

Day 4 – Thursday, 29 November 2007
Parallel Sessions – Session 2B 9.00am-10.30am

Speaker: Nataša Pirc Musar, Information Commissioner
Organisation: Information Commissioner of the Republic of Slovenia
Presentation Title: Extending the law to cover the legislature and courts

Republic of Slovenia adopted the general Act on the Access to Information of Public Character in 2003. Implementation of this Act itself introduced important changes in the interest of transparent functioning of the public sector for following reasons:

- It covers all three branches of authorities;
- State authorities as well as bearers of public authority, public services contractors and even all entities of public law are covered by the Act;
- Independent and autonomous appeal body for access to information is in place since September 2003 – Commissioner for access to information of public character, which has been since 31.12.2005 renamed Information Commissioner (hereinafter IC) as the body has been merged with the national supervisory authority for protection of personal data;
- IC being the appeal instance on second level prior to judicial protection of this right has as appeal body strong decision-making powers including the possibility to amend the decision of the body on the first level and thus order the transmission of information;
- Different types of complaints against violations of the right to access to public information are provided for, including appeal on the grounds of inactivity of the body in case of absence of reply by the body and appeal against inadequate transmission of requested information if the information are not transmitted in requested form;
- 12 narrowly defined exceptions to freely accessible information were stipulated, using the damage test for most of the exception. In 2005 however the Act has been amended imposing public interest test for most of then relevant 11 exceptions to freely accessible information.

IC in numerous cases decided to order access to documents of a court case-file. The right to review a case-file under the Civil/Criminal/Administrative Procedure Act differs totally from the right of access to public information by which it is not needed to demonstrate legal interest. The right to review and transcribe a case-file of an individual case belongs only to persons succeeding in demonstrating their legal interest to the whole case-file, whereas access to public information on the other hand regulates everyone's right to access the various documents/information of a certain case-file (for majority of the documents within the case-file an exception or even more of them could apply and only partial access could be granted). These are two different legal basis to regulate two different rights - the right of access to public information and on the other hand the right of parties or other rightful claimants to review and transcribe case-files, originating from the right to equal procedural protection. Both of them are constitutional rights. The subjects of legal protection are two mutually non-exclusive constitutional rights. The question of access to public information should therefore be decided on individual case basis, it is however not mandatory that every information in a case file should indeed be publicly accessible. The content of each case file thus has to be reviewed on a case by case basis.

Questions:

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Which exceptions to free access can be anticipated concerning a judgment in a civil litigation case?

How is the principle of publicity of publicly held hearings connected with freely accessible information?

What is the goal of courts' case files being in principle freely accessible documents?