

Salzburg Province

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The legal materials for the following law (Blg LT 13. GP: government bill 554 and committee report 604, fourth session in each case) can be obtained at cost price from the office of the provincial parliament, P.O. Box 527, 5010 Salzburg, telephone (0662) 80 42-32 50, fax (0662) 80 42-27 75, or can be retrieved at the Internet address <http://www.salzburg.gv.at/pol-verw/landtag/lpi-aktuell.htm>.

69. Law of 4 July 2007, amending the law on duty of disclosure, data protection and national statistics

The Parliament of Salzburg has decided:

The Law on duty of disclosure, data protection and national statistics, Provincial Gazette (LGBI) No 73/1988, in the version of the laws LGBI No 65/2001 and 98/2004, is amended as follows:

1. The title of the law and the abbreviation are: "Gesetz über Auskunftspflicht, Dokumentenweiterverwendung, Datenschutz und Landesstatistik (Law on duty of disclosure, document re-use, data protection and national statistics) – ADDS -Gesetz"
2. The following changes are made to the table of contents:
 - 2.1. The lines relating to § 6 and § 7 are omitted.
 - 2.2. The lines relating to § 8 to § 19 in the second section are replaced by the following lines:

Section 2

Re-use of documents

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| § | 8 | Purpose and scope of the second section |
| § | 9 | Definitions |
| § | 10 | Requests for documents to be provided for re-use |
| § | 11 | Processing the requests |
| § | 12 | Available form and languages |
| § | 13 | Conditions for re-use |
| § | 14 | Charges |
| § | 15 | Facilitating access to documents, and transparency |
| § | 16 | Prohibition of exclusivity agreements |
| § | 17 | Legal redress" |

2.3. The lines relating to § 25 and § 26 are replaced by the following lines.

"§ 25 Exemption from charges

§ 25a The municipalities' area of competence

§ 26 Entry into force

§ 27 Note on transposition"

3. In § 1 the wording, "not a case of environmental data within the meaning of § 9", is replaced by "not a case of environmental information within the meaning of § 25 of the Law on environmental protection and environmental information".

4. § 6 and § 7 are omitted.

5. The second section reads as follows

"Section 2

Re-use of documents

Purpose and scope of the second section

§ 8

(1) The provisions of this section serve to facilitate the creation of new information products and the setting up of information services based on the re-use of documents available at public sector bodies.

(2) This section governs the legal framework for the re-use of documents created by a public sector body as part of its public task, and held by a public sector body.

(3) This section does not affect any of the legal provisions that regulate access to documents of public sector bodies. This also applies to all the provisions for data protection and statutory obligations of secrecy.

(4) This section does not apply to documents

1. that may not be accessed;

2. that may be accessed only if evidence of a particular interest is provided;

3. that are the intellectual property of third parties and are covered by industrial property rights;

4. that are held by educational and research establishments or cultural organisations, such as schools, archives, libraries, museums, orchestras and theatres of public sector bodies.

(5) The provisions of § 11 and § 17 (Processing the requests and Legal redress) also apply to requests concerning documents produced by a public sector body not as part of its public task, or to documents pursuant to paragraph 4(1) to (3).

Definitions

§ 9

In this section the following definitions apply:

1. Public sector bodies:
 - a) organs of a province, a municipality or a municipal association;
 - b) establishments managed under provincial law;
2. Document: any content, or parts thereof, whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) produced by a public sector body in order to carry out its public task;
3. Document held by a public sector body: a document whose re-use may be authorised by the public sector body;
4. Re-use: the use of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose of the public task within which the documents were produced. The 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 task does not constitute re-use.

Requests for documents to be provided for re-use

§ 10

- (1) Requests for documents to be provided for re-use are to be made in writing to the public sector body which holds the document requested. This may be done in any technical form that the public sector body is able to receive.
- (2) Should a request not make the content, scope or manner of the re-use of the requested document sufficiently clear, the public sector body shall immediately require the applicant to specify the request more clearly in writing within an appropriate period. If the applicant does not comply within the specified period, the request shall be deemed not to have been submitted.

Processing the requests

§ 11

- (1) This section does not make it compulsory to provide documents held by public sector bodies for re-use. If a public sector body provides such a document for re-use, it may not exclude other interested parties, except in the case of § 16(2), from the re-use even if value-added products based on these documents already exist, nor may it discriminate against these parties with regard to the conditions and charges for the reuse (§ 13 and § 14).
- (2) Requests for the provision of documents for re-use must be dealt with promptly by the public sector bodies, or within no longer than four weeks, in writing and, as far as possible, in electronic form as set out below:
 1. the requested documents shall be made available in their entirety;

2. the requested documents shall be made partly available, stating the reasons for the request not being completely granted;
 3. an offer of contract shall be presented if conditions are stipulated or charges levied for the re-use of the requested documents;
 4. the fact that the request will not be granted shall be communicated, stating the main reasons for this. The possibilities for legal redress pursuant to § 17(1) shall be referred to when stating the reasons for not granting the request (completely).
- (3) The deadline laid down in paragraph 2 applies only if effective access rules do not stipulate a deadline for processing. The period begins when the request is received or, in the case of a request for clarification pursuant to § 10(2), when the clarification is received. The deadline can be extended by a further four weeks for extensive or complex requests. The applicant shall be informed of this within three weeks of the public sector body receiving the request or the clarification.
- (4) If the basis for the notice of refusal (last sentence of paragraph 2) is that the requested document is the intellectual property of third parties or is covered by industrial property rights, the public sector body shall refer to the known rightholder or alternatively to the person from whom it obtained the material concerned.

Available form and languages

§ 12

- (1) Where public sector bodies provide documents which they hold for re-use, they shall do so in the existing forms and languages, through electronic means where possible and appropriate. The applicant may choose between forms and languages if several different ones exist. Extracts from documents shall be provided if the effort involved entails no more than a straightforward operation.
- (2) Public sector bodies are not obliged to reproduce, adapt, further develop, or continue to produce documents for the purpose of their re-use.

Conditions for re-use

§ 13

- (1) The public sector bodies may stipulate conditions, which they agree upon with the applicant, for the re-use of documents that they hold. The conditions shall not unnecessarily restrict possibilities for re-using the requested documents and shall not be used to restrict competition.
- (2) The conditions, which can be stipulated in a contract that has been standardised as far as possible, must meet the following requirements:
 1. The conditions that apply in standard cases shall be defined in advance (standard conditions), and published in electronic form as far as possible.
 2. The conditions for similar categories of re-use shall not be defined so as to be discriminatory.

(3) When re-using documents, public sector bodies shall be subject to the same conditions as other users.

Charges

§ 14

(1) Public sector bodies may stipulate charges, which they agree upon with the applicant, for the re-use of documents that they hold.

(2) The total income from the charges may not exceed the costs for collecting, producing, reproducing, disseminating and providing the documents, in addition to a reasonable return on investment. The charges shall be in relation to the costs incurred during the corresponding accounting period and shall be calculated in line with the accounting principles applicable to the public sector body involved.

(3) Lines 1 and 2 of § 13(2) shall apply by analogy.

Facilitating access to documents, and transparency

§ 15

(1) Public sector bodies shall make practical arrangements for facilitating access to documents which are available for re-use. For this purpose they can, in particular,

1. designate information points and contact persons;
2. keep registers of the most important documents they hold and publish them in an appropriate fashion.

(2) Public sector bodies shall on request provide explanations for all the conditions that apply to re-use, as well as the basis of calculation for the charges pursuant to § 14 and the factors that are taken into account when calculating charges in atypical cases.

Prohibition of exclusivity agreements

§ 16

(1) Agreements between public sector bodies and third parties which establish exclusive rights with regard to the re-use of documents (exclusivity agreements) are inadmissible.

(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 exclusivity agreement shall be checked regularly, at least every three years. In any event, the exclusivity agreement 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 exclusivity agreement no longer exist. The exclusivity agreements must be transparent and shall be published in electronic form if possible. This also applies to agreements entered into after 31 December 2003.

Legal redress

§ 17

(1) Within two weeks of receiving notice that their request is being granted only partially or not at all, or is being made subject to a contract (lines 2, 3 and 4 of § 11(2)), the applicant may apply to have a decision issued on their request.

(2) If the public sector body does not deal with the request within the deadline laid down in § 11(2) or within the extended deadline pursuant to § 11(3), the applicant may apply to have a decision issued on their request.

(3) If the public sector body is not authorised to issue a decision, the authority responsible for supervising the public sector body shall issue decisions regarding requests pursuant to paragraphs 1 and 2. The public sector body shall forward such requests promptly to the supervisory authority responsible.

(4) The General Law on Administrative Procedure 1991 shall apply to procedures for issuing decisions and calculating deadlines under this section.

(5) Appeals shall be decided by the Independent Administrative Court of Salzburg Province. This shall not apply to decisions issued in the municipality's own area of competence.

6. § 25 is replaced by the following provisions:

"Exemption from charges

§ 25

Provincial and municipal administrative charges shall not be payable for official actions pursuant to this law.

The municipalities' area of competence

§ 25a

(1) The tasks to be dealt with by the municipalities under sections 1 to 3 are those within the municipality's own area of competence.

(2) Decisions regarding the rejection of requests for information or for documents that are addressed to organs of the municipality or of an association of municipalities shall be issued by the mayor or the chairperson of the association.

7. The following is added to § 26:

"(4) § 1, § 8 to § 17, § 25, § 25a und § 27 in the version of the law in the Provincial Gazette No 69/2007 enter into force at the same time as the law governing the disclosure of environmental information in the current IPPC Installations Act. At the same time §6, § 7, § 18 und § 19 expire. Exclusivity agreements already existing at the time that are not subject to the exception in § 16(2), shall end when the contract expires, or on 31 December 2008 at the latest.

8. The following is added after § 26:

"Note on transposition

§ 27

Insofar as the province is competent, this law serves to transpose the following Directives:

1. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281 of 23 November 1995;
2. Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, OJ L 345 of 31 December 2003."

Holztrattner

Burgstaller