

Recommendation R(2002)2

of the Committee of Ministers to member states on access to official documents adopted by the Committee of Ministers on 21 February 2002 at the 784th meeting of the Ministers' Deputies

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Bearing in mind, in particular, Article 19 of the Universal Declaration of Human Rights, Articles 6, 8 and 10 of the European Convention on Human Rights and Fundamental Freedoms, the United Nations Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental (adopted in Aarhus, Denmark, on 25 June 1998) and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 (ETS No. 108); the Declaration on the freedom of expression and information adopted on 29 April 1982; as well as Recommendation No. R (81) 19 on the access to information held by public authorities, Recommendation No. R (91) 10 on the communication to third parties of personal data held by public bodies; Recommendation No. R (97) 18 concerning the protection of personal data collected and processed for statistical purposes and Recommendation No. R (2000) 13 on a European policy on access to archives;

Considering the importance in a pluralistic, democratic society of transparency of public administration and of the ready availability of information on issues of public interest;

Considering that wide access to official documents, on a basis of equality and in accordance with clear rules:

- allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, whilst encouraging informed participation by the public in matters of common interest;
- fosters the efficiency and effectiveness of administrations and helps maintain their integrity by avoiding the risk of corruption;
- contributes to affirming the legitimacy of administrations as public services and to strengthening the public's confidence in public authorities;

Considering therefore that the utmost endeavour should be made by member states to ensure availability to the public of information contained in official documents, subject to the protection of other rights and legitimate interests;

Stressing that the principles set out hereafter constitute a minimum standard, and that they should be understood without prejudice to those domestic laws and regulations which already recognise a wider right of access to official documents;

Considering that, whereas this instrument concentrates on requests by individuals for access to official documents, public authorities should commit themselves to conducting an active communication policy, with the aim of making available to the public any information which is deemed useful in a transparent democratic society,

Recommends the governments of member states to be guided in their law and practice by the principles set out in this recommendation.

I. Definitions

For the purposes of this recommendation:

"public authorities" shall mean:

- i. government and administration at national, regional or local level;
- ii. natural or legal persons insofar as they perform public functions or exercise administrative authority and as provided for by national law.

"official documents" shall mean all information recorded in any form, drawn up or received and held by public

authorities and linked to any public or administrative function, with the exception of documents under preparation.

II. Scope

1. This recommendation concerns only official documents held by public authorities. However, member states should examine, in the light of their domestic law and practice, to what extent the principles of this recommendation could be applied to information held by legislative bodies and judicial authorities.
2. This recommendation does not affect the right of access or the limitations to access provided for in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

III. General principle on access to official documents

Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.

IV. Possible limitations to access to official documents

1. Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:
 - i. national security, defence and international relations;
 - ii. public safety;
 - iii. the prevention, investigation and prosecution of criminal activities;
 - iv. privacy and other legitimate private interests;
 - v. commercial and other economic interests, be they private or public;
 - vi. the equality of parties concerning court proceedings;
 - vii. nature;
 - viii. inspection, control and supervision by public authorities;
 - ix. the economic, monetary and exchange rate policies of the state;
 - x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.
2. Access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.
3. Member states should consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply.

V. Requests for access to official documents

1. An applicant for an official document should not be obliged to give reasons for having access to the official document.
2. Formalities for requests should be kept to a minimum.

VI. Processing of requests for access to official documents

1. A request for access to an official document should be dealt with by any public authority holding the document.
2. Requests for access to official documents should be dealt with on an equal basis.
3. A request for access to an official document should be dealt with promptly. The decision should be reached, communicated and executed within any time limit which may have been specified beforehand.
4. If the public authority does not hold the requested official document it should, wherever possible, refer the applicant to the competent public authority.
5. The public authority should help the applicant, as far as possible, to identify the requested official document, but the public authority is not under a duty to comply with the request if it is a document which cannot be identified.

6. A request for access to an official document may be refused if the request is manifestly unreasonable.

7. A public authority refusing access to an official document wholly or in part should give the reasons for the refusal.

VII. Forms of access to official documents

1. When access to an official document is granted, the public authority should allow inspection of the original or provide a copy of it, taking into account, as far as possible, the preference expressed by the applicant.

2. If a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to the remainder of the information it contains. Any omissions should be clearly indicated. However, if the partial version of the document is misleading or meaningless, such access may be refused.

3. The public authority may give access to an official document by referring the applicant to easily accessible alternative sources.

VIII. Charges for access to official documents

1. Consultation of original official documents on the premises should, in principle, be free of charge.

2. A fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs incurred by the public authority.

IX. Review procedure

1. An applicant whose request for an official document has been refused, whether in part or in full, or dismissed, or has not been dealt with within the time limit mentioned in Principle VI.3 should have access to a review procedure before a court of law or another independent and impartial body established by law.

2. An applicant should always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review in accordance with paragraph 1 above.

X. Complementary measures

1. Member states should take the necessary measures to:

i. inform the public about its rights of access to official documents and how that right may be exercised;

ii. ensure that public officials are trained in their duties and obligations with respect to the implementation of this right;

iii. ensure that applicants can exercise their right.

2. To this end, public authorities should in particular:

i. manage their documents efficiently so that they are easily accessible;

ii. apply clear and established rules for the preservation and destruction of their documents;

iii. as far as possible, make available information on the matters or activities for which they are responsible, example by drawing up lists or registers of the documents they hold.

XI. Information made public at the initiative of the public authorities

A public authority should, at its own initiative and where appropriate, take the necessary measures to make public information which it holds when the provision of such information is in the interest of promoting the transparency of public administration and efficiency within administrations or will encourage informed participation by the public in matters of public interest.