

Law No. 46/2007

of 24 August

Governs access to and re-use of administrative documents, repeals Law No. 65/93, of 26 August, with the wording introduced by Laws Nos. 8/95, of 29 March and 94/99 of 16 July, and transposes into the national legal system Directive 2003/98/EC, of the Parliament and of the Council, of 17 November, 2003 on the re-use of public sector information.

The Assembly of the Republic decrees the following in accordance with Article 161(c) of the Constitution:

CHAPTER I

General provisions

Article 1

Open administration

Access to, and the re-use of, administrative documents is guaranteed in accordance with the principles of publicity, transparency, equality, justice and impartiality.

Article 2

Object

1 – This law governs access to administrative documents, without prejudice to the provisions in legislation concerning access to information on environmental matters.

2 – This law also governs the re-use of documents relating to activities carried out by the entities referred to in Article 4, and transposes into the national legal system Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information.

3 – Access to documents which identify persons, particularly when they include health details, by the information right holder, by a third party authorised by the right holder or by any party that can show it has a direct, personal and legitimate interest, is regulated by this law.

4 – The rules governing exercise of the right of citizens to be informed by the Administration of the progress of cases in which they have a direct interest and to hear the final decisions taken concerning them is contained in specific legislation.

5 – Access to notarial and registry documents, civil and criminal identification documents and documents deposited in historical archives is governed by specific legislation.

Article 3

Definitions

1 – For the purposes of this law, the following definitions shall apply:

- a) “Administrative document” – any information support medium, be it in written, visual, sound, electronic or any other material form, held by the bodies and entities referred to in the next Article, or held on their behalf;
- b) “Named person document” – an administrative document which contains an appraisal or

value judgement concerning a single identified or identifiable person, or information subject to the rules of personal privacy.

2 – The following are not deemed administrative documents for the purposes of this law:

- a) Personal notes, drafts, jottings and other records of a similar nature;
- b) Documents whose production is not the result of administrative activity, in particular ones relating to a meeting of the Council of Ministers and Secretaries of State, and their preparation.

Article 4.

Scope of application

1 – This law applies to the following bodies and entities:

- a) Bodies of the State and Autonomous Regions forming part of the Public Administration;
- b) Other bodies of the State and Autonomous Regions, to the extent that they carry out substantially administrative functions;
- c) Bodies within public institutions and public associations and foundations;
- d) Bodies within public enterprises;
- e) Bodies within local government and their associations and federations;
- f) Bodies within regional, inter-municipal and municipal enterprises;
- g) Other entities in the exercise of administrative functions or public powers.

2 – The provisions of this law also apply to documents held or produced by any entities having a legal personality which have been created to meet in some specific way needs which are in the general interest and are not of an industrial or commercial nature, to which any one of the following circumstances may apply:

- a) The activity in question is mainly financed by one of the entities mentioned in the preceding paragraph or this paragraph;
- b) Handling of the activity concerned is subject to control by one of the entities mentioned in the preceding paragraph or this paragraph;
- c) The various administration, management or inspection bodies are more than half composed of members designated by one of the entities mentioned in the preceding paragraph or this paragraph.

Article 5.

Right of access

All persons, without having to declare any interest, are entitled to access to administrative documents, and this includes the right to consult, to copy and to obtain information concerning their existence and contents.

Article 6.

Restrictions on the right of access

1 – Documents which contain information, knowledge of which may be judged to be capable of jeopardising or damaging the internal or external security of the State, are subject to a

prohibition on access, or to access with authorisation, during such time that may be strictly necessary, by means of classification in accordance with specific legislation.

2 – Access to documents relating to matters subject to *in-camera* proceedings is regulated by specific legislation.

3 – Access to administrative documents which are preparatory to a decision or belong to proceedings which are not yet concluded may be deferred until the decision is taken, the case is filed for one year after the documents were produced.

4 – Access to inquiries and investigations may take place on the expiry of the period stipulated for any disciplinary proceedings.

5 – Third parties are only entitled to access to named person documents if they have written authorisation from the person to whom the information relates or if they can prove a direct, personal and legitimate interest which is sufficiently relevant according to the principle of proportionality.

6 – Third parties are only entitled to access to administrative documents which contain commercial or industrial secrets or which concern the internal affairs of a company if they have written authorisation from the latter or if they can prove a direct, personal and legitimate interest which is sufficiently relevant according to the principle of proportionality.

7 – Administrative documents subject to access restrictions may be disclosed in part provided that it is possible to delete the information relating to the classified material.

Article 7.

Disclosure of health information

Health information shall be disclosed through a doctor if the applicant requests it.

Article 8.

Unlawful use of information

1 – It is not permitted to use information in breach of copyright or industrial property rights.

2 – Named person documents which are disclosed to third parties must not be used for purposes other than those for which access was requested, otherwise liability for loss and damage in law may be incurred.

Article 9.

Responsibility for access

Each ministry, regional secretariat, local government agency, public institute, public association, public foundation, public enterprise, regional enterprise, inter-municipal enterprise and municipal enterprise shall designate a person responsible for overseeing compliance with the provisions of this law.

Article 10.

Disclosure of information

The bodies and entities referred to in Article 4 must facilitate the disclosure, specifically in electronic databases easily accessible to the public via public telecommunications networks, of the following administrative information, which must be updated at least six-monthly:

- a) All documents, particularly internal regulatory orders, circulars and guidelines which involve administrative activity;
- b) A statement of all documents which involve interpretation of positive law or a description of administrative procedure, mentioning in particular the title, subject matter, date, source and place where they can be consulted.

CHAPTER II

Exercise of the right of access to, and re-use of, administrative documents

SECTION I

Right of access

Article 11.

Form of access

1 – Access to administrative documents shall be exercised in the following ways, at the discretion of the applicant:

- a) Free consultation, at the department holding them;
- b) Reproduction by photocopying or any other technical means, particularly visual, sound or electronic;
- c) Certification.

2 – The documents shall be transmitted in an intelligible form and the content must agree exactly with what is in the records.

3 – If there is a risk that reproduction will damage the document, the applicant may, at its own expense and under the direction of the custodian of the information, have a manual copy made or reproduce it in some other way which will not expose it to damage.

4 – Computerised documents shall be sent by any form of electronic data transmission, whenever this is possible and provided it is a means capable of preserving the intelligibility and reliability of the contents, and that it agrees exactly with what is in the records.

5 – The entity to which the request is addressed is not obliged to create or adapt documents to meet the request, nor is it bound to supply extracts from documents, if this involves effort which is disproportionate to merely handling them.

Article 12.

Charges for reproduction

1 – The reproduction referred to in sub-paragraph b) of paragraph 1 of the preceding Article means one copy subject to payment by the applicant of the fixed charge, which must be the sum of the charges commensurate with the use of machines and tools, the costs of the materials used and the service provided, but must not exceed the average value charged in the market for the service concerned.

2 – With reference to the provisions of the preceding paragraph, the Government of the Republic and the Governments of the Autonomous Regions shall, after consultation with the Administrative Documents Access Committee (hereinafter abbreviated to CADA), and the national and local government associations, establish the charges to be made for reproductions and certifications of administrative documents.

3 – Entities with independent taxation powers may not set charges more than 100% in excess of those established in accordance with the preceding paragraph, and must conform to these charges until such time that they publish their own tariffs.

4 – The bodies and entities referred to in Article 4 must display in a place accessible to the public a list of the charges for the reproduction and certification of administrative documents..

5 – The entity to which the application is made may ask for a prepayment as a guarantee of the charges due, and to cover the despatch charges when relevant.

Article 13.

Request for access

1 – Access to the documents must be requested in writing, listing the items which are essential for identification, also the name, address and signature of the applicant.

2 – The entity receiving the request may also accept verbal requests and must do so in the circumstances specified by law.

3 – In order to submit a complaint to the CADA, under this law, there must have been a written request, or at least written confirmation of a refusal to handle a verbal request.

4 – If the request is not sufficiently precise, the entity receiving the request must, within five days, inform the applicant of that fact and invite it to rectify the deficiency within a time set for the purpose.

5 – The bodies and entities referred to in Article 4 must, through their officials, help the public to identify the required documents, and in particular explain the organisation of its archives and records and how to use them.

Article 14.

Response to the request for access

1 – The entity to which the request for access to an administrative document is addressed must, within 10 days;

- a) State the date and place and how to make the enquiry, if requested;
- b) Issue the requested copy or certificate;
- c) Explain in writing the reasons for total or partial denial of access to the required document, and what rights of administrative and contentious appeal against the decision are available;
- d) Say if it does not have the document, and, if it knows which entity does have it, forward the request to the latter, advising the applicant of this fact;
- e) Explain to the CADA any doubts it may have concerning the decision to be taken, in order for the latter to give an opinion.

2 - In the case of sub-paragraph e) of the preceding paragraph, the requested entity must inform the applicant and send the CADA a copy of the request and of all the information and documents which will assist in handling it.

3 - The Administration is not obliged to meet requests which, because of their repetitive and systematic nature or the number of documents required, are clearly excessive.

4 - In exceptional cases, if the volume or complexity of the information justify it, the period referred to in paragraph no. 1 may be extended up to a maximum of two months. The applicant must be informed of this fact and the reasons within a maximum of 10 days.

Article 15.

Right of complaint

1 - The applicant may complain to the CADA about a lack of response, refusal or other decision which limits access to administrative documents.

2 - The complaint shall result in suspension of the period in which to apply to court for issue of an instruction to provide information, check on proceedings or issue certificates, and must be submitted within that period, and, with the necessary adaptations, shall be subject to the rules governing the sending to court of the legal briefs.

3 - If there is no justification for a temporary refusal, the CADA must ask the requested entity to respond to the complaint within 10 days.

4 - Both in the case of a complaint and the enquiry referred to in Article 14(1)(e), the CADA is allowed a period of 40 days in which to produce the report on its evaluation of the situation and to send it, with its conclusions, to all the parties concerned.

5 - On receipt of the report referred to in the preceding paragraph, the requested entity must notify its final duly supported decision to the applicant within 10 days, otherwise it shall be presumed to have taken no decision.

6 - Both the decision and the lack of decision referred to in the preceding paragraph may be challenged by the party concerned in the administrative courts, and the rules of process of instruction referred to in paragraph no. 2 shall apply, subject to the necessary adaptations.

SECTION II

Re-use of documents

Article 16.

General principle

1 - The documents held or produced by the entities referred to in Article 4, to which access may be authorised under this law, may be re-used by individuals or corporate bodies for purposes other than the public service purpose for which they were produced.

2 - The provisions of this section shall not preclude the use of the text of conventions, laws, regulations and reports or administrative or judicial decisions or ones by any bodies or authorities of the State or the Administration, nor the use of the official translations of the texts.

3 – The provisions of this section shall not apply to documents held or produced by:

- a) Public service broadcasting companies, their subsidiaries and other bodies performing public service broadcasting functions;
- b) Teaching and research establishments, including, when relevant, organisations created to transfer the results of research;
- c) Public or private collective entities dedicated to the provision of cultural activities, in particular museums, libraries, archives, orchestras, operas and ballet and theatre companies.

4 – The exchange of documents between the entities mentioned in Article 4 exclusively in the performance of their duties does not constitute re-use.

5 – Unless agreed by the Administration, persons who re-use administrative documents must not alter the information in them, nor must they allow their meaning to be distorted. They must always cite the sources, also the last date this information was used.

Article 17.

Request for re-use

1 – The express authorisation of the entity holding the documents must be obtained in order to re-use them, by means of a request by the applicant.

2 – The request for re-use must be made in writing in the same application used to request access to the document.

3 – When the re-use of the documents is for educational or research and development purposes, the applicant must state this specifically.

Article 18.

Excluded documents

The following documents may not be re-used:

- a) Ones produced in a privately managed activity by the entity concerned;
- b) Ones whose copyright or associated rights belong to third parties or whose reproduction, dissemination or use could constitute unfair competition;
- c) Named person documents, unless authorised by that person, by a legal provision that specifically requires it or when the value judgements or information subject to the rules of privacy can be made anonymous.

Article 19.

Response by the requested entity

1 – The entity to which the request to re-use the document is addressed must, within the same time as that specified in Article 14(1):

- a) Authorise re-use of the document; or
- b) State the reasons for denial of permission, whether total or partial, to re-use the document and what means of challenge against this decision are available to the applicant.

2 – The request to re-use the document may only be denied on the grounds of violation of legal regulations, and in particular any of the provisions of this law.

3 – The duty to state the reasons for denial of permission includes naming the individual or corporate body which owns the copyright or associated rights over the document, when that ownership constitutes the grounds for refusing the requested re-use.

4 – The period specified in paragraph no. 1 may be extended once, by the same duration, in the case of large or complex requests, by notifying the applicant within five days of receipt of the request.

Article 20.

Conditions governing re-use

1 – The authorisation granted in the circumstances described in the preceding article may be subject to compliance with certain re-use conditions.

2 – The re-use of documents may also be subject to payment by the applicant, on terms and conditions to be decided by a joint administrative ruling of the Ministries responsible for the finance, public administration and administrative modernisation. The total amount charged for access and re-use shall not exceed the costs incurred in collecting, producing, reproducing and disclosing the document concerned, plus a reasonable margin, in order to recover any expenditure and to maintain a high quality service.

3 – The re-use may also be subject to payment by the applicant of the cost of making the documents anonymous.

4 – The requested entity may stipulate a prepayment to cover the charges due, and, when relevant, the despatch expenses.

5 – In deciding the amounts to charge in accordance with paragraphs 1 and 2, the requested entity must base itself on costs during the normal accounting period, calculated in accordance with the accounting principles applicable.

6 – Different pricing arrangements must be introduced according to whether the documents are to be re-used for commercial or non-commercial purposes. There shall be no charge for the re-use of documents for educational or research and development purposes.

7 – The conditions governing re-use and the charges must not unnecessarily restrict the opportunities for re-use, and the requested entity may not use this as a means of differentiating between comparable re-use categories or limit competition.

Article 21.

Publicity

The conditions governing re-use and the prices applicable, including the time and manner of payment, shall be pre-established and publicised electronically whenever possible. The basis for calculating the amounts to be charged must be stated whenever requested by the applicant.

Article 22.

Prohibition of exclusive agreements

1 – It is forbidden to conclude exclusive agreements for the re-use of documents, except in cases where it may be necessary to create an exclusive right in order to provide a service which is in the public interest.

2 – Exclusive agreements concluded in accordance with the preceding paragraph, and the reasons for them, must be publicised, electronically whenever possible.

3 – The underlying reasons for creating an exclusive right must be subjected to periodic examination at least on a three-yearly basis.

4 – Existing exclusive agreements which may not conform to the provisions of paragraph no. 1 shall terminate on 31 December 2008.

Article 23.

Legal notice for the re-use of documents

Without prejudice to other guarantees provided by law, if a request for re-use presented in accordance with this section is not fully satisfied, the interested party may request the relevant administrative court to give legal notice to the requested entity, and the provisions of Articles 104 to 108 of the Procedural Code of the Administrative Courts shall apply.

Article 24.

Disclosure of documents available for re-use

1 – The entities covered by the provisions of this section must, electronically whenever possible, publicise lists of the archives of documents available for re-use.

2 – The information referred to in the preceding paragraph must, whenever possible, be set out in a portal linked to decentralised archives, in order to help locate documents which are available for re-use.

CHAPTER III

CADA

Article 25.

Description

1 – The CADA is an independent administrative entity working in conjunction with the Assembly of the Republic and responsible for overseeing compliance with the provisions of this law.

2 – The CADA has an annual budget which is funded from the budget of the Assembly of the Republic.

Article 26.

Composition

1 – The CADA is composed of the following members:

- a) An advising judge from the Supreme Administrative Court, designated by the Senior Council of the Administrative and Fiscal Courts, who presides over;
- b) Two Members of Parliament elected by the Assembly of the Republic, one of them on the recommendation of the parliamentary group of the largest party supporting the Government, and the other on the recommendation of the largest opposition party;
- c) One professor of law designated by the President of the Assembly of the Republic;
- d) Two leading figures designated by the Government;

- e) One leading figure designated by each of the Governments of the Autonomous Regions;
- f) One leading figure designated by the National Association of Portuguese Municipal Districts;
- g) One lawyer designated by the Bar Association;
- h) One member designated by the National Data Protection Commission from among its members.

2 – The incumbents shall have a deputy able to substitute for them, designated by the same entities.

3 – The members of the CADA shall assume their duties before the President of the Assembly of the Republic during the 10 days following publication of the list in Series 1 of the *Diário da República*.

4 – The mandates are for two years and are renewable, and cease when new incumbents assume their duties.

Article 27.

Responsibilities

1 – The CADA is responsible for:

- a) Drawing up its internal regulations, to be published in Series 2 of the *Diário da República*;
- b) Hearing complaints submitted to it in accordance with Article 15;
- c) Giving its opinion on access to administrative documents, at the request of the bodies and entities referred to in Article 4;
- d) Giving its opinion on the communication of documents between services and bodies within the Administration, at the request of the entity to which the application is made or an interested party, unless it foresees a risk of interconnection of data, in which case the matter must be referred to the National Data Protection Commission;
- e) Issuing statements on the document registration and classification system;
- f) Giving its opinion on the application of this law, and on the preparation and application of complementary statutes, at the request of the Assembly of the Republic, the Government and the bodies and entities referred to in Article 4;
- g) Producing an annual report on the application of this law and its activities, to be sent to the Assembly of the Republic for publication and examination, and to the Prime Minister
- h) Helping to explain and disseminate information on the various forms of access to administrative documents in accordance with the principle of open administration;
- i) Applying fines in administrative infringement proceedings.

2 – Projects for examination are prepared by the CADA members with the support of the technical services.

3 – Its opinions are published in accordance with its internal regulations.

Article 28.

Cooperation by the Administration

1 – All heads, officials and agents of the bodies and entities referred to in Article 4 must cooperate with the CADA, and failure to do so could render them liable to disciplinary or other forms of action, as provided by law.

2 – For the purposes of the preceding paragraph, all information relevant to the examination of issues submitted to the CADA within its area of competence must be communicated.

Article 29.

Rules of membership of the CADA

1 – Citizens who do not enjoy full exercise of their civil and political rights cannot be members of the CADA.

2 – CADA members must:

- a) Perform their duties impartially, conscientiously and independently;
- b) Participate actively and diligently in the work of the CADA.

3 – Members of the CADA shall suffer no disadvantage in relation to their job security, professional career, in particular with regard to any promotions they may qualify for in the meantime, public tenders they may participate in, or their social security entitlements when the mandate began.

4 – CADA members may not be removed from office and their functions cannot be terminated before the end of the mandate, except in the following circumstances:

- a) Death;
- b) Permanent physical incapacity or incapacity which is expected to extend beyond the mandate termination date;
- c) Relinquishment of the mandate;
- d) Forfeiture of the mandate.

5 – The mandate may be relinquished by submission of a written statement to that effect to the President of the CADA and publication in Series 2 of the *Diário da República*.

6 – CADA members will forfeit their mandate if they are disqualified for reasons of ineligibility or incompatibility as defined by law, or if they fail to attend three consecutive meetings or six intermittent meetings in the same calendar year without justified reason.

7 – Forfeiture of mandate shall be announced in a decision published in Series 2 of the *Diário da República*.

Article 30.

Terms of remuneration

1 – The President shall receive the remuneration and other privileges to which he is entitled as an advising judge of the Supreme Administrative Court, also a monthly payment for representation expenses of 20% of the base salary concerned.

2 – With the exception of the President, all members may exercise the mandate in addition to other functions and shall receive a payment of 25% of the 100 index value of the civil service senior staff salary scale.

3 – With the exception of the President, all members shall receive a payment of 5% of the 100 index value of the civil service senior staff salary scale for each CADA session they attend.

4 – All members are entitled to cost subsidies and reimbursement of transport and telecommunications expenses on the terms specified for the post of General Manager.

5 – With regard to travel by the delegates designated by the Governments of the Autonomous Regions, payment of the cost subsidies shall be handled in accordance with the current arrangements of the regional administrations.

Article 31.

Powers of the President

1 – Within the guidelines set by the CADA, the President exercises, and can delegate to the secretary, the authority defined by law for the post of senior executive of an autonomous body in matters of staff, financial, assets and administrative management.

2 – The CADA may delegate powers to the President to consider and decide on:

- a) Complaints which are clearly groundless or out of time;
- b) Waivers of action;
- c) Cases where the process no longer serves any useful purpose

Article 32.

Support services

1 – The CADA has its own technical and administrative support services, whose regulations and personnel lists are approved by a resolution of the Assembly of the Republic, on the recommendation of the Commission.

2 – The regulations and the personnel lists created by Law no. 8/95 of 29 March shall continue to apply until the legal instrument mentioned in the preceding paragraph comes into force.

CHAPTER IV

Administrative infringements

Article 33.

Administrative infringements

1 – Individuals or corporate bodies which commit any of the following acts shall be guilty of a punishable administrative infringement:

- a) Re-use of public sector documents without the authorisation of the relevant entity;
- b) Re-use of public sector documents without observing the re-use conditions specified in Article 20(1);
- c) Re-use of public sector documents without having paid the charge specified in Article 20(2) and (3).

2 – The infringements specified in sub-paragraphs a) and c) of the preceding paragraph are punishable by the following fines:

- a) Where an individual is concerned, a minimum of 300 (euro) and a maximum of 3500 (euro);

b) Where a corporate body is concerned, a minimum of 2500 (euro) and a maximum of 25,000 (euro).

3 – The infringement specified in sub-paragraph b) of paragraph 1 is punishable by the following fines:

a) Where an individual is concerned, a minimum of 150 (euro) and a maximum of 1750 (euro);

b) Where a corporate body is concerned, a minimum of 1250 (euro) and a maximum of 12,500 (euro).

Article 34.

Negligence and wilful intent

Negligence and wilful intent are always punished as administrative infringements as described in the preceding Article.

Article 35.

Application of the fines

1 – The departments of the Administration in which the infringement was discovered shall be responsible for conducting the administrative infringement proceedings, and may be assisted by the support services of the CADA.

2 – The CADA is responsible for applying the fines specified in this law.

3 – The CADA's decision is an enforceable title, unless it is challenged within the legally prescribed time.

Article 36.

Allocation of the sums received

The sums received as a result of applying fines shall be applied as follows:

a) 40 % to the CADA;

b) 40 % to the State Treasury; and

c) 20 % to the entity mentioned in Article 4 which was harmed by the infringement.

Article 37.

Failure to perform a duty

Whenever the infringement is due to failure to perform a duty, application of the sanction and payment of the fine shall not release the offender from that duty, if it can still be performed.

Article 38.

Judicial challenge

1 – A challenge to the final decision of the CADA shall be in the form of a complaint to be submitted within 10 days of notification of the decision.

2 – In response to the challenge, the CADA may modify or revoke its decision, and notify the accused person or persons of the revised final decision.

3 – If it maintains its previous decision, the CADA must refer the complaint to the Public Prosecution Service representative to Lisbon Administrative and Fiscal Court within 10 days;.

Article 39.

Judicial process

1 – The Public Prosecution Service representative, advised by the CADA technician or representative, shall complete the case records and present them to the judge.

2 – The judge may decide the issue in accordance with this law in a simple order, if there is no objection by the defence, the Public Prosecution Service or the CADA.

3 – If there is a hearing, the formalities shall be kept to the essential minimum, without the need for recording the evidence or hearing more than three witnesses for each charge of infringement.

4 - The judge shall always be competent to decide any indemnification to be paid to any party which may consider it is so entitled.

5 – The judge's final decision may be appealed against to the Supreme Administrative Court, which shall decide in accordance with the law.

Article 40.

Repeal

Law no. 65/93 of 26 August, with the wording introduced by Laws nos. 8/95 of 29 March and 94/99 of 16 July, and by Article 19 of Law no. 19/2006 of 12 June are hereby repealed.

Article 41.

Entry into force

This Law shall come into force on the 1st day of the month following the month of publication, with the exception of the provisions of Article 30, which shall take effect on the coming into force of the Law of State Budgets after its approval.

Approved on 19 July 2007.

The President of the Assembly of the Republic, Jaime Gama

Enacted on 8 August 2007.

To be published.

The President of the Republic, ANÍBAL CAVACO SILVA

Endorsed on 16 August 2007.

The Prime Minister, José Sócrates Carvalho Pinto de Sousa.