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Free Access to Environmental Information

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1. Introduction

A right of access to public information is defined in second paragraph of Art 39 of the *Constitution of the RS* (hereinafter: *Constitution*). Slovenian *Constitution* was adopted in 1991 and for the first time a right to access to public information has been legally defined.

Before that, in the *Constitution* in former Yugoslavia such a right was not assured as a fundamental democratic right. Basically, at that time in 1991, most of Slovenians were not aware of what does it mean. Same article also defines freedom of expression and to certain extend it was more important than access to the public information. On my own opinion, it lasted for a decade or so that most of Slovenians accepted access to information as democratic right and start to use it. The right to access to public information is most widely used by journalist, but also NGOs and individuals are requesting public information more and more frequently. This is true also with respect to environmental information.

Apart from the Constitution, the right to access to environmental information is defined in several acts. Before one dives into them, lets, briefly, discus a history and the role of the directive 90/313/EC.[1] The most general act is *Access to Public Information Act*[2], *Physical Assets of the State and Local Government Act*[3], *Environmental Protection Act*[4], *Inspection Act*[5] and *General Administrative Procedure Act*[6].

It has been, since the SEVESO directive that principle of public participation and information was enacted in the field of the environment. Information needs to be given to the public with respect to environmental projects and also safety measures. Especially big industrial accidents taught us that access to public information is an effective tool, among others, for the industrial operator to take into account not only safety measures, but also day to day management and care to the environment.

Before the access to public information was given to the public, in both – in national and European legislation, people were not aware what is going on behind the fence of certain factory, also, people were not aware of the future projects, even in cases where investor was the public one - the state, not only the private investor. The access to environmental information is also a foundation for public participation in environmental planning, in procedures of adopting environmental legislation, not only *ex post*, but what is more important, *ex ante*. It is not only the public that is that way informed about future projects and possible influences to the environment, nature, their health and safety, but this is also an opportunity for state authorities to get back information from the public, their opinions, and that way, to be aware of things that they usually would not know; the decision makers are usually siting in their office, not being part of the area, the society of inhabitants who are living in certain area where future project plans to be constructed.

The principle of public access to information regarding the environment is crucial and nowadays we can hardly imagine how would be life without it; without this kind of rules.

A right to access to environmental information is given also in Slovenian legal order. As said it above, this kind of right was not known to us before we started to adopt EU legislation. During the first years of this possibility to acquire environmental information, we were not really aware of the essence of that right and there was only a small number of request for environmental information. However, during the years we slowly realised how important it is. Especially journalists and NGO's were in the foreground and main applicant that have demanded, more and more often, the right to access to environmental information.

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[1] OJ EC L 158, 23/06/1990, p. 56 – 58.
[2] OJ of the RS. No. 24/2003) with changes and amendments (latest change: Official Gazette of RS, No. 19/15, Decision of Constitutional Court of Slovenia); available: https://www.ip-rs.si/index.php?id=324.
[3] OJ of the RS, Nr. 86/10, 75/12, 47/13 – ZDU-1G, 50/14, 90/14 – ZDU-1I, 14/15 – ZUUJFO).
[4] OJ of the RS, Nr. 39/06, 49/06 – ZMetD, 66/06 – odl. US, 33/07 – ZPNačrt, 57/08 – ZFO-1A, 70/08, 108/09, 108/09 – ZPNačrt-A, 48/12, 57/12 in 92/13).
[5] OJ of the RS, 43/07, 40/14.
[6] OJ of the RS, Nr. 24/06, 105/06 – ZUS-1, 126/07, 65/08, 8/10 in 82/13.

Since the cost of environmental information are limited and since only the normal production cost of such information can be charged, the payment for such an information was usually not an issue. However, during the years, the demands for public information were bigger and bigger and it happened quite often, that information was required where public authorities needed quite some time to get the documents, or even to produce new documents, statistics, etc. In certain cases, a demand for public information would be such a burden, that it takes week or even months of work to get it. Now, a right to public information and the access to it, is not about new documents, but it is about existing documents. This (Art. 4 of the Public Information Access Act) is usually forgotten. It defines: "*Public information shall be deemed to be information originating from the field of work of the bodies and occurring in the form of a document, a case, a dossier, a register, a record or other documentary material (hereinafter referred to as "the document") drawn up by the body, by the body in cooperation with other body, or acquired from other persons*."

It is not up to the authority to draw new documents because of request to public information. And such a request can be simply rejected. However, the practice in Slovenia is different. Usually, the journalists will be the one who will be pressing to the authorities certain information that they would like to have and not only the document that is existing. And since, usually, if they do not receive such an information, the authority will be presented in the media as unwilling to help with the information. The authorities therefore usually produce additional documents and statistics for them. But this, as said it above, request some additional time, working power, costs. These costs can be charged. I think that this is the main reason why Slovenian *Access to Public Information Act* was changed and article was added which empowers authorities to charge for all costs associated with the access to public information.

Is this good or bad? Although, I am great supporter of free access to public information, especially information regarding to the environmental measures or environmental plans, I still believe that it was the increased demand on the information that do not exist in the document but that needs to be newly performed and gathered, the main reason to regulate additional charging. Based on that, I am not really sure, that critics, which are headed towards such a provision, are always justified. One have to have in mind that information that is already there, in a document, can still be free of charge, or accessible for minimum payment. But information that still needs to be gathered, additionally prepared, this is not information, that would be, at first place, subject of a free accession. Once we understand a difference, it will be easier to cope with such provision. There is however, another danger; namely, that even information already contained in the documents, will be charged for any single costs associated with it. That is the catch 22 one shall fight against.

But, let us start elaborating this topic at the beginning.

2. Brief history

As already mentioned, Slovenia became independent in 1991, one year after adoption of the Directive 90/313. At that time, we were not member of EU neither negotiation had been started. In 1997, when we concluded the Association Agreement with the EU Slovenia started with the adoption of the *acqui communiaitre*. In this period, we also adopted, for the first time, the law on public access on information. One of the most important issues at that time was a question, what is public information (how it is defined; namely, especially in case of journalists, sometimes information requested was not written in any document and access to that kind of information was usually not granted. Before becoming a member of the EU, Slovenia already adopted the *Environmental Protection Act*, which also regulated the access to public information and in 2006 this act was substantially changed. The right to environmental public information was even more detailed elaborated.

However, before 1993, we hardly knew that access to public information is possible. Until that time one, basically, had not known the content state environmental plans, what is going on behind the factories walls, how to get environmental information from the environmental permissions, etc. Generally speaking one can say that right to access public information started in 1991 and access to environmental public information in 1993.

3. Authorities, responsible to supervise access

According to *Access to Public Information Act*[7] (hereinafter: *APIA*) and more especially under *Information Commissioner Act*[8], the Information Commissioner (hereinafter: IC) is the central body, which supervises the access to the public data. It does not mean that IC provides the public data, but it organises and supervises access to them. Namely, all public bodies, i.e. of all three authorities – legislative, executive and judicial – are under the duty to allow direct access to public information. The same is true for business entities, which are under prevailing influence of the public bodies. This means, that IC is an umbrella body, responsible for the supervision to the access to public data in all fields, being environmental data, data of any executive offices, ministries, public employees, etc.

The same IC is also responsible for the supervision of protection of personal data. The chosen model, according to our knowledge, is not raising any difficulties. Above all, IC, is, as a central body, enabled to be acquainted to all possible misuses, violations or other problems in the practice. The public also accepted it as an administrative body, which can answer different questions, from different fields, etc., regarding public information, the access to them and regarding the protection of privacy in respect personal data.

Statistical information on the use of the access–right can be given, but only with the respect to the procedures commenced at the Information Commissionaire office. Namely, there is no statistic for overall number of requests addressed to public entities that are obliged to allow the access or to provide information. However, procedures (appeals) that are registered by *Information Commissionaire* can be of help. Namely, if there is a procedure commenced at *Information Commissionaire*, it means that there was an appeal, because certain public body did not want to allow access or did not give public information as requested.

4. Entities, oblige to give access to public information

As noted above, all public bodies, i.e. of all three authorities – legislative, executive and judicial – are under the duty to allow direct access to public information. The same is true for business entities, which are under prevailing influence of the public bodies.

According to APIA (Arts. 8., 9., 10 and 10a), the whole public sector, including private entities, which are under the prevailing influence of public identities, shall prepare a catalogue of public data, i.e. the list of data

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[7] OJ of the RS, Nr. 24/2003, 61/2005, 113/2005 - ZInfP, 109/2005 - ZDavP-1B, 28/2006, 117/2006 - ZDavP-2, 23/2014, 50/2014, 72/2014 - skl. US, 19/2015 - odl. US, 102/2015. Off. abrev. ZDIJZ.

[8] OJ of the RS, Nr. No. 113/2005. Art. 2 of this act defines:

(1) The Information Commissioner is an autonomous and independent state body, competent for:

- deciding on the appeal against the decision with which a body refused or dismissed the applicant's request for access or violated the right to access or re-use of public information in some other way, and within the frame of appellate proceedings also for supervision over implementation of the Act regulating the access to public information and regulations adopted there under,
- inspection supervision over implementation of the Act and other regulations, governing protection or processing of personal data or the transfer of personal data from Slovenia, as well as carrying out other duties, defined by these regulations,
- deciding on the appeal of an individual when the data controller refuses his request for data, extract, list, examination, confirmation, information, explanation, transcript or copy in accordance with provisions of the Act governing personal data protection.

(2) The Information Commissioner is a violations body, competent for supervision over this Act and the Act governing personal data protection.

(3) The Information Commissioner has the following competencies:

- organizes and manages the work of all employees, including the national supervisors for personal data protection;
- carries out other competencies of the head of the state body;
- conducts supervision in accordance with the Act governing personal data protection.

that are processing. This list (not the data itself) shall be published on their internet sites in order for individual to be informed which data are accessed and controlled by certain public body.

This is one part and one obligation. The other part refers to individuals that are looking for public information. In this case individuals needs to be active. How they can ask and request public data is regulated under *APIA*, under heading 4. The request can be filled in written, not using any form, also orally.[9]

In general, access to public information is free of charge, but costs for copying, disseminating, etc. can be charged if the exceed of 20 EUR (VAT included).[10]

Article 1.a of *APIA* stipulates laso that certain business entities, that are subject prevailing influence of the public law entities, are also under the duty to provide information. This article foresees that everyone shall have free access to (and re-use of public information) held by companies and other legal entities of private law but subject to direct or indirect dominant influence, individually or jointly, of the Republic of Slovenia, self-governing local communities and other entities of public law.

The condition of the dominant influence is fulfilled when the Republic of Slovenia, self-governing local communities or other entities of public law, individually or jointly:

- are able to exercise dominant influence on the basis of the majority proportion of the subscribed capital, or have the right to supervise the majority, or are entitled to naming more than half of the members of management body or supervisory authority in a company, directly or indirectly through another company or other legal entity of private law, or
- act as founders in another legal person governed by private law that is not a company, directly or indirectly through another company or other legal entity of private law.

A business entity subject to the dominant influence of entities of public law is liable to enable access to public information, which was created at any time during the existence of dominant influence of entities of public law. The purpose of is to increase transparency and responsible management of public resources and financial resources of business entities subject to dominant influence of entities of public law.

5. Information excluded from access

The access to certain information is denied or restricted. The access to requested information shall be denied, if the request relates to:

- information which is defined as classified;
- information which is defined as a business secret in accordance with the Act governing companies;
- personal data the disclosure of which would constitute an infringement of the protection of personal data in accordance with the Act governing the protection of personal data;
- information the disclosure of which would constitute an infringement of the confidentiality of individual information on reporting units, in accordance with the Act governing Government statistics activities;
- information the disclosure of which would constitute an infringement of the tax procedure confidentiality or of tax secret in accordance with the Act governing tax procedure;
- information acquired or drawn up for the purposes of criminal prosecution or in relation to criminal prosecution and the disclosure of which would prejudice the implementation of such procedure;
- information acquired or drawn up for the purposes of administrative procedure, and the disclosure of which would prejudice the implementation of such procedure;

[9] See Arts. 12-18 of *APIA*.
[10] See Art. 34 of *APIA*.

- information acquired or drawn up for the purposes of civil, non-litigious civil procedure or other court proceedings, and the disclosure of which would prejudice the implementation of such procedures;
- information from the document that is in the process of being drawn up and is still subject of consultation by the body, and the disclosure of which would lead to misunderstanding of its contents;
- information on natural or cultural value which, in accordance with the Act governing the conservation of nature or cultural heritage, is not accessible to public for the purpose of protection of (that) natural or cultural value;
- information from the document drawn up in connection with internal operations or activities of bodies, and the disclosure of which would cause disturbances in operations or activities of the body.

Without prejudice to the above list, the access to the requested information is sustained, if public interest for disclosure prevails over public interest or interest of other persons not to disclose the requested information, except in the next cases:

- for information which, pursuant to the Act governing classified data, is denoted with one of the two highest levels of secrecy;
- for information which contain or are prepared based on classified information of other country or international organization, with which the Republic of Slovenia concluded an international agreement on the exchange or transmitting of classified information.
- for information which contain or are prepared based on tax procedures, transmitted to the bodies of the Republic of Slovenia by a body of a foreign country.

Also, without prejudice to the above list, the access to the requested information is sustained:

- if the considered is information related to the use of public funds or information related to the execution of public functions or employment relationship of the civil servant, except in some particular cases
- if the considered is information related to environmental emissions, waste, dangerous substances in factory or information contained in safety report and also other information if the Environment Protection Act so stipulates.

APIA, as noted above, regulates exclusions, i.e. information that are excluded from free access. Basically, it is one regime regarding all possible exclusions; however, if there is prevailing or overriding public interest, than certain exclusions are to be denied. According to Art. 6, paragraph 1, point 2 of *APIA* information, which is defined as a business secret in accordance with act governing companies, is exempted from the free access. However, paragraph 3 of the same article sets forth that this is not possible, if the information considered relates to the environmental emissions, waste, dangerous substances or information contained in safety report and also other kind of similarly information if the *Environmental Protection Act* so stipulates.

The IC shall also deny the applicants request to re-use information if the request relays to information protected by intellectual property right of third parties. This means that prohibition relates to the re-use of information, not to the access. There is no decision of the IC that would address this as an issue. Among only few decision one can find one in which the access to intellectual property public based decisions was not questioned.[11] However, according to the database of the IC decisions, the IC has never been faced to reveal information that would be the substance of the IP right, like for instance the ingredients of certain newly invented product or procedures for certain innovation etc.

[11] See in this respect decision of the IC Nr. 090-157/2015 of 15.7.2015.

6. Right to free access and its comprehension and the protection of personal data

Personal data needs to be respected in the whole file or text of the public act. This causes different problems. Sometimes the anonymization is *de facto* not possible. For instance, if a public file includes personal data throughout the whole text, then it is not possible even with the erasure of personal data not to reveal the individual. Further on, sometimes the requested data are self-identified for certain individual (for instance, if question asked would itself relate to certain individual). Questions regarding personal data and the salaries, also cause problem.

Personal data for individuals employed in the public sector, are regulated under Arts. 8 and 9 of the *Personal Data Protection Act.*[12] These articles are to be understood that personal data, as protected also under Art. 6 of *AIPA* shall be understood as only relatively protected; namely, public officials or public employees have to reframe from certain level of privacy and to allow that some of their personal data. These individuals cannot define themselves, which personal data can be accessible and which not. In another words, the personal data (like name and surname) can be revealed, if these data are related to the use of public funds (for instance, for salaries, honorariums, etc.). This is due to third paragraph of Art. 6 APIA, the access to personal data can be assured, if they are related to public expenditure. In addition, paragraph 2 of the same Art. 6, defines that certain exceptions from the access to personal data, can be given if the public interest of revealing them is more important than the interests of this concrete individual.[13]

7. Significant national law and jurisprudence on the definition of "environmental information" as defined under Art. 1 para 1 Dir 2003/4/EC

The *Environmental Protection Act* (2006) enables access to environmental information not only as a general rule but also as specific cases like to information of emission and monitoring, environmental plans, environmental projects, the environmental impact assessment, in cases of industrial pollutions or industrial accidents, etc. A part from the sole environmental information one can stress also that environmental information is also part of public participation procedures, meaning that opening different procedures to public participation, enables also access to environmental information.

Altogether app 30 procedures are registered at *Information Commissionaire* since 2005 that regards information relating to the environment. Procedures refer to the environmental information and are mostly commenced by natural persons, then attorneys of law, then civil initiative, non-governmental associations (NGOs), and also by companies, usually competitors. On the other hand, addressee that should allow access to information are the Government and individual ministries, Health inspection, municipalities, Environmental inspection, Agency for radioactive waste, National institute for health protection and also Agency for protection of competition.

A list of requests is rather long one; however, one can select the following information being requested:

- weather radio stations for telecommunications cause any health implication,
- what is the quality of drinking water,
- whether environmental permission for waste disposal was awarded or not,
- what are emissions from bio electricity plant,
- what will be implications to the environment and to the health of the people in case of new thermoelectricity plant,
- request for the elaborate for the waste treatment plant,
- municipality plans on future construction works and regarding their impact to the environment,
- what are the emissions caused by plant Lafarge, which also burn waste,

[12] Official Journal RS, No. 86/2004, 113/2005 - ZInfP, 51/2007 - ZUstS-A, 67/2007.
[13] The decision of IC, no. 090-263/2015 (07.01.2016) is well argumented also in this respect.

- environmental permit to treat motor oil,
- health impacts of active lightning conductor - Prevectron,
- information on how the radioactive waste are treated,
- request for geology report,
- an assessment of the performance of small waste water plant,
- what are the emissions of noise in certain areas,
- information on the procedure how certain public service on the field of the environmental protection has be awarded, …etc.

To my knowledge, access to public information and issuing an information regarding the environment is quite benevolently issued by many public entities. Relatively low number of appeals that are handled by *Public Commissioner*, basically, confirms this viewpoint.

It is interesting, that I was not able to find any judgment on application of the Directive 2003/4/EC by courts. I can only express my own opinion, and I think this is because public entities are benevolent offering access to information on the one hand, and on the other hand, and this is more important, *Public Commissionaire*, as state body, handles, rather efficiently, appeals.

8. Significant national law and jurisprudence on determining the access right holder ("without having to state an interest", Art. 3 para 1 Dir 2003/4/EC)

The issue of legitimacy to request public information according to the personal criteria is regulated under Article 5 of *Public Information Access Act.* This article does not require any specific condition regarding the interest of the party to be fulfilled. Limitations are regulated under Article 5.a, which reads:

"Exceptions to Limiting the Rights of Parties, Participants or Victims in Proceedings and Protection of Confidential Source.

(1) The body denies the applicant access to requested information if the request refers to information, access to which is forbidden or restricted under law even to parties, participants or victims in legal or administrative proceedings, or inspection procedure as governed by the law.
(2) The body denies access the applicant to requested information if the request refers to information on which the law stipulates protection of confidential source.«

Basically, there are no other conditions, like to prove personal (individual) interest, also not in case of the *Environmental Protection Act* for an environmental information. This basic rule, that public information is available to everybody, is quite widely respected. It means that this criteria of a subjective nature, which is usually hard to be proven, is not condition precedent. This is indeed important, since subjection conditions are difficult in accessing and especially proving, specially once such a case would be handled by the court.

9. Significant national law and jurisprudence on the realm and obligations of private persons as defined by Art. 2 No. 2 b and c 4/EC. (see ECJ 279/12

Cases on a question who is a body obliged to offer an access to public information were part of application of PIAA However, not so much in cases where certain private company would have been awarded with the exclusive or special right of a public nature (like concessionaires). This is not disputable. In case where a private person performs an activity of a public competence it is rather straight forward that it is to be understood as a public body in a sense of a PIAA. However, in cases where public entities establish a companies, not pursuing state based competences, this might not be so clear. Therefore, the PIAA has been changed to broaden the obligation to allow access to public information also to persons being under surveillance of public bodies.

10. National law and jurisprudence on the public authorities to be addressed ("information held by or for them") (Art. 3 para 1 Dir 2003/4/EC)

Who are entities that are obliged to allow access to public information is defined under Articles 1, 1.a, 3.b, 4.a of the *Public Information Access Act* (*PIAA*) with the field of application also in environmental matters. The statute defines the notion of public authorities and therefore the notion of entities being obliged to procure information quite widely. Even more, since these entities often establish other entities, which might also be engaged in private law sphere, the law was changed in 2014, to broaden its application also to, so called, *liable business entities subject to dominant influence of entities of public law*. In short, that means that if certain entity is supervised or being under auspices of public entity, that first entity is also obliged to allow access to information.

11. Significant national law and jurisprudence on practices on access conditions (terms, "practical arrangements" (see Art.3 paras 3 – 5 Dir 2003/4/EC)

Access conditions were not often challenged by parties. Usually, it is not a problem to obtain information which is saved somewhere in physical manner, like being in a form of a paper, document, etc. There was one case, where party ask for the on-line access to certain information and the access was denied. On the other side, if the request is too broadly formulated, this might be a reason for simple refusal. This does not occur often. According to Art. 18 of the PIAA the public entity has to offer help in defining or redefining the request for public information.[14]

12. Law and practices/jurisprudence on charges for access (copying, administrative time)

In cases where preparing public information demands certain work to be done by public entities, the later are entitled to condition the access by the costs of such work and this is than notified to the party. Consultation on the spot of the requested information shall be, therefore, normally, free of charge. The body may charge the applicant the material costs for the transmission of a transcript, copy or electronic record of the requested information.[15] If the party is unwilling to pay, there is no obligation for public entity to procure such information. This later approach is usually used in case of journalist, that are asking for the access to information that need to be processed first.

13. Copyright objection

A copyright is an objection where public interest test is applied. Also, in case of fees and in case of republication there are usually certain costs which public authority or public entity is faced with because personal data needs to be deleted first. For instance, all judgments of courts are requested by certain private company who process them and offers certain services with added value, like to connect certain decision with certain article and statutes. That makes any legal research much easier. The private company can get

[14] Article 18 (Supplementing the request)
(1) If the request is incomplete and, hence, the body cannot deal with it, the body must invite the applicant to supplement it within the time limit laid down by the body. The time limit may not be less than 3 working days.
(2) Official referred to in Article 9 of this Act is obliged to provide the applicant with the appropriate assistance in supplementing the request.
(3) If the applicant does not supplement the request within the time limit laid down in the first paragraph, or if the request does not fulfill the conditions set out in Article 17 of this Act even following its supplementation and, hence, the body cannot deal with it, the body shall act in accordance with the Article 19 of this Act.

[15] Art. 34 of the PIAA.

court judgments for reviews (as a public information) for the purposes of re-use, however, court has to delete all personal data before handling over the judgments. This processing demands certain costs, to which courts are entitled.[16]

14. National law and jurisprudence on the role of affected third parties in access procedures esp. concerning trade secrets and personal data (designation of trade secrets, consultation prior to release of information, etc)

Personal data, trade secrets, rights to industrial property, etc. all this affects third parties rights. These are usually an obstacle for unlimited access to public information. Third parties have a right to be included in the proceedings and they can request certain data, especially personal date, to be deleted. Also, it is possible to held procedure *in camera*. This is usually used by *Information Commissionaire* when it would first like assess, whether certain document is indeed of public interest (to perform *public interest test*) and whether includes trade secrets, business secrets, or is a part of industrial property rights.

15. Significant national law and jurisprudence on exceptions (Art. 4 Dir 2003/4/EC)

15.1. Confidentiality of commercial or industrial information

Disputes in cases that concern a confidentiality of commercial or industrial information needed to be answered by *Information Commissioner*. Exception to free access to public information are defined under Article 6 of the *PIAA*. Commercial or industrial information is such an exemption of confidentiality. Confidentiality can be defined by the commercial subject itself (subjective criteria). Such rule has to be included in an internal act of general application and transparently published. There is also another criterion, so called objective criteria, embodied under Article 6.2.: *Access to information is not allowed if public interest would not be so important and, on the other hand, if information revealed can cause substation damage.* In both cases the access to public information can be denied. However, the public interest test needs to be performed in order to establish whether the public interests outweigh the right to confidentiality.

15.2. Confidentiality of the proceedings of public authorities / internal communications

Usually, also proceedings in camera are respected in cases where permission commissionaire would like, first, to establish whether certain information should be given to public or not. Also, when decision to access to public information is issued, personal data needs to be respected and any public information, that is given to applicant shall not be given with personal data included. There is no provision, to my knowledge, that there should also be a confidentiality assured in internal proceedings.

15.3. "Information on emissions into the environment" (Art. 4 para 2 subpara 2 Dir 2003/4/EC, see T-545/11

Information on emissions into the environment is quite often requested by individuals, also by NGO's. Since different kind of monitoring are also in place, this information are usually accessible and to certain extend,

[16] This is not so in cases where deleting personal data is already done for the purposes of court's openly accessible database.

this information has to be publish in media, especially emissions of CO_2, PM_{10}. To my knowledge, it is not difficult to get to this information. It is more questionable how reliable are. Especially in cases where there are ongoing proceedings (for instance cement factory Lafarge plant, where, according to media info, inhabitants were unable to rely on measurement of the emissions). Case like T-545/11 is not noticeable in Slovenian practice.

As it is reported by *B. Wegner* for the Avosetta meeting in Riga (May 2016), the Advocate General *Juliane Kokott* has delivered her opinion. She proposes that the Court should set aside the judgment of the General Court of the EU of 8 October 2013 in Stichting Greenpeace Nederland and PAN Europe v Commission (T−545/11, EU:T:2013:523) and reject the emissions-clause argument. According to her arguments, the Plant Protection Regulation of 2011, which was adopted subsequent to the emissions clause, changes the legal situation, as Article 63(2) catalogues information the disclosure of which would undermine the protection of commercial interests. This includes the specification of the full composition of a plant protection product and of impurity of the active substance except for the impurities that are considered to be toxicologically, ecotoxicologically or environmentally relevant, and results of production batches of the active substance including impurities; precisely the contested information. In defining the catalogue, the legislature ought to have known that that information arises in connection with the approval of plant protection products. If it had assumed that information from the approval procedure falls under the emissions clause because plant protection products are intended to be released into the environment, it would have defined a catalogue of highly sensitive information which would be rendered ineffective in practice, as such information would always be subject to the presumption of an overriding public interest in disclosure. As the Commission had pointed out, however, the view cannot be taken that the legislature intended to adopt a provision which was ineffective in practice. According to *Kokott*, it must therefore be assumed that the legislature implicitly reassessed the anticipated weighing of the relevant fundamental rights and principles and thus defined the scope of the emissions clause strictly.

This is, however, not the decision of the Court of the EU. It is of interest of the scholars and the final decision of the Court is awaited.

15.4. Weighing of interests in every particular case (Art. 4 para 2 subpara 2 Dir 2003/4/EC

Indeed, public interest is often present and, to my opinion, *Public Commissionaire* is using it in due diligence, appropriate, with due care and with due interpretation, on case by case basis, trying to, as much as possible, explain, why in certain cases public interest is more important than other rights (like industrial property rights, copyright, etc.).

16. Judicial control of access-decisions

16.1. Specialised administrative appeal bodies

A specialised administrative appeal body was set up to monitor access to public information. It is titled *Public Commissionaire*.[17] It is a kind of state based agency, which, again to my opinion, works rather well (from its very beginning). Decisions adopted by *Public Commissionaire* are well augmented, using also the consistent interpretation, using and citing European Court of Justice decisions, EU acts and sources of law, etc. This body did a huge work and has an important impact on understanding a right to access to public information as well as a right to reuse public information. Due to the work they have done and due to the well reasoned decisions, there are basically no court procedures. Namely, it is possible to bring an action against decision of *Public Commissionaire*.

[17] This is its home page: https://www.ip-rs.si/?id=195

16.2. Court review: "in-camera"-control? Standing of parties affected by decisions denying or granting access?

According to the rules, court review of decision of *Information Commissionaire* is possible. However, I was unable to find any case that would refer to Directive 2003/4/EC.

17. How do states fulfil the duty to make information actively available?

Information can also be actively available; this is especially true in cases of environmental information. According to EPA the state has to do the first step:

- informing public how to participate in assessing strategic environmental assessment (SEA), and also in EIA;
- every forth year the Ministry for the environment prepares a comprehensive and report on the state of play in the environment in Slovenia;
- certain monitoring are also requested and their results are quite often published in daily newspapers, daily media (internet). This is true for CO_2 emissions and greenhouse gases. Also, during the summer season, information are available also for bathing waters and they are publicly published.

18. Conclusion

One cannot fail to observe that after relatively small number of requests relating to access to public information app. a decade ago, i.e. after *APIA* entered into force, increases constantly since then. In the last decade, the trend to use public information in media also increases. Especially the media is the sphere, which uses the public information as a source of their information, being further on used for dissemination and commercial use. The demands and the requests are usually more extensive than the definition of public information foresees. Information are often requested not being in written form, but needs to be prepared, like statistical data, merger of different reports or other acts, etc, that demands certain work or even additional costs. Also, the requests to access to public information, which contains personal data is extended. This includes most of the data, which relates to public expenditure, and, as described above, in such cases personal data like name and surname of the public employee can be revealed.

Another possibility to gain access to public data is also overriding interest of the public. This is an exception. It offers access to public and also to personal data. As an exemption also, as the developments indicates, it is not always restrictively interpreted.

All these developments listed above indicate that also disputes relating to access to public information increases. From this viewpoint, it is also necessary to emphasize, that interim measures cannot offer effective legal remedy if information is given to the public but it should not have been given. In such case it is not possible to limit the effects once the information reached by the public, especially by media. This fact underlines that decision to reveal certain data, especially private data, which might cause severe consequences in individual's life, his relatives, etc. needs to be very carefully deliberated. The IC have therefore an out most important role, and in some cases, the court cannot influence a lot the effects if the information was revealed but it should not have been. The IC is therefore a "safety net". It is also easier for IC to create the picture of availability and non-availability of public information in comparison to the court. The IC deals with more cases, it acts in media sphere, it has more contact to the public, etc. The area of public available information is also tremendously important for non-governmental organisation, which act in public interest, especially if they want to gain access to data, referring to the safety, to the healthy leaving environment, etc. Without statute based mandatory regulation to access to public information, this would not be possible for them.

A publication of the court's judgments, also discussed in this text, is nowadays a generally accepted standard, which was hardly imaginable a decade or two ago. Nowadays it is reality and offers many help, not only to the wider public, but also to courts themselves to enable them, in more advanced and

faster manner to unify the jurisprudence. Also, the expert public benefits a lot and it is exactly this tool, public access to judgments, that makes jurisprudence and courts decision more important for the legal system as such. It means that jurisprudence can play much more important role in clarifying the applicability and the use of legal rules. It is expected that different internet applications which offered additional services (like linkage (relation) between judgments, articles of certain acts and statutes, legal institutes, etc.) will even strengthen the use of jurisprudence in the future. At the same time, this also strengthen the publicity of courts' decision-making and adjudicating processes.