suggests that it applies only to the looking into the building documentation, and not to the providing of information in the building and territorial proceeding generally, and it is possible to use it only in case of request for looking into this documentation. It is obvious from the petitioner's application that he did not ask for looking into the building documentation, but asked for providing of information in the form of copy of some documents. This duty to provide requested information in this way is imposed on the defendant by the § 14 par.3 let. c) of the Free Access to Information Act."*

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### **Information from the building procedure**

**86.** *The Building office witholds information on the passed building procedure (territorial decision of a particular construction including all supplements, issued territorial decision, request for building permission, issued building permission and approval decision to this construction). Do we have right for them? Can we ask the state police so that they would help us by help of their presence to obtain this information?*

The answer is simple: you have the right for practically all the information and the building authority is obliged to provide you with it.



It is not only grounded on a very homogenous attitude of legal theory contained in the professional literature, but also on several judgements of the administrative courts (see e.g. the Assotiation of Friends of Nature in the town of Havířov versus the Local Authority in Karviná – in the question N.4). These opinions and judgements say that *"the building procedure is not a comprehensive arrangement for the access to information, and that is why there is always applied the Free Access to Information Act"*. According to it you are entitled to get the requested information within 15 days. The Police of the Czech Republic is not justified to make any steps in the given matter. Your option of defence is only the way of appeal against withholding of information. That is necessary to submit within 15 days since the information was refused, to wit even in case of withholding through the inactivity of the authority.

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### ***Difference between taking a look and getting a copy from the building proceeding***

#### ***87. Why is there made a difference between taking a dip and getting a copy from the building proceeding?***

There is applied another protection regime for providing copies and another regime for the possibility of looking into, i.e. physical contact with documents. This provision involves logical demand on physical protection of kept documents (it is common that in the archives of the building authorities various “losses“ and counterfeiting of documents occur, especially of building plans). Futhermore, this demand presents also the duty and possibility of the authority to ensure by providing in the form of copy that there will not be provided protected data (in case they exceptionally occur in the document), e.g. personal data, or some classified facts, e.g. from the sphere of the crisis proceedings,...) Providing in the form of copy thus enables (and imposes) the authority to leave out such details according to the § 12 of the FOIA (e.g by blacking out,...)

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### ***The building authority refuses to disclose the term of the occupancy permit procedure***

#### ***88. I asked the building authority for the information (under the FOIA) whether there is set a term for the occupancy permit procedure for the construction, in which I take part. There are plenty of imperfections in the construction and I want to monish to them in the occupancy permit procedure. It was the reason why I enrolled as the participant of the occupancy permit procedure. The building authority not only witholds me the possibility of inspecting the document, but also refuses the right for a copy of the "Announcement on the opening of the occupancy permit procedure and inviting to verbal negotiation" to me. What shall I do?***

Provided you asked for information under the FOIA, and you did not receive the information within 15 days, or you got a decision of withholding information, you must appeal at the latest within 14 days. It is possible to pre-estimate that the information on the date of the occupancy permit procedure is not subject to any protection, and thus it must be provided. In the compliance with the judgements in similar cases you are entitled to get the copy of the "Announcement on the opening of the occupancy permit procedure and invitation to the verbal negotiation", where can be made personal data illegible.

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In case you are participant of the building procedure (but it does not arises only by your "enrolling" ), you have the right to take a look into the document. However, it is not necessary so that all the participants of the building proceeding were the participants of this proceeding, and were invited to the occupancy permit procedure.

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### ***Copy of the proceeding building or planning permission procedure***

**89.** *Can I ask the Building Office for a copy of a document from the proceeding building or planning permission procedure? The Building Office announced to me that the materials of a procedure under way can be only looked and the extract can be done only in the form of notes. I suspect the office of exchanging the projects for building permission – in the original ones there were heights of constructions higher than in the planning permission and the heights in the new projects are identical with the planning decision. I was said that I can get copies only from the closed administrative procedures.*

You are entitled to get copies even from the proceeding administrative procedures. The administrative authority will only made restriction of the information protected by the law (personal data, ...). Claim on copies on the basis of the FOIA is supported e.g. by judgement of the Friends of Hasina civil association versus the District authority of Nymburk:



Judgement N. 44 Ca 179/ 2002:

*"The Rules of Administrative Procedure sets that the participants of the procedure are entitled to look into the documents. However, it is not possible to infer from it that the other applications for information will be withheld on the grounds of applicants not being the participants of the procedure."*

Providing of information by the compulsory subjects on the basis of their powers in the sphere of town and country planning and on the basis of the Building Code is ruled by the amendment included in the FOIA. At providing of requested information in the form of looking into the planning documentation and the construction documentation it is necessary to respect the conditions set in the § 133 of the Building Act.

However, the form of inspecting is only one of the specific forms making sense that make the information available: e.g. if the applicant only concretizes what he wants to apply for in the form of copy, or if he/she wants to make sure of the authenticity of documents. To this form (inspecting) and **only to that** there applies a special amendment described in the Building Code.

Termination of an administrative procedure does not present a parameter, according to which there should be ruled providing of information. The information is provided or protected only and solely according to its own characteristics, and not according to the context in which is set. Otherwise, there could be refused information accessible earlier only for the reason it later got into a commenced administrative procedure.

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### **Copies of building permission**

**90.** *I asked the local authority for providing information – a copy of building permission for construction of nine residential houses. The authority answered to me: Under the Act N. 106/1999 Coll. to regulate the free access to information, as amended, in the sense of the § 133 of the Act N. 50/1976 Coll. to regulate planning of towns and villages and the Building Code, as amended, we call upon you to supplement the request, e.g. to prove the legitimacy of your request, i.e. within 30 days. In case the replenishment is not delivered within this time-limit, your request for information under the Act N. 106/1999 Coll. will be dismissed. Providing of information by the compulsory subjects on the grounds of their powers in the sphere of planning and the Building Code is ruled by the legal regulation involved in the Act N. 106/1999 Coll.. At providing of requested information in the form of looking into the planning documentation and the construction documentation (or making copies of this documentation) it is necessary to respect the conditions set in the § 133 of the Act N. 50/1976 Coll.*

*I want to look into the building permission, because the building owner built completely different building than for which he had a valid planning and building permission. I do not care for looking into the project documantation at all. It is already the second inquiry to the local authority. How shall I proceed further and how shall I complete my application?*

The authority is trying to confuse you in an unbelievably cheeky way: you asked for a **copy** of the building permission. The answer of the authority nevertheless refers to the other technical way of making the information available after the request – that is **inspecting**. There is the **Resolution of the Constitutional Court N. III. CC 156/02**, from which obviously the building authority quotes, but the authority itself added the words: "possibly making copies of this documentation". Precisely to the copies such procedure does not apply, as the Constitutional Court emphasized. Proceed therefore according to your original request: after expiration of a 15 day time-limit, or after receiving any announcement from the authority, which contains "withholding" of the requested copy of building permission, formulated in one way or the other, there de iure occurs withholding of the requested information from the side of the authority. It is confirmed by the Resolution of the Supreme Administrative Court N. A 1/2003 from the date of 17 July, 2003 (similarly also the judgement of the Supreme Administrative Court 7 A 114/2002 from the date of 28 August, 2003):



Judgement of the Supreme Administrative Court N. A 1/2003:

*"A mere official letter is not possible to consider as the decision of withholding information and in the given case there occurs the fiction of making a negative decision according to the § 15 par. 4 of the Act N.106/1999 Coll."*

However, such withholding is unjustified, which is proved by many judgements in the equal matters. It is necessary to appeal against this withholding at the authority where you originally submitted the application, to wit within 14 days from that refusal.



Example: Just in case you should write in the appeal that with respect to the fact your authority did not instruct you of the possibility of appeal, it is regarded that according to the § 54 of the Administrative Procedure Act (1967), the time-limit is

3 months (see § 54 (3) *"In case the participant of the proceeding thanks to wrong instruction or as he/ she was not instructed at all, submitted a remedy after the time-limit, it is regarded that he/ she submitted it on time in case he/she did it from the date of the decision announcement."*) I therefore recommend e.g. this sentence: *"I appeal in time with regard to the § 54 par. 3 of the Administrative Procedure Act."*

In the appeal you should mention again, what kind of providing information you request, and that this form (providing of copy) is not subject to the regime given by the authority. Support your right for getting a copy of the building permission by e.g. the judgement of the Friends of Hasina Civic Association versus District authority of Nymburk:



Judgement N. 44 Ca 179/2002:

*"As the special regulation on providing information in the sense of regulation of § 2 par.3 of the Free Access to Information Act is not considered the Building Act which adjusts primarily public law relations in the field of planning towns and villages and the Building Code...the above-mentioned suggests that providing of information by the compulsory subjects on the grounds of their powers in the sphere of planning and of the Building Code, is ruled by the legal amendment involved in the Act N. 106/1999 Coll."*

As the authority tries at the same time to use for blocking the information the provision on replenishment of the application (§14 par. 3 let a)), I recommend to add also a sentence in roughly this wording:



Example: "Even though I regard your demand of specifying the request according to the § 14 par.3 let. a) as legally wrong, together with this appeal I submit the specification requested by you in that sense that for the requested form of providing information it is presented by the reasoning of this appeal."

## VI. THE OTHER

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### ***Veracity of information***

**91.** *Is there anybody who checks, whether the information given to the citizen was right and complete?*

Unfortunately, the law does not contain any check or sanctions: The applicant has only the option to appeal in case he/she assumes that he/she was not given adequate information or that the answer was only partial. The further step is the court that will issue a final verdict.

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### ***"Official" and "non-official" information***

**92.** *The authority organizes so called "working meetings" (e.g. with the representatives of the local civic associations, with the local entrepreneurs,...). I asked for the information on the criterion of the selection of participants and who makes the selection (I was refused according to the § 11, par. 1 let. a) as well as I was withheld the minutes of the session with the comment that "it is not official". It would be surely right in case that all of the given group were (publicly) invited to such session. Nevertheless, the meetings are confidential and only for the selected ones.*

You are fully entitled to get the requested information. The free access to information and the FOIA do not know the term **official**. Either the information is at the authority's disposal and relates to its powers (which applies in this case), or it is not at the disposal or is not related to the powers. The authority must provide such information at the request, although it feels it as unofficial. Similarly it must answer to the request, **what is the criterion of the participants selection and who makes it**. It must answer either that there is no such criterion and it is made thoughtlessly, or to provide it if the criterion exists.

But you might get at the interdigitation of personal activities of some council members with performance of their mandate and with work of local authority. In case the sessions and negotiations are made with the application of the authority, with the financial or organizational assistance of the authority and the authority takes use of the results, then it is a kind of information that must be provided to the applicant with the authority. In case it is only personal meeting of the representatives, then they get into the cross of interests (see the Communities Act, the passage on the cross of interests), or it could be a misuse of public official status, or illegitimate using of community resources for private purposes. Precisely to be all these conjectures cleared up, it is necessary to enable access to all the above-mentioned requested information.

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### ***Price information, paragraph 3 of the § 11***

**93.** *Can or even must a central administrative body issue at the request of legal entity the price information which is acquired according to the § 12 of the Act N. 526/1990 Coll., on prices, and which is evaluated for its own need? Must the authority announce, how is the*

***information evaluated? What about the duty of reticency? What does in human tongue mean the § 11 par.3 of the FOIA?***

The above-mentioned provision of the FOIA is really complicated and asks for clarifying. The interpretation in professional literature is uniform: Various inspecting and control bodies (the State Power Supply Inspection, The Supreme Audit Office, the Securities and Exchange Commission, customs bodies, Trade Licence Offices, the Czech Trade Inspection,...) acquire during the performance of their activity various information on other subjects, particularly on private individuals and legal entities. These compulsory subjects so get to the great amount of information of confidential character, and only some of them are linked with the (resulting) fulfillment of control or inspecting tasks of this body. Providing of information is for this reason limited only to that information, that is directly bound to fulfilling of the respective body tasks. **Said in human speech:** The control body reveals by its activity some kind of public interest, therefore the public should be entitled to get information on revealing of this public interest. Since such body acquires in practice even that information, that goes beyond the borders of its public interest, it should not be further provided. It is the meaning of the aforementioned provision.

In the given case the price control bodies can provide only that information which is **directly** linked with the fulfillment of their tasks. That is in the Price Act formulated in this way:

*“The price control § 14 (1): The price consists in*

*a) finding out, whether the seller and purchaser do not violate the provisions of this law and the price regulations,*

*b) in verifying of the correctness of the grounds presented for the needs of evaluating the price development, price regulation and for the proceeding to deal with a violation of price regulation. “*

The price control body so for example provides with the information, whether a particular controlled subject breaks the law and other regulations, or from which data (generally speaking) it was found, but it will not provide this ground data.

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### **Public tenders**

**94. Which information on the course and results of a public tender is the compulsory subject obliged to provide at the applicant's request so that it would not contradict a single one of the mentioned laws?**

Level of untransparency in the ordering of public contracts is very high in the Czech Republic (as it appears from the Transparency International ranking). The purpose of the Act to regulate ordering of public contracts is precisely their "public ordering". It is impossible to realize the transparency otherwise than by citizen's access to information that sufficiently show the procedure of the public order. The compulsory subject must provide, in compliance with the Charter of Human Rights and Freedoms and international treaties, all the information in its possession, except of those set by the law. The Act N. 40/2004 Coll. to regulate the public orders does not set any restrictions. It only reckons on not offending of the protection of information protected by other regulations (personnal data, trade secret).

The passage referring to the report on the offers evaluation, § 63 par. 2 says: *"The sponsor is obliged to enable all the applicants, unless they were excluded from the tender proceeding, to look into until the contract is made, and to make a copy or an extract from it."* It is not possible to interpret it as a restrictive regulation. On the contrary, it is a widening provision which poses three above-standard possibilities for members of the tender. They can look into without any formalized procedure as is e.g. submitting of an application,... They can look into immediately, i.e. without any time-limit for handling the application and can inspect the original report, so they can not be referred to a copy or an extract. It therefore does not mean that "into the report on the appraisal and judgement of public order can look only applicants for this order", and it does not at all mean that the information from this report could be withheld to any applicant.



Example: For the same reason it is impossible and legally ineffective if the sponsor sets in its internal regulation that "the report from the board for appraising and judging of offers is available only for applicants".

It is possible to define some specific types of requested information:

The results of vote of the most advantageous offer are typical public information and have to be provided with the applicant. Otherwise the public tender loses the character of public tender.

It is necessary to make a selection in case of detailed data in particular offers according to the types of classified information permitted by the law (trade secret, personal data, intellectual property protection).

The membership in the board is typically public information. The name of a person does not present a kind of personal data. However, it is impossible to provide that kind of personal data about this person which is not connected with the performance of a board member (e.g. address).

The Public Orders Act establishes the Informational system on placing of public orders, in the frame of which is the Ministry for Regional Development bound to publish actively some information on the public tenders at so called "central address" on Internet at [www.centralniadresa.cz](http://www.centralniadresa.cz). It is a matter of extending the right for information that does not restrict in any way the general right for information according to the international treaties, CHRF and the FOIA. It is hence not possible to infer from the extent of information published on the central address the extent of information provided at the request.

**Note:** *Many sponsors can be surprised by this legal state, as there is widespread a baseless idea that the public tender proceeding is kind of "confidential".*

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### ***The report on a competitive bidding***

**95.** *I have a suspicion that the competitive bidding with respect to a position at the municipal authority was not objective (kin relationship between the winning applicant and the head of department, that was looking for a new worker and was in the selective board). What kind of information am I entitled to get?*

You are entitled to be acquainted with the content of the report, which there must be on the competitive bidding made (§9 par. 5 of the Act N. 312/2002 Coll. to regulate the officials of territorial self-government units).

According to your letter it might have been the violation of the provision:

*“§ 41 Joint provisions on boards (2): The members of the board can not be the individuals provided there are well-founded doubts about their disinterestedness with regard to their relationship with some of applicants in a tender or with the applicant for accreditation or with an official taking exam. The member of the board is obliged immediately after he/she learns about the facts indicating his/her bias to announce this fact to that person or people who appointed him/her. The applicant, participant of the procedure or official will announce the facts suggesting a bias of a member of the board to the person, who appoints the members of the board, as soon as he/she learns about these facts. The person, who appoints the members of the board will decide without unnecessary delay of the bias of the board member. In case there is found the bias of the board member, this member will be dismissed and another person will be appointed to the position.”*

In case of real violation of this provision you can turn to the Regional Authority. The control of community work is made by the Regional Authority under the § 123 of the Communities Act and of the followings:

*"§ 123 (1) Supervision over the execution of communities separate powers is performed by the Regional Authority 36b) in the delegated powers and the Ministry of Interior. The supervision is made subsequently and there is probed the accord of generally binding community regulations with the laws and the accord of resolution, **decision and other community bodies measures and other legal regulations.**"*

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### **Information on the amendment preparation**

**96.** *The Ministry of Health is preparing the regulation amendment. They present it to some organizations for comments. Is it possible to get this draft? Who decides of the fact who will be invited to such a proceedings and who not, and on the basis of what criteria?*

**The Ministry of Health is obliged to provide the draft text of the amendment, which the Ministry processed and which provides for discussion to other subjects, particularly those ones that are out of public administration, to an applicant at the request.**

This duty emerges from these regulations:

1. Art.1 of the Charter of Human Rights and Freedoms: *"People are free and equal both in their dignity and rights."* In case the Ministry of Health provided the text (the information) to some, it can not refuse it to the others.
2. Art.17 of the Charter of Human Rights and Freedoms: *"...2)Everybody has the right to express his/her opinions in the words, in writing, pictures or other ways as well as freely search, accept or disseminate ideas and informations without regard to the state borders.*

*...(4) The Freedom of speech and the right to search and disseminate information is possible to restrict by the law in case it is a measure necessary for the protection of the rights and freedoms of the others, for the state security, public security, for the protection of public health and morals. "*

None of the above-mentioned reasons (par.4) for restricting the access to information, is not fulfilled here. Even if some inferior regulation seemingly suggested something like that, the Ministry of Health is obliged to follow the constitutional laws.

The Act N. 2/1969 Coll. to regulate the constitution of ministries and other central bodies of the state administration of the Czech Republic:

*"§ 22 The Ministries examine social problems in the scope of their powers, in the scope of their province, analyse the achieved results and make measures for solving topical issues. They process the concepts of development of the entrusted sectors and solution of crucial issues which they present to the Government of the Czech Republic. They inform the public in an adequate way on the drafts of crucial regulations."*

Considering the above-mentioned regulations (particularly of higher legal force) it is **impossible to use** the § 11 of the FOIA for this case:

*"...(1) The Compulsory subject can restrict providing of information in case: ...b) it is a new information that came to rise during the preparation of the decision of a compulsory subject, in the absence of a provision to the contrary; it is in force until the time when the preparation is finished by a decision."*

The Ministry of Health is probably prepared to argue after withholding of this information, that it is not any definite material, and that there will be used the aforementioned provision of the FOIA. The erroneousness of such procedure is partly clear from the fact, that the Ministry of Health has provided this information to the others (the principle of equality), and partly because the preparation of the amendment regulation is so important regulation, that it is necessary to approach it in that way so that the use of the restrictive provisions would have to be really inferior to some of the characteristics, set in the CHRF or in the International Treaty as the possibility of restriction. However, it is not so. The preparation of the amendment can not in any case threaten any protected interest, given by these norms.

The public access to regulations in the process of preparation is in some countries directly and explicitly modified.



Example: The Slovak Act N. 211/2000 Coll to regulate the free access to information says in the § 5: *"The compulsory publication of information (5): The Ministries, the other central government bodies and local government bodies release the materials of programmatic, conceptual and strategic character and the texts of suggested legal norms after their release for interdepartmental commenting proceedings."*

However, the concept of the Czech Act to regulate the Free Access to Information avoided from the beginning such technically detailed description of particular forms of information. That leads often to groundless withholding of information. The Czech arrangement comes out

of it that the obligation to provide such information arises from the whole legal context, especially from the superior legal regulations.

The Ministry of Health releases some regulations, which are in the process of preparation on its websites, which is praiseworthy. But it can not on the basis of it introduce a kind of own legal regime, in which some information will be provided and some not. There is not, I suppose, any legal amendment to the question of authorization of a professional organization. It is the Ministry's own decision, who will be invited to so called "commenting". In the scope of this own decision, though, the Ministry of Health can not violate the laws, and that is why it must follow them in the field of access to information, as mentioned above.

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### ***Information into the past, shredding, storage of documents***

#### **97. *Is it possible to ask for information also retrospectively for the period of 4 years?***

The authority provides information that is at its disposal. It will provide also that one, relating to whatever backward period. The limit of providing information in the time will be only that situation of not having the requested information at disposal, as it was e.g. in compliance with the Safe Destruction of Official Documents Code destroyed, or in the compliance with the Archive Act it became the archive material and was passed on into an archive. The interested person then has the same access to such publicly accessible information on the basis of the Archive Act.

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### ***Contract made before the effect of the Free Access to Information Act***

#### **98. *I want from the compulsory subject information of the contract made before the effect of the Free Access to Information Act. Do I have right for it?***

There is univocal agreement on this question in the professional literature: by the effect of the Act N. 106/1999 Coll. (FOIA) on January 1, 2000, did not arise any change, nor any problem in the access to information. It is not case of so called retroactivity. There are three reasons for it:

- 1) The character of information at authorities disposal is such, that the information itself does not present legal relationships bound to the time of beginning or acquiring, but they present rather "things" of its kind that are at disposal without respect to the time of beginning or acquiring.
- 2) The general access to information was introduced as early as in 1991 by the accepting of the Charter of Human Rights and Freedoms. It is performable directly, the FOIA presents only "implementary regulation" by which, though, it was not necessary to constitute the right for information. The date of 1 January, 2000 so does not mean any change in the information accessibility. Moreover, there is a question whether the general access to information was not introduced already by the effect of the International Treaty on Civil and Political Rights from March 23, 1976, namely with the respect to so called direct performability of international obligations in the sphere of human rights, or the constitutional precedence of these treaties to the laws of the Czech Republic – art. 10 of the Constitution of the CzR stated until 31 May of 2002 about these treaties that are

instantly obligatory and are prior to the law", after the amendment it states: "in case the international treaty sets something different than the law, there will be applied the international treaty". The date of effect of the FOIA thus does not play any role.

- 3) The amendment of the protection of particular types of protected information did not pass in the followed period through any crucial change unless we count changes of terminology and some procedures.

Besides, it is possible to say, that during formation of the FOIA, there was made vast analysis of the justified information protection in the Czech legal code so that there did not happen its unacceptable break. In this way there was e.g. formulated § 11 par. 2, let b) or the par. 3 of the FOIA.

For the above-mentioned reasons it is possible to exclude that there occurred some problem as for the availability of the arisen or acquired information by the gradual transition from the confidentiality to openness of public administration (from 1991 until now).

It is also necessary to mention at the penetration of the archives adjustment (the act from 1976) with the general access to information. Though, in time of issuing of this publication it is being changed by a new archive act, that in principle keeps the same public access to the public information as before its archivation.

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### ***Applicant***

**99.** *Am I entitled to get the information on the authority expenses, if I am authority employee?*

The right for information is not bound to any personal characteristic of applicant, so your employee status does not have any impact on the request and it can not be taken into consideration. The authority can not require any excess personal data that does not relate to the application.

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### ***Databasis, registers – coverage of the expenses***

**100.** *The Ministry of Education makes and keeps register of the schools network. It is administered by the Institute for Information in Education (IIE), which provides so called selections from the register database. As a special selection there exists a complete register on CD. Providing is operated by a special price list (6 000 CzK per CD). Does the FOIA apply to providing of this database? If so, are they obliged to provide the information according to this law, i.e. including the fee for providing information? Is it possible to restrict the subsequent usage of the data obtained according to the FOIA on the basis of making agreement with IIE?*

The FOIA applies fully to providing of the above-mentioned information in the form of database selection (here the whole database). None of the special laws, as far as it was found out, sets any difference or different delegation. That is why the § 14 of the aforementioned act applies to the coverage of expenses. The amount of 6000 CzK per CD with recorded information is obviously not corresponding to the legal authorization which enables to

demand the coverage in the amount *"that can not exceed the expenses connected with the seeking the information out, making copies, procuring of the technical data carriers and sending the information o the applicant."*

Equally, setting a kind of quasi contractual conditions for providing this information is entirely beyond the scope of legal possibilities that IIE and ME have. The par.17 of the Charter of Human Rights and Freedoms sets that the restriction of the right to information is possible to set only by the law.

Briefly: workers of IIE probably wantonly promoted themselves into the role of lawmakers. There were conducted discussions on the similar possibilities of amendment at the approving of the FOIA, but the Parliament did not embodied them into the Act. The Ministry of Education (IIE) illegitimately orders, in the contradiction with the Constitution ("art. 2 par. (3): The state power serves to all citizens and is possible to exercise it only in cases, in the boundaries and in the ways, set by the law."). I recommend to send an application to this institution for providing information on what legal regulation is the mentioned part of the Tariff called "Prices for selections" based on. And then in case it should be the application of the FOIA in the sense of coverage for seeking out, to ask for detailed evaluation of these expenses. It is obvious from the released tarrif that the requested information is available without seeking, or that its seeking out is made by the "authomatized way as part of informational technologies" (see art.3, par. 2 of the Government methodical instruction from the date of 6 September, 2000). Furthermore, we can note that it is not possible to project former investment or operational expenses into the coverage for providing information. These are covered by the citizen's taxes.

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### ***Medical reports***

***101. Am I entitled to obtain medical reports copies of my deaceased father for the sake of ascertainment of the family anamnesis? My local doctor said me that I do not have right for it.***

You have right for copies of this documentation. There is § 12 of the Civil Code that applies to the protection of this documentation:

*“(1) The documents of personal character, likenesses, pictures, video and audio records concerning a physical body, or his/ her manifestations of personal character can be procured or used only with his/her consent.”*

In this sense it is a document of personal character.

Furthermore, in case of a person already departed, there will be applied the provision of paragraph 15 of the same act:

*“The right for protection of personality after the death of a physical body pertains to the husband/wife and children, and if there are not any, to its parents.”*

You thus, in fact, exercise the right for your father's personality protection, under which also the consent with use of a personal character document comes.

It is not possible to apply any provision of the Act N. 20/1966 Coll. to regulate people's health care. Its § 67b par. (9) says: *"The rights and obligations during the processing of personal data related with ensuring the health care conform to a special law."* This provision, however, is not possible to apply, as the personal data protection applies only to the data on living people. By the moment of death the same datum in the documentation changes de iure from the "personal data" protected by the law N. 101/2000 Coll. into the "document of personal character, protected by the above-mentioned provisions of the Civil Code.

It is not possible to demur even the § 67b par. 10 of the People's Health Act that enumerates who can look into the medical documentation, but the remains are not mentioned here. It is necessary to emphasize here that it is in principle a legal relationship, by which there is implemented the fundamental right in accordance with the article 17 of the ChRF – the access to information – under very specific circumstances where is narrowly specified not only information, but also the person, whose approach to the information is judged (the survivor). It generally stands that a restriction of the access to information must have character of a negative statement excluding the access of a given person (circle of people) to the given information (circle of information). It must be so called negative formulation (the access will **not** be provided, **not** enabled, it is **not** allowed to look into, it will be provided **only (solely)** to that, who...and similarly). Vice versa so called positive formulation, enabling the access to information of a particular circle of people, can not mean restriction for the others.

In the examined case is hence the restriction of the access to the "documents of personal character", which is presented by the medical documentation, set for all people by the above-mentioned provision of the Civil Code § 12 par.1, and they are thus bound to the approval of a person. In case of a departed person can be this approval given only by the husband and children, and if there are not any, then parents. That is the basic restrictive clause. The § 67b par. 10 of the People's Health Act set as a special restriction, stands against it as an extension of the possibility to look into, and this even without this survivor's approval enables the doctors and other specified people, medical workers basically, to look into the documentation.

At the same time there is another possibility: your nursing doctor is the person, who is entitled to acquaint with this documentation in the scope of a concrete providing of the health care (to you). That one is even obliged, according to the § 23 par.1 of the People's Health Act to give you this information: *"The doctor is obliged to instruct in proper way the patient, or the members of his/her family on the character of illness and the necessary operations so that they could become active coworkers in providing of medical and preventive care."*

Your doctor is so entitled to secure everything in the medical documentation of your departed father that could have impact on your health state, and is obliged to announce you these facts.

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### ***Providing of information on a criminal procedure under way***

***102. I submitted explanation according to the § 158 par. 5 of the Criminal Code in the case related to the suspicion of criminal act of spreading false news, as I allegedly spreaded it. The Police authority put away the case and did not comply with my application for enabling reading the resolution and the report of the commission of crime submitted against me. Not even the Prosecuting Attorney complied with my request. Does the Act N. 106/1999 Coll. apply to this case?***

The Free Access to Information Act (FOIA) in the § 11 par. 4 let. a) explicitly excludes providing of information on criminal procedure under way. However, in this case the criminal procedure was already finished by not proceeding of the case. The obstruction according to the given provision so disappears. Furthermore, there will follow judging of the impact of a special act, here the Act to regulate the criminal court procedure, that says in the § 8a:

*"§ 8a Providing of information on criminal procedure*

- (1) The authorities active in criminal procedure inform public on their activity by providing information to the news media. At the same time they take care of not threatening the clarification of facts important for judging a case, do not publish data about people, who take part in the criminal procedure, that are not directly connected with the criminal activity, and so that they did not violate the rule that until the guilt is not pronounced by the final and conclusive convicting decision, it is not possible to look at the person, against which the criminal procedure is led as if he/she was guilty (§2 par.2).*
- (2) For the reasons given in the paragraph 1 the authorities active in the criminal procedure will deny providing of information."*

According to the par.2 there will be withheld every information to which it is possible to relate the characteristics according to the par. 1. The contents of criminal information filed against you, can not in principle pose such protected information. Only identification of the person who filed the information, could be protected, because here (in spite of certain unclarity of the wording) the police authority would probably assert the opinion that it is "data on people who take part in criminal procedure and are not directly related to the criminal activity", at least for the reason that it was not any criminal activity.

Judging according to the special act to regulate the personal data protection will come off the same – there will be excluded all the data that have character of personal data and that are not directly related to you.

You can therefore make a request under the FOIA on providing the information on literal content of criminal information against you. It is possible to recommend so that there would be attached the aforementioned interpretation and so that there would be emphasized that you suppose excluding all the data from requested information, to which protection according to the mentioned § 8a of the Criminal Code applies, but that you ask that piece of information to which this protection does not apply, and that the criminal information must out of the principle involve also this kind of unprotected information. I, however, suppose that for the police authority the situation will be so new and unknown that it will refuse providing of information. Then, it will be up to you how you will further enforce your right (appeal, law suit).

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### ***Statistical information from the Tax Office***

***103. Can I obtain information – statistical data (without concrete names) – from the Tax Office, to how many physical or legal bodies there was allowed the instalment calendar for the VAT debt for a calendar year?***

Yes, this information from the financial office is every applicant entitled to obtain: § 10 of the Act N. 106/ 1999 Coll. restricts providing of such information only to individual person, but it

does not relate to overall anonymized data. It is necessary to lodge an application (first it is possible to try it orally, the authority might comply directly). If you do not get the information even after the written application, it is necessary to appeal and to file an action.

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### ***Defaulting a deadline for appeal***

**104.** *The applicant asked in writing for providing information in 5 points. The authority answered in 4 points. As far as the point 5 is concerned the authority referred the applicant to another administrative body with the explanation that seeking the information out will take more time than the legal time-limit for an answer is. The applicant appealed against the decision of the partial providing of information. Although the authority contested this appeal, eventually the requested information was provided (22 days after submitting the appeal). Did the applicant proceed correctly? Is it possible to consider the second answer of the administrative body within the time-limit of 22 days as defaulting of the deadline for appeal?*

Formally assessed, the information under the point 5 was provided after the deadline, but it was not withheld by the decision (as your description suggests), its not providing was commented only informally, which does not constitute any legal relationship. As for the information under the point 5, there arose a legal fiction of denying information, and it was correct to submit an appeal against this kind of decision.

The administrative authority could solve the matter in the appeal proceeding by the error coram nobis (remedying of own erroneous decision) –i.e. by complying the appeal in full extent (§ 57 par. 1 of the Administrative Code). If it does not comply, the case must be passed to an appellate body within 30 days.

Your description does not suggest whether the appellate body was the same administrative body (it would be e.g. a case of community where the appellate body is the council or the mayor). If so, then it is not possible to apply the 30 days time-limit, and there was immediately running the 15-days time-limit for handling of the appeal. Even at this point – now the appellate body - could change the decision that it provided the information (as it was coincident with requested administrative body.) Nevertheless, it did it after this time-limit, therefore there already arose the legal fiction of the issued negative decision of the appeal. Formally said – this kind of negative decision is possible to challenge by suit in the court. Later providing of information (by 7 days) is beside it already so called void act, as it is impossible to decide twice in one matter.

In case the appellate body was not the same administrative body, then the requested administrative body had in fact for the error coram nobis – compliancy of appeal – the time limit of 30 days before passing the case to an appellate body. In such case the appeal was complied within the time-limit and it is not possible to challenge the matter by a suit.

We can see that it is a case of legalist and legally theoretical plaything. There is important that the information was provided and basically within the possibilities, which the administrative body had according to the rules (the Act N. 106/ 1999 Coll. and the Administrative Proceeding Act). I hence do not recommend any further procedure, although it would be in one case possible).

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### ***Transferring request to respective subject***

**105.** *The Free Access to Information Act imposes upon the authority so that the request for information, that is not related to its powers, would be put away within 3 days. It does not impose to announce the applicant, under the powers of which subject the requested information comes under. It does not even impose (as it is e.g. in case of complaints) to transfer the application to the subject relevant for its handling. A person who asks for information at a wrong authority, will learn only that he/she is wrong and nothing more (although the most reasonable would be to transfer his/her application to the correct place). Is it a gap in the law or is there any good reason for it?*

The aforementioned detail was discussed during the creation of the act, to wit from the points you quote.

The obligation of the public administration bodies to transfer wrong submission to a relevant place, presents the regulation which has to protect the citizen, not knowing exactly the organization of public administration, from the harms that could arise for him out of this unawareness. There prevailed the opinion that the access to information does not represent the right, whose immediate non-fulfilling brings an immediate harm to the applicant. It is more the right connected with the principles of functioning of a democratic state than with practical immediate impacts on the lives of individuals.

That is why the public authorities were not imposed to provide help considering the ascertainment of the "informational" competency. Moreover, the number of "informational" competencies is undoubtedly much more higher than the number of the "decision-making" competencies, so to want from the authorities to find out where it is possible to obtain some information, would be (at least in some cases) unsuitable and it could lead to the misuse of the public administration.

It is also necessary to recognize that the scope of "compulsory subjects" according to the FOIA is much more higher than the scope of the administrative bodies. It after all covers the Universities, the Czech TV, the Academy of Sciences, allowance organizations, and even the trade organizations established by the state or communities. In such a wide spectrum it would be impossible to realize the "transferring to a relevant place".

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### ***Auditing reports of the Labour Office at employer***

**106.** *Does the trade union have right according to the Act N.106 for copies of auditing reports of Labour Office that are stored at employer (the elementary school)? Are there any restrictions?*

The elementary school is a compulsory subject according to the Act N. 106/1999 Coll. (FOIA). It is bound at anybody's request, so also at trade union's request to provide all the information that it has except of that one, which is explicitly protected by the law.

The afore - mentioned information – i.e. the information included in the auditing reports on the inspection carried out by the Labour Office, do not generally have the character of protected information. The provision of the § 11, par. 3 does not apply to the given situation, as the inspection was not carried out by the compulsory subject (the school).

The compulsory subject can therefore withhold only protected data according to the § 12 of the FOIA. Here it could be most probably only personal data, so for example a passage, where the auditing report states a particular person in connection with some other personal data of his/her (the mere stating of names, e.g. names of school staff, is not kind of personal data provided these data have been already released in a way, e.g. on the school website...)

At the same time it is necessary to take into consideration the fact that the data on the official activity of officials (here e.g. the headmaster and teachers) are not subjects to the personal data protection. Thus it is imposible to refuse e.g. the data on the audit findings relating to the work of the aforementioned people.

The application asks providing in the form of copy. The compulsory subject is obliged to comply with this request, and in accordance with above-mentioned § 12 will hence provide the copies of records with protected personal data having been made unreadable (by covering during copying...).

# ACT N. 106/1999 COLL. TO REGULATE THE FREE ACCESS TO INFORMATION

## **106/1999 Coll. of 11 May, 1999 to regulate the free access to information**

Amendment: 101/2000 Coll.

Amendment: 159/2000 Coll.

Amendment: 39/2001 Coll.

The Parliament has passed the following act of the Czech Republic:

Section 1 – Purpose of the act

Section 2 – Duty to provide information

Section 3 - Definitions

Section 4 – Providing of information

Section 5 – Releasing of information

Section 6 – Duty to refer to published information

Section 7 – Protection of classified facts

Section 8 – Protection of personality and privacy

Section 9 – Protection of trade secrets

Section 10 – Protection of confidentiality of information regarding personal worth

Section 11 – Other restrictions of right to information

Section 12 – Terms of restrictions

Section 13 – Application for information

Section 14 – Procedure applied in respect of filing and processing of written applications for provision of information

Section 15 - Decisions

Section 16 - Appeals

Section 17 – Fees

Section 18 – Annual report

Section 19

Section 20 – Transitory and final provisions

Section 21

Section 22 - Effect

### **Section 1 – Purpose of the act**

The act regulates the terms and conditions of the right to free access to information and defines the basic terms and conditions under which information is provided.

## **Section 2 – Duty to provide information**

(1)

The bodies that are obligated to provide under this Act the information relating to the range of their powers are the state agencies, territorial self-administration authorities and public institutions managing public funds.

(2)

Such obligated bodies also include the bodies that have been authorized by the law to decide on the rights, interests protected by the law or on duties of natural persons and legal entities in the public administration sector. Such duty applies solely to the scope of their discretionary powers.

(3)

This act does not apply to the provision of personal data and information under a special law.<sup>1</sup>

## **Section 3 - Definitions**

(1)

For the purpose of this act, the "applicant" means any natural person or legal entity requesting information.

(2)

The "remote access possibilities" means, for the purpose of this act, access to information provided to an unlimited number of applicants through telecommunications media<sup>2</sup> (e.g., the Internet).

(3)

For the purpose of this act, the "published information" means information that may be at all times retrieved and obtained, especially information published in the printed form or on any other data carrier allowing to record and keep such information, information posted on an official bulletin board with a possibility of remote access, or placed in a public library.<sup>3</sup>

(4)

For the purpose of this act, "supporting information" means any information closely associated with the requested information (like any information regarding its existence, origin, number, reason for denial, the time limit during which the reason for denial shall exist and when it is to be reviewed, as well as any other important factors).

#### **Section 4 – Providing of information**

Obligated entities shall provide information to the applicant on the basis of an application or by publishing it.

#### **Section 5 – Releasing of information**

(1)

In order to inform the public, each obligated entity shall disclose at a place accessible to the public within its seat and offices, and shall allow making copies of the following information:

a) the reason and manner of establishing the obligated entity including all terms and principles under which it has been performing its activities,

b) description of its organizational structure, the place at which and the manner by which the information may be obtained, where to file applications or complaints, where to submit suggestions, motions or other requests, or where to obtain decisions,

c) the place where, the time limit within which and the manner in which it is possible to file a remedy against the decision of the obligated entity, including express requirements that the applicant is obligated to meet in this respect, and the description of procedures and rules that have to be adhered to in these activities, the name of the relevant form and the manner in which and place at which such form may be obtained,

d) the procedure that is to be applied by the obligated entity in respect of the processing of all applications, suggestions and other requests filed by citizens, including the applicable time limits that have to be met,

e) the summary of the most important laws and regulations applying to the conduct and decisions of the obligated entity, which stipulate the right to request and the obligation to provide information and regulate other rights of the citizens in relation to the obligated entity, including the information where and when such laws and regulations are available for inspection,

f) the schedule of fees charged for the provision of information,

g) the annual report on the activities performed by the obligated entity in the previous year in respect of the provision of information ( Section 18).

(2)

Each obligated entity shall publish information referred to in paragraph 1 above also in a manner allowing the remote access. This duty shall not apply if the obligated entity is a natural person.

(3)

Obligated entities maintaining and administering registers of information that may be accessed by anyone pursuant to a special law, are obligated to publish such information in a clearly arranged manner, allowing remote access. For this purpose, the obligation to prevent clustering of information under a special law does not apply to those entities.<sup>3a)</sup>

(4)

Every obligated entity may publish the information pursuant to paragraph 1 above in another way, and may also publish other information unless specified otherwise herein.

### **Section 6 – Duty to refer to published information**

(1)

If an applicant seeks information that has already been published, the obligated entity may provide to the applicant in lieu of the information requested by him, and as expediently as possible, but in any case not later than within seven days, the data that will allow him/her to retrieve and obtain the published information.

(2)

If an applicant insists on providing of published information, the obligated entity shall provide him such information.

### **Section 7 – Protection of classified facts**

If the requested information is designated, in accordance with the applicable laws and regulations<sup>4</sup>, as classified information, to which the applicant does not have authorized access, the obligated entity shall not provide such information.

### **Section 8 – repealed**

### **Section 9 – Protection of trade secrets**

(1)

If the requested information is designated as trade secret<sup>6</sup>, the obligated entity shall not provide it.

(2)

The provision of any information on the amount and recipients of money from the state budget, budgets of territorial (self-government) units or from any funds established by the law<sup>7</sup>, or on the disposal of assets of such entities, is not considered as a breach of trade secret.

### **Section 10 – Protection of confidentiality of information on personal worth**

The obligated entity shall not provide hereunder any information obtained under any tax, pension and health insurance or social security laws<sup>8</sup>, and regarding the personal worth of a person who is not an obligated entity.

## Section 11 – Other restrictions of the right to information

(1)

The obligated entity may restrict the provided information if such information:

- a) applies solely to internal instructions and personnel regulations of the obligated entity,
- b) is new information ascertained during the preparation of a decision of the obligated entity, unless stipulated otherwise by the law; this shall apply only until the issue of the relevant decision.

(2)

The obligated entity shall not provide information:

- a) if such information has been supplied by a person who is not obligated to do so under the law, unless such person gives his consent with the provision of such information,
- b) until the next period, if such information is published by the obligated entity pursuant to a special law<sup>9</sup> and within pre-determined regular cycles,
- c) if such provision represents a breach of protection of intellectual property under a special law.<sup>10</sup>

(3)

If the obligated entity is to provide information received from a third party for the purpose of performance of a task under a special law<sup>11</sup> pursuant to which the obligated entity is bound by the obligation or confidentiality or by any other procedure protecting such information from disclosure or misuse, but which may be provided in accordance with this act, the obligated entity shall provide only the information that is directly connected with the performance of its task.

(4)

Furthermore, the obligated entities shall not provide information on

- a) pending criminal process,
- b) court decisions,
- c) tasks performed by intelligence services,
- d) the preparation, course and review of results of inspections at the bodies of the Supreme Audit Office,
- e) activities of the relevant organizational component of the Ministry of Finance under the special law.<sup>12 a)</sup>

The provisions of the special laws<sup>13</sup> regarding providing of information in the aforementioned areas shall not be affected hereby.

## **Section 12 – Terms of restrictions**

The obligated entity shall apply all restrictions of the right to information by providing the requested information (including any supporting information) after excluding all information that is to be excluded under the law.

The right to deny information shall apply solely during the existence of the reason for such denial and the obligated entity shall verify in justified cases whether the reason for denial still exists.

## **Section 13 – Application for information**

(1)

The application for information may be submitted either verbally or in writing including telecommunications media.

(2)

If the applicant is not provided information on the basis of a verbal request or if the applicant does not consider the information provided on the basis of a verbal application as sufficient, it is necessary to submit a written application.

(3)

The provisions of Section 14, Section 15, Section 16 and Section 18 apply solely to written applications.

## **Section 14 – Procedure applied in submission and processing of written applications for information**

(1)

An application is deemed to have been submitted on the date on which it is received by the obligated entity. A notice submitted by the applicant that he/she insists on providing of information under Section 6(2) is considered as a new application.

(2)

The application must clearly indicate to which obligated entity it is addressed and who is the applicant. An application submitted through telecommunications media<sup>2</sup> must also include the appropriate identification of the applicant (e.g. his/her electronic address). If the application does not include such data, it is not considered as a motion hereunder and shall be suspended.

(3)

The obligated entity shall review the contents of the application and:

a) if the application is incomprehensible, does not clearly indicate what information is being requested or if its wording is too general, the obligated entity shall call the applicant within

seven days after the submission date, to clarify the application; if the applicant fails to do so within 30 days, the obligated entity shall reject the application,

b) if the requested information does not fall within its competency, the obligated entity shall suspend the application and shall notify the applicant within three days of such fact with reasons therefor,

c) shall provide the requested information not later than 15 days after the receipt of the application or restated application under paragraph (a) above either in writing, by inspection of the file and making copies thereof, or on memory media.

(4)

A record shall be made in respect of the procedure applied in the provision of information.

(5)

The time limit for the provision of information may be extended for serious reasons but for not more than ten days. Such serious reasons are:

a) retrieval and collection of the requested information in other offices located at a place other than the office processing the application,

b) retrieval and a collection of a large volume of separate and different information requested by a single application,

c) consultations with another obligated entity that has a substantial interest in the decision on the application, or between two or more components of the obligated entity that have a substantial interest in the object of the application.

In any of the above cases, the applicant must be demonstrably notified of such extension of the time limit and on the reasons therefor. Such notice must be provided in time before the expiry of the time limit for the provision of information.

## **Section 15 – Decision**

(1)

If the obligated entity does not satisfy the application, even in part, it shall issue a decision thereon within the time limit determined for the processing of the application, save for cases in which the application is suspended pursuant to Section 14(2) or 14(3)(b). If the obligated entity is a municipality, such decision shall be issued by the municipal office.

(2)

The decision must include the designation of the obligated entity, reference number and date of issue of the decision, the designation of the addressee of such decision, the verdict with the reference to applicable laws and regulations under which the decision has been issued, reasons for each restriction of right to information, instructions regarding the place where, the time when and the form in which it is possible to file an appeal, the signature of the authorized person of the obligated entity, his name, surname and title.

(3)

Any such decision is delivered to the applicant in person.

(4)

If the obligated entity fails to provide information or issue the decision pursuant to Section 15(1) within the stipulated time limit, it shall be deemed to have issued a decision denying such information. Such decision may be appealed within 15 days from the expiry date of the time limit designated for the processing of the application.

### **Section 16 – Appeal**

(1)

A decision of the obligated entity denying the application may be appealed within 15 days after the receipt of the decision or futile lapse of the time limit designated for processing of the application in the case specified in Section 15(4). The appeal shall be filed with the - obligated entity that has or should have issued the decision.

(2)

The appeal against the decision of the obligated entity shall be decided by the obligated entity that is the direct superior of the obligated entity that issued or should have issued the decision. In the case of a decision issued by a municipal office in respect of information falling into the independent competencies of the municipality, such appeal shall be decided by the municipal board, unless the municipal council determines that the appeal is to be decided by another municipal body. In all other cases, the appeal shall be decided by the person who presides over the obligated body that issued or should have issued such decision, and who is authorized to act on its behalf.

(3)

The appellate body shall decide on the appeal within 15 days after the submission of the appeal by the obligated entity. If the body fails to decide on the appeal within the above time limit, it is deemed to have issued a decision dismissing such appeal and confirming the contested decision, and the day following the expiry of the time limit designated for the processing of the appeal shall be deemed to be the date of service of such decision.

(4)

The decision on appeal may not be appealed.

(5)

A decision of a central state administration authority may be contested by a remonstrance, which shall be decided by the head of such central state administration authority. The provisions of paragraphs 1, 3 and 4 above shall apply as appropriate to the remonstrance.

(6)

A decision on rejection of an application may be reviewed by a court under a special law<sup>14</sup> (Section 247 et seq. of Act No. 99/1963 Coll. (the Civil Procedure Code), as amended) .

## **Section 17 – Fees**

(1)

In connection with the provision of information, the obligated entities are entitled to fees in an amount not exceeding all costs incurred in connection with the retrieval of information, copying, provision of data carriers and delivery of the information to the applicant.

(2)

The applicant shall obtain, on request, a receipt regarding the estimated amount of costs that are to be reimbursed.

(3)

The obligated entity may request payment of the costs or an advance therefor as a condition for the provision of information.

(4)

The above reimbursements are deemed to be the income of the obligated entity.

## **Section 18 – Annual report**

(1)

Each obligated entity shall publish until March 1 of every year a report on its activities relating to provision of information hereunder in the previous year. Each such report shall include the following data:

- a) the number of submitted applications for information,
- b) the number of submitted appeals,
- c) a copy of essential parts of each court judgment,
- d) results of proceedings on sanctions for failure to comply with this act, not including any personal data,
- e) all other information relating to the application of this act.

(2)

If the obligated entity is obliged to submit a public annual report under a special law, the data specified in paragraph 1(a) through (e) shall form a separate part of the report named "Provision of Information under Act N. 106/1999 Coll. to Regulate Free Access to Information and Amendments to Certain Other Acts (Freedom of Information Act)".

## **Section 19**

Making possible the access to information or provision of information under the terms and conditions and in the manner stipulated herein does not represent a breach of the obligation of confidentiality imposed by special laws.<sup>15</sup>

## **Section 20 – Transitory and final provisions**

(1)

The duty stipulated in Section 5(2) shall come into effect on January 1, 2001. In respect of municipalities that are not cities<sup>16</sup>, the duty stipulated in Section 5(2) shall come into effect on January 1, 2002.

(2)

The duty stipulated in Section 5(3) shall come into effect on January 1, 2002.

(3)

The time limit for provision of information ( Section 14(3)(c) ) and the extension thereof (Section 14(5)) shall be doubled within the first twelve-month period following the effective date of this Act and shall be extended by one half within the subsequent twelve-month period.

(4)

Unless stipulated otherwise herein, the time limits applying to the proceedings under Section 15 and Section 16 shall be determined by the Administrative Code <sup>17</sup>(Act No. 71/1967 Coll. on Administrative Proceedings: the Administrative Code), save for the provision regarding the reinstatement of the proceedings and review of the decisions outside the appellate process.

## **Section 21**

The government shall issue a decree regulating the coordination of activities of state administration agencies and municipalities in the performance of duties applying to municipalities under Section 5 hereof.

Section 22

Effectiveness

This act shall become effective on January 1, 2000.

Per: Klaus

Per: Havel

Per: Zeman

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<sup>1</sup> E.g., Act N. 101/2000 Coll. to regulate the protection of personal data and amendments to certain laws, and Act N. 123/1998 Coll. to regulate the right to information on environment."

<sup>2</sup> Section 1 (4) (a) of the Act N. 110/1964 Coll. to regulate the telecommunications, as amended by Act N.150/ 1992 Coll.

<sup>3</sup> The Act N. 53/1959 Coll. to regulate the integrated system of libraries (Librarian Act), as amended by Act N. 425/1990 Coll.

<sup>3a)</sup> Section 5(1)(h) of Act N. 101/2000 Coll. to regulate the protection of personal data and amendments to certain laws."

<sup>4</sup> The Act N. 148/1998 Coll. to regulate the protection of classified facts and the amendments to certain laws.

<sup>6</sup> Section 17 of Act N. 513/1991 Coll., the Commercial Code.

<sup>7</sup> E.g., Act N. 388/1991 Coll. to regulate the State Environmental Fund of the Czech republic, as amended by Act N. 334/1992 Coll., Act N. 171/1991 Coll. to regulate the province of bodies of the Czech republic in cases of property transfers from the state to other entities, and to regulate the National Property Fund, as amended, Act N. 472/1992 Coll. to regulate the State Fund of Market Regulation in Agriculture, as amended.

<sup>8</sup> E.g., Section 24 of the Act N. 337/1992 Coll. to regulate tax and fees administration, as amended, Section 23 of the Act N. 592/1992 Coll. to regulate the general health insurance premium, as amended, Section 14 of the Act N. 582/1991 Coll. to regulate the organization and providing of social security, as amended, Section 24a of the Act N. 551/1991 Coll. to regulate the General Health Insurance Company of the Czech republic, the Act N. 117/1995 Coll. to regulate the state social welfare system, as amended.

<sup>9</sup> E.g., the Act N. 89/1995 Coll. to regulate the state statistical service, the Act N. 6/1993 Coll. to regulate the Czech National Bank, as amended.

<sup>10</sup> E.g., the Act N. 35/1965 Coll. to regulate the works of literature, science and art (Copyright Act), as amended.

<sup>11</sup> E.g., the Act N. 592/1992 Coll., as amended, the Act N. 222/1994 Coll. to regulate the conditions of enterprise and the state administration performance in the power supply sectors and the State Power Supply Inspection, as amended by Act N. 83/1998 Coll., the Act N. 283/1993 Coll. to regulate the prosecuting attorney's office, as amended, the Act N. 166/1993 Coll. to regulate the Supreme Audit Office, as amended, the Act N. 15/1998 Coll. to regulate the Commission for Securities and the amendments of other acts, the Act N. 77/1997 Coll. to regulate the national enterprise, the Act N. 273/ 1993 Coll. to regulate some of the conditions of production, disseminating and archiving of the audiovisual works and the amendment of some acts and other regulations, as amended by Act N. 40/1995 Coll., the Act N. 13/1993 Coll., Customs Act, as amended, the Act N. 570/ 1991 Coll. to regulate the state administration of the air protection and the charges for its pollution, as amended, the Act N.

64/1986 Coll. to regulate the Czech Commercial Inspection, as amended, the Act N. 133/1985 Coll. to regulate fire service, as amended.

<sup>12</sup> Section 5 and 8 of the Act N. 153/1994 Coll. to regulate the intelligence services, as amended by Act N. 118/1995 Coll.

<sup>12a)</sup> Act N. 61/1996 Coll. to regulate certain measures against legalization of proceeds from criminal activity and amendments to related laws, as amended.

<sup>13</sup> E.g., section 8a of the Act N. 141/1961 Coll., the Criminal Procedure Code, as amended by Act N. 292/1993 Coll., section 45 of the Act N. 166/1993 Coll.

<sup>14</sup> Section 247 and the following of the Act N. 99/ 1963 Coll., the Civil Procedure Code, as amended.

<sup>15</sup> E.g., the Act N. 15/1998 Coll., the Act N. 90/ 1995 Coll. to regulate the rules of order of the Chamber of Deputies, the Act N. 199/ 1994 Coll. to regulate placing of public orders, as amended, the Act N. 283/ 1993 Coll., as amended, the Act N. 6/1993 Coll., as amended.

<sup>16</sup> The Act N. 367/ 1990 Coll. to regulate communities (local government), as amended.

<sup>17</sup> The Act N. 71/ 1967 Coll. to regulate the administrative procedure (Rules of Administrative procedure).