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14. Act of 14 December 2006 on the obligation to provide information, the re-use of public sector information and the statistics of the Province of Burgenland (Burgenland Act on the Obligation to Provide Information, Re-Use of Information and Statistics [*Burgenländisches Auskunftspflicht-, Informationsweiterverwendungs- und Statistikgesetz*] – *Bgld. AISG*) (XIX. Gp. RV 308 AB 332) [CELEX No 32003L0098]

14. Act of 14 December 2006 on the obligation to provide information, the re-use of public sector information and the statistics of the Province of Burgenland (Burgenland Act on the Obligation to Provide Information, Re-Use of Information and Statistics [*Burgenländisches Auskunftspflicht-, Informationsweiterverwendungs- und Statistikgesetz*] – *Bgld. AISG*)

Further to Section 1, pursuant to the Basic Act on the Obligation to Provide Information, [*Auskunftspflicht-Grundsatzgesetz*], Provincial Law Gazette No 286/1987 as amended by Act Provincial Law Gazette I No 158/1998, the following is hereby enacted by decision of the Provincial Parliament:

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Section 1

General obligation to provide information

§ 1 Obligation to provide information

- (1) The bodies of the Province, of the municipalities, of the municipal associations and of the self-governing bodies established under provincial law shall provide information on matters within their jurisdiction to the extent that this is not prevented by a legal obligation of secrecy.
- (2) Any person has the right to request information.
- (3) Information means factual statements on matters of which the body obliged to provide information is aware at the time that the request for information is lodged.
- (4) Information shall be provided only to the extent that it does not significantly affect the discharge of other administrative duties. Professional agencies shall have an obligation to provide information only vis-à-vis their members, to the extent that this does not interfere with the proper discharge of their statutory duties.
- (5) Information need not be provided if it is requested in a manifestly gratuitous manner, if extensive preparations would be required, or if the information is directly

accessible to the information requester in some other way.

§ 2

Request for information

- (1) Information may be requested orally, by telephone or in writing, whereby the General Administrative Procedures Act [*Allgemeines Verwaltungsverfahrensgesetz*] 1991 (*AVG*) shall apply to the form in which the request for information is lodged.
- (2) If the contents or scope of the desired information are not sufficiently clear from the request, the information requester may be asked to present, in writing, a request for information made orally or by telephone, or to clarify an unclear written request for information within a suitable period of at least two weeks. If such an instruction is not complied with, the request for information shall be deemed not to have been lodged.

§ 3

Provision of information

- (1) Information shall, as far as possible, be provided orally or by telephone.
- (2) Information shall be provided without unnecessary delay, within no more than eight weeks after it [sic] is received. If that deadline cannot be met for special reasons, the information requester shall at all events be notified.

§ 4

Refusal to provide information

If information is not provided, a decision about this shall be issued at the request of the information requester. The *AVG* shall apply to the procedure in such matters.

§ 5

Jurisdiction of the municipality

The matters mentioned in this Section shall fall within the jurisdiction of the municipality insofar as they are to be dealt with by bodies of the municipalities or of municipal associations.

§ 6

Exemption from administrative charges

Official acts and requests for information under this Section shall be exempt from provincial and municipal-administration charges.

Section 2

Re-use of documents held by public sector bodies

§ 7

Aim

The purpose of this Section is to facilitate the re-use of documents held by public sector bodies, particularly in order to thereby encourage the creation of new information products and information services.

§ 8

Matters covered

- (1) This Section governs the legal framework for the commercial and non-commercial re-use of documents held by public sector bodies in accordance with § 10(1), which such bodies produce in the course of their public tasks, insofar as they make them available for re-use.
- (2) This Section shall not affect legislation governing access to documents held by public sector bodies.
- (3) This Section shall not affect the provisions of the Data Protection Act [*Datenschutzgesetz*] 2000, Provincial Law Gazette I No 165/1999, as amended by Act Provincial Law Gazette I No 13/2005, of the Burgenland Data Protection Act [*Burgenländisches Datenschutzgesetz*], Provincial Law Gazette No 87/2005, or legal obligations of secrecy.

§ 9

Exceptions to matters covered

- (1) This Section shall not apply to documents
 1. which are not created as part of the public tasks of the public sector body concerned;
 2. which are excluded from access, in particular for reasons of national security, general national defence, public security or because they contain commercial or company secrets or are otherwise subject to confidentiality;
 3. which can only be accessed upon proof of a particular interest;
 4. which are the intellectual property of third parties;
 5. which are covered by industrial property rights;
 6. which are held by public service broadcasters and their subsidiaries and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;
 7. which are held by educational and research establishments such as schools, universities, archives, libraries and research facilities and
 8. which are held by cultural establishments, such as museums, libraries, archives, orchestras, operas and theatres.
- (2) § 12(3)(2) and (4) and 12(4) to (6) shall apply to the processing of requests for re-use of documents mentioned in paragraph 1(1) to (5).

§ 10

Persons covered

- (1) This Section shall apply to the following public sector bodies:
 1. the Province;
 2. the municipalities;
 3. self-governing bodies established under provincial law;
 4. establishments founded under provincial law, such as foundations, funds and institutes, and public-law authorities, which
 - a) were set up for the express purpose of performing tasks of a non-commercial nature in the general interest and
 - b) have at least some legal capacity and

- c) are predominantly financed by the Province, by a municipality, by other establishments founded under provincial law or other public sector bodies (Article 2(1) of Directive 2003/98/EC on the re-use of public sector information, OJ L 345 of 31 December 2003, p. 90) or as regards their management are subject to supervision by such or whose administrative, management or supervisory body is composed mainly of members appointed by the Province, a municipality, other establishments founded under provincial law or other public sector bodies (Article 2(1) of Directive 2003/98/EC), and
 - d) are not undertakings within the meaning of Article 127(3) or 127a(3) of the Federal Constitutional Law [*Bundes-Verfassungs-gesetz*](*B-VG*), Provincial Law Gazette No 1/1930, as amended by Act Provincial Law Gazette I No 121/2005;
 - 5. associations which are mainly composed of two or more public sector bodies in accordance with numbers 1 to 4.
- (2) The municipalities and other self-governing establishments are to implement this Section within their own jurisdiction, to the extent that they perform legally devolved tasks within their jurisdiction.

§ 11 Definitions

In this Section, the following definitions shall apply

- 1. “document”: any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) as well as any part of such content, with the exception of computer programs;
- 2. “document held by a public sector body”: a document regarding which the public sector body is entitled to allow re-use;
- 3. “re-use”: the use by persons or legal entities of documents held by public sector bodies for commercial and non-commercial purposes other than the initial purpose within the public tasks for which the documents were produced. Exchange of documents between public sector bodies within the meaning of Article 2(1) of Directive 2003/98/EC purely in pursuit of their public tasks does not constitute re-use.

§ 12

Requests for re-use and their processing

- (1) Requests for the re-use of documents shall be made in writing to the public sector body holding the requested document. The AVG shall apply to the form in which the request is lodged.
- (2) Should a request within the meaning of paragraph 1 not make the content, scope or manner of the re-use of the requested documents sufficiently clear, the public sector body shall immediately ask the applicant to specify the request in writing within a period of not more than two weeks. If the applicant complies with the specification requirement within the time limit, the time limit under paragraph 3 shall start to run afresh after the arrival of that information. Otherwise the request shall be deemed not to have been lodged.
- (3) The public sector body shall process the request within the time limit for processing applications and requests for access to documents under the current access rules or, if no such time limit is laid down, within four weeks after the arrival of the request, and with reference to the possibilities of legal redress under §§ 19 and 20,
 - 1. shall make all the requested documents available for re-use or

2. shall make the requested documents partly available for re-use and shall inform the applicant in writing, stating the reasons, that the request is in part not being met, or
 3. shall present a binding contract offer, if it is necessary under Article 15(1) to agree conditions for the re-use of the requested documents, or
 4. shall notify the applicant in writing that his or her request is not being met, stating the reasons why.
- (4) If the basis for the notice of refusal under paragraph 3(2) or (4) is that the requested document is the intellectual property of third parties, the public sector body shall refer to the known rightholder or alternatively to the person(s) from whom it obtained the material.
 - (5) The time limit in paragraph 3 may be extended by four weeks for extensive or complex requests. In such cases the applicant shall be notified as soon as possible that the time limit has been extended, and no later than within three weeks after receipt of the request.
 - (6) Where possible and appropriate, public sector bodies shall use electronic means to process requests for re-use and to make documents available for re-use.

§ 13

Scope of the obligation to make documents available

- (1) Where public sector bodies authorise the re-use of documents which they hold, they shall provide them in any pre-existing format or language, through electronic means where possible and appropriate. However, under this Section, public sector bodies shall not be obliged to produce anew, adapt or further develop documents in order to meet a request for re-use.
- (2) If extracts from documents are requested, they shall not be made available where this would involve disproportionate effort, going beyond a simple operation.
- (3) On the basis of this Section, public sector bodies shall not be required to continue the production of a certain type of document with a view to the re-use of such documents.

§ 14

Charges and exemption from charges

- (1) Where public sector bodies levy charges for the re-use of documents which they hold, the total income from making available and allowing re-use of the documents may not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges shall be cost-oriented over the appropriate accounting period and shall be calculated in line with the accounting principles applicable to the public sector bodies involved.
- (2) Without prejudice to paragraph 1, no administrative charges governed by provincial law shall be levied with regard to matters in this Section.

§ 15

Conditions for re-use

- (1) Public sector bodies may lay down conditions for the re-use of documents they hold, in a contract regulating the essential aspects of that re-use.
- (2) The conditions in paragraph 1 may not limit the possibilities of re-use of the requested documents unnecessarily or restrict competition.

§ 16

Transparency and practical arrangements

- (1) The standard charges and standard conditions applicable to the re-use of documents shall be established by public sector bodies in advance and published in a suitable fashion, if possible on the internet.
- (2) Public sector bodies shall, on request, provide the basis of calculation for the published charges and the factors which are taken into account when calculating charges in atypical cases.
- (3) Public sector bodies shall make practical arrangements for facilitating access to those documents which are available for re-use, in particular by
 1. keeping lists and indexes of the most important documents which they hold and which can be accessed for re-use and publishing them in appropriate fashion, where possible on the internet;
 2. designating information staff and information points.

§ 17

Non-discrimination

- (1) Charges and other conditions for the re-use of documents held by public sector bodies shall be non-discriminatory for comparable categories of re-use.
- (2) If documents held by public sector bodies are re-used by them as input for their own commercial activities which fall outside the scope of their public tasks, the same charges and other conditions shall apply to the supply of the documents for those activities as apply to other users.
- (3) If documents held by public sector bodies are available for re-use, the former shall be open to all potential actors in the market, even if the documents are already being exploited by one or more market players as a basis for value added products.

§ 18

Prohibition of exclusive arrangements

- (1) Contracts or other agreements between public sector bodies and third parties which establish exclusive rights with regard to the re-use of the documents falling within the scope of this Section (exclusive arrangements) shall be prohibited.
- (2) Paragraph 1 shall not apply if the granting of an exclusive right is necessary for the provision of a service in the public interest. The grounds for such an exclusive arrangement shall be checked regularly, at least every three years. In any event, the exclusive arrangement shall include a provision ensuring that the public sector body has a special right of termination if the regular review shows that the grounds justifying the exclusive arrangement no longer exist. Exclusive arrangements entered into after 31 December 2003 shall be transparent and made public in a suitable way, where possible on the internet.
- (3) Existing exclusive arrangements which are not covered by the exceptions in the first sentence of paragraph 2 shall end when the contract expires or shall be regarded as cancelled at the latest at the close of 31 December 2008.

§ 19

Legal redress in the event of a notice of refusal under § 12(3)(2) and (4)

- (1) If the applicant has been informed pursuant to §12(3)(2) or (4) that his or her request cannot be met or can only partly be met, the public sector body shall take a decision on the application if so requested, provided that it has the power to do so. The applicant shall submit to the public sector body in writing, within two weeks of receipt of the notice of refusal, the request for a decision to be issued.
- (2) Public sector bodies which have no decision-making power shall, without

unnecessary delay, forward applications made under paragraph 1, including the original related request for re-use and the notice of refusal, to the supervisory administrative authority. The public sector body shall be party to the case pertaining to this which come before the first or second instance supervisory authority. Where applicable, the stages of appeal shall be based on the provisions of provincial law which govern the supervisory process. The public sector body shall have the right to submit a complaint of illegality to the Administrative Court and to the Constitutional Court against decisions taken by the supervisory authority in procedures carried out pursuant to this Section after having exhausted the administrative stages of appeal.

- (3) The AVG shall apply to procedures under paragraphs 1 and 2.

§ 20

Legal redress in use contracts under § 12(3)(3)

- (1) If the applicant considers that individual provisions in the binding contract offer presented under § 12(3)(3) do not correspond to the rules in this Section, he or she must notify the public sector body of this in writing within the appropriate time limit set for accepting the offer of contract. If the applicant is not offered an accordingly amended use contract within eight weeks, he or she may apply for the appeal or supervisory authority to declare that individual, precisely defined provisions of the binding contract offer infringe provisions in this Section. Such an application shall be lodged, within a further two weeks, with the public sector body which issued the relevant contract offer and submitted by that public sector body, without unnecessary delay, to the competent appeal or supervisory authority. The provisions laid down in the second to fourth sentence of §19(2) shall apply to cases brought before the first or second instance supervisory authority.
- (2) An application under paragraph 1 must, however, contain:
1. the exact title of the public sector body;
 2. the exact title of the provisions of the relevant contract offer which are considered to be illegal;
 3. the exact title of the Act which the applicant considers to have been infringed;
 4. the grounds on which the claim of illegality is based;
 5. a precise request and
 6. the information necessary to assess the timeliness of the application.
- (3) A declaration application under paragraph 1 may refer only to those provisions with which the applicant found fault in his or her previous written communication (first sentence of paragraph 1).
- (4) The public sector body shall take account in its future contract offers under §12(3)(3) of the decision taken by the appeal or supervisory authority as a result of an application pursuant to paragraph 1.
- (5) The AVG shall apply to procedures under paragraphs 1 to 4.

Section 3

Provincial Statistics

§ 21

Creation and tasks of the Provincial Statistical Office

- (1) Provincial statistics shall be managed by the Provincial Government and shall

encompass all statistical activities and surveys which are sponsored by the Province and which are of importance for provincial administration or are otherwise in the interests of the Province.

- (2) The Provincial Statistical Office is the organisational unit of the Provincial Government office which, based on the distribution of the latter's business, is charged with discharging tasks relating to provincial statistics.
- (3) The tasks of the Provincial Statistical Office shall be, in particular:
 1. to carry out empirical analyses, modelling and forecasts and to produce statistics which are in the interests of the Province, including the necessary surveys or consultations of public registers to this end;
 2. to obtain added value from statistical information by assembling and evaluating findings from various data and information sources;
 3. to create statistical datasets for the Province;
 4. to work in the fora and institutions of the Federal Statistical Office which deal with statistical matters and represent the Province's interests in such fora and institutions, in cooperation with the relevant expert services of the Provincial Government office;
 5. to cooperate with the institutions of the Federal Statistical Office, the other provincial statistical offices, and other statistics operators insofar as this is sensible and appropriate for the performance of the delegated tasks;
 6. to carry out statistical surveys which are instructed under Provincial Acts or ordinances of the Provincial Government, insofar as such Acts or ordinances do not entrust these to other bodies.

§ 22

Principles

The following principles shall be observed in the performance of the tasks of the Provincial Statistical Office:

1. guarantee of objectivity and neutrality when producing statistics, in particular via the use of freely chosen statistical methods and procedures based on internationally recognised scientific principles and standards and their disclosure;
2. guarantee of reliability, materiality, cost-effectiveness and transparency;
3. ongoing review of statistics with a view to quality improvements;
4. ensuring that the statistics are as up-to-date as possible;
5. obtaining statistics which are as consistent as possible;
6. minimising the burden, and adequate information, for those affected and those obliged to provide information;
7. safeguarding the confidentiality, statistical secrecy and data protection of personal data;
8. publishing the findings from statistical surveys under § 29;
9. ensuring the gender-specific collection and evaluation of data in all cases where a gender connection is appropriate and is possible on the basis of the survey type.

§ 23

Collection and processing of data

- (1) The collection of data may take place via:
1. cooperation with *Statistik Österreich*, the Federal Government, the provinces and with other institutions engaged in statistics,
 2. collection of data from public registers,
 3. collection of statistical data,
 4. collection of administrative data,
 5. statistical surveys under § 25.
- (2) Agencies keeping public registers and holders of statistical or administrative data shall be obliged to forward to the Provincial Statistical Office, if possible in computer-readable form, the data which are shown to be required by the Provincial Statistical Office in the performance of its tasks.
- (3) When collecting and processing data, account shall be taken as far as possible of the protection-worthy interests of the persons concerned, while having regard to the provisions laid down in data protection legislation.

§ 24

Dealing with personal data

- (1) Personal data may be used for provincial statistical purposes only.
- (2) Personal data may be kept only for as long as is necessary to produce the relevant statistics.
- (3) Personal data used in connection with provincial statistics may be forwarded to third parties only if this is provided for by law or if there is express consent from the person concerned.
- (4) Moreover, the provisions of the Data Protection Act 2000, Provincial Law Gazette I No 165/1999, as amended by Act Provincial Legal Gazette I No 13/2005, of the Burgenland Data Protection Act, Provincial Law Gazette No 87/2005, and existing legal obligations of confidentiality shall apply.

§ 25

Statistical surveys

- (1) Statistical surveys shall encompass collection of data via
1. measuring, weighing or counting,
 2. questioning.
- (2) Statistical surveys may concern:
1. natural persons,
 2. legal persons governed by public or private law,
 3. partnerships governed by trade law.
- (3) Statistical surveys may be conducted:
1. in the form of a full survey or
 2. in the form of a sample survey based on statistical methods.
- (4) Statistical surveys linked to an obligation by individual data holders to provide

information may be conducted only on the basis of an ordinance under § 26 or of a specific legal instruction.

- (5) If there is no legal basis within the meaning of paragraph 4, a statistical survey may only be permitted with the consent of those affected. When asked to grant consent, they shall be informed of the use of their data and of the right to refuse consent.
- (6) In the case of a statistical survey which was not ordered under paragraph 4, the Provincial Statistical Office may use personal data only if those concerned have expressly consented to the use of their data.

§ 26

Power to issue ordinances

- (1) Statistical surveys linked to an obligation to provide information shall be ordered by the Provincial Government via ordinance and publicly announced. An instruction is only permissible if
 1. the data obtained from the statistical surveys are needed for the performance of provincial tasks,
 2. the work outlay and the costs are in keeping with the importance of the provincial task for which they are needed,
 3. the data cannot be collected in another way while observing the principle of administrative economy and
 4. the aim of the survey, furthermore, cannot be expected to be met via the voluntary provision of information by those affected.
- (2) The ordinance shall contain:
 1. the purpose of the survey,
 2. the subject of the survey,
 3. the characteristics of the survey,
 4. the type and method of the survey,
 5. the scope of the survey in terms of area and time,
 6. the category of those obliged to provide information and the manner of their participation and
 7. if necessary, the powers of the census, survey and monitoring bodies to conduct sampling, censuses and measurements or to inspect records needed for the survey.
- (3) If the content of an intended survey ordinance affects the scope of a legal representation of interests, the latter shall be given the opportunity to comment within a suitable time limit before the ordinance is issued.
- (4) Specific types of printed material may be prescribed for the purposes of conducting statistical surveys, especially with regard to a computer-based evaluation of the data obtained.
- (5) Statistical surveys based on an ordinance under § 26 may be of a personal nature only if this is indispensable for
 1. establishing the category of persons in a survey,
 2. checking compliance with an obligation to provide information or
 3. correcting or completing information.

§ 27

Obligations to provide information and to consent

- (1) Only the following may be obliged to provide information by an ordinance under § 26:
 1. natural persons who have completed their fourteenth year and are resident in Burgenland,
 2. legal persons governed by public or private law, and partnerships governed by trade law, having an office or establishment in Burgenland.
- (2) Persons or partnerships, or their bodies with powers of representation, which are obliged to provide information in accordance with an ordinance under § 26 shall provide information which is timely, complete and truthful.
- (3) If an ordinance under § 26 so provides, the census, survey and monitoring bodies entrusted with conducting the survey shall, at their request, and to the extent needed for the survey, be allowed to access premises, installations, land and enterprises, to remove samples and other investigation material, to perform censuses and measurements, including fitting the necessary appliances, and to inspect records which are of significance to the survey. Surveys in enterprises may only be carried out during business and operating hours and only after prior notice, which shall be given at least one week before the surveys. Disruption to the course of business or operations shall be avoided during access.
- (4) Details which have been provided pursuant to the obligation in paragraph 2 to provide information, or which have been obtained via investigations in paragraph 3, may be used for statistical purposes only. The bodies entrusted with conducting the surveys or forwarding the details may not use the information they have gained in the course of this activity for other than statistical purposes.

§ 28

Census, survey and monitoring bodies

- (1) Census, survey and monitoring bodies may be appointed to conduct statistical surveys. For the duration of their appointment, they shall be deemed to be officials within the meaning of § 74(4) of the Criminal Code [*Strafgesetzbuch*] (*StGB*), Provincial Law Gazette No 60/1974, as amended by Act Provincial Law Gazette I No 56/2006.
- (2) Census, survey and monitoring bodies under paragraph 1 shall be given an official attestation by the Provincial Government for the duration of their activity. The bodies shall carry the attestation, together with an official identity card bearing a photograph and shall, without being asked, show them to the person obliged to provide information.
- (3) Census, survey and monitoring bodies under paragraph 1 shall be bound to secrecy about all the facts which they gain exclusively from this activity, the confidentiality of which is advisable in the interests of public safety, order and security, general national defence, foreign relations, in the economic interest of a public-law authority, in order to prepare a decision, or in the overwhelming interest of the parties.

§ 29

Publication of findings from statistical surveys

- (1) The Provincial Government shall publish the findings from statistical surveys in a suitable manner.
- (2) Statistics shall be published in such a way that it is not possible to trace details to identified or identifiable individuals concerned. If that possibility cannot be excluded,

publication may only take place after prior, express written consent from those concerned.

§ 30

Penalties

- (1) Individuals are in breach of administrative rules and shall be given a fine of EUR 2 200 by the district administrative authority if
 1. they do not meet the obligation to provide information under § 27(2) in a timely manner,
 2. in providing information under § 27(2), they knowingly give incomplete or false details,
 3. they do not meet the obligation to consent under § 27(3),
 4. they breach the obligation of secrecy under § 28(3).
- (2) The deed shall not be punished when it constitutes the basis of a punishable offence falling within the competence of the courts.

Section 4

General provisions

§ 31

References to Provincial Acts

Where this Act refers to provisions in other Provincial Acts, these are to be applied in their respective up-to-date versions.

§ 32

Note on transposition

Section 2 of this Act transposes Directive 2003/98/EC on the re-use of public sector information, OJ L 345 of 31 December 2003, p. 90.

§ 33

Entry into force

- (1) This Act shall enter into force on the first day of the month following publication.
- (2) Upon entry into force of this Act, the Act on the obligation by the institutions of the province, of the municipalities, of the municipal associations and of the self-governing bodies established under provincial law to provide information (Burgenland Act on the Obligation to Provide Information [*Bgld. Auskunftspflichtgesetz*]), Provincial Law Gazette No 3/1989, shall cease to apply.
- (3) Procedures pending under the Burgenland Act on the Obligation to Provide Information, Provincial Law Gazette No 3/1989, shall be concluded in accordance with the legislation which applies until the present Act enters into force.

The President of the Provincial Parliament: The Provincial Governor:

Prior

Nießl