

DECREE No. 184

Pursuant to Article 98(4) of the Constitution of the Republic of Bulgaria

I HEREBY RESOLVE:

To promulgate in the State Gazette the Act amending the Access to Public Information Act, adopted by the XL National Assembly on 7 June 2007.

Issued in Sofia on 14 June 2007.

President of the Republic: **Georgi Parvanov**

Sealed with the State stamp.

Minister for Justice: **Georgi Petkanov**

ACT

amending the Access to Public Information Act (promulgated in the State Gazette, Issue No. 55/year 2000; amended, SG No. 1 and No. 45/year 2002, SG No. 103/ year 2005, SG Nos. 24, 30, and 59/year 2006)

§ 1. The words “as well as to the re-use of public sector information” shall be added at the end of Article 1.

§ 2. Article 2 shall be amended as follows:

1. The words “and public sector information” is added at the end of the title.

2. A new paragraph 3 is added:

“(3) Public sector information is any information objectified on paper, electronic or other media, including when stored as a sound recording or video recording, and collected or created by a public sector body.”

3. The existing paragraph 3 becomes paragraph 4.

§ 3. A new Article 2a shall be added:

“Re-use of public sector information

Article 2a. (1) Re-use of public sector information means the use of the latter for commercial or non-commercial purposes other than the initial purpose for which it was created within the powers or functions of a public sector body.

(2) The supply of public sector information to a public sector body, related to the exercise of its powers or functions, shall not be considered re-use within the meaning of this law.”

§ 4. Article 3 shall be amended as follows:

1. The following words in the title shall be deleted: "for ensuring access to public information."

2. The following new paragraphs 3 and 4 is added:

“(3) Public sector bodies shall be obliged to make available public sector information for re-use, except in the cases stipulated by law.”

(4) Public sector body means a State, regional or local authority or a body governed by public law, as well as their associations.”

§ 5. Article 4 shall be amended as follows:

1. The following text is added at the end of the title: “and to the right of re-use of public sector information.”

2. The following new paragraph 4 is added:

“(4) The persons referred to in paragraphs 1, 2, and 3 shall be entitled to re-use public sector information.”

§ 6. Article 5 shall be amended as follows:

“Exercising the right of access to public information and re-use of public sector information

Article 5. The right of access to public information and public sector information may not be exercised against others’ rights and reputation, or against the national security, public order, national health, and moral standards.”

§ 7. Article 6 shall be amended as follows:

1. The existing text becomes paragraph 1.

2. A new paragraph 2 is added:

“(2) The basic principles governing the making available of public sector information for re-use shall be:

1. providing possibilities for multiple re-use of public sector information;

2. transparency in providing public sector information;

3. prohibition of discrimination in providing public sector information;

4. prohibition of restriction of free competition.”

§ 8. Article 7 shall be amended as follows:

1. The following words are added at the end of the title: “and of re-use of public sector information.”

2. Paragraph 1 is amended as follows:

“(1) The right of access to public information and of re-use of public sector information shall not be abridged, except where the said information

is classified information or another type of protected secret in the cases provided for by a law.”

§ 9. In Article 8, the text preceding paragraph 1 shall be amended as follows:

“The provisions of the Access to Public Information Act shall not apply to information which is”

§ 10. In Article 40(1), the word “regional” shall be replaced by “administrative.”

§ 11. After Article 41, a new Chapter Four shall be added, including Articles 41a-41k:

“Chapter Four
PROCEDURE FOR THE RE-USE OF PUBLIC SECTOR INFORMATION

Section I
Making available public sector information for re-use

Conditions for making available public sector information for re-use

Article 41a. (1) Public sector information shall be presented in the format and in the language in which it was collected, or created, or in another format, by the decision of the relevant public sector body.

(2) Public sector bodies shall not be obliged to make available information for re-use, when this involves its creation, collection or processing, or when this is related to the provision of extracts from documents or other materials, requiring effort going beyond a usual operation.

(3) Public sector bodies shall not be obliged to continue creating or collecting a particular type of information for the purposes of its re-use.

(4) Upon request by the applicant and when possible, the requested information shall be supplied electronically to a specified e-mail address or through other suitable means for supplying the information in an electronic form.

Public sector information which shall not be made available for re-use

Article 41b. The following types of public sector information shall not be made available for re-use:

1. the content of which is related to activities falling outside the scope of the powers and functions of public sector bodies;
2. which is subject to intellectual property rights of a third party;
3. which has been collected or created by public radio or television operators or their regional centres;
4. which has been collected or created by schools, institutions of higher education, scientific and research establishments, the State Archives, libraries, museums, orchestras, operas, ballets, theatres, and other scientific and cultural establishments.

Providing public sector information to public sector bodies

Article 41c. (1) Public sector information shall be made available for re-use also to public sector bodies under the provisions of this law.

(2) In the event that public sector information is requested for re-use by bodies covered under paragraph 1 for performing activities, which are beyond the scope of its powers or functions, the same conditions and charges shall apply.

Facilities for the search for information

Article 41d. Public sector bodies shall provide the necessary conditions for facilitated searching for public sector information by means of different mechanisms for online access or by any other suitable means.

Prohibition of granting exclusive rights of re-use

Article 41e. (1) The conclusion of any contracts for exclusive provision of public sector information is prohibited.

(2) The conclusion of a contract under paragraph 1 shall be permitted only in the cases when a service of public interest cannot be provided by other means. The existence of grounds for the conclusion of such a contract shall be reconsidered once every three years by the public sector body which is a party to the contract.

Section II

Procedure for making available public sector information for re-use

Request for re-use of public sector information

Article 41f. (1) Public sector information shall be made available for re-use upon filing of a written application.

(2) When the application is filed by electronic means, the public sector bodies shall be obliged to reply by electronic means. In this case a confirmation of receipt of the shall not be required.

Payment

Article 41g. (1) Public sector information shall be made available for re-use upon payment of the material costs of supplying it, determined in accordance with a tariff adopted by the Council of Ministers.

(2) The payment referred to in paragraph 1 shall not exceed the cost of supplying the public sector information.

(3) In the event of a filed application, the public sector bodies shall provide information about the method of determining the expenses under paragraph 1.

(4) The payments collected under paragraph 1 shall accrue to the budget of the respective public sector body.

Time-limit for providing public sector information

Article 41h. (1) Public sector bodies shall process applications for re-use and shall respond to applicants within 14 days as of the date of filing the application.

(2) If the requested information is important for a specific period of time, the public sector bodies shall provide it within a reasonable period in which the information has not lost its validity.

(3) If an application for re-use of public sector information is of a complex nature and requires more time to be supplied, the term under paragraph 1 may be extended up to 14 days. In this case, a notification shall be sent to the applicant regarding the necessary time for supplying the information within a period of 14 days as of the date of filing the request.

Refusal to supply public sector information for re-use

Article 41i (1) Any refusal to supply public sector information for re-use shall be well grounded.

(2) Refusal may occur in the cases, where:

1. the supply of the requested information is prohibited by law;
2. the application does not meet the requirements under Article 41f.

(3) The refusal under paragraph 1 shall contain the factual and legal grounds for the refusal, the date on which the decision was made and the procedures for its appeal. In the case of a refusal due to the existence of intellectual property rights of a third party, the decision for refusal shall mention the name of the right-holder or of the person from whom the public sector body has acquired those rights.

(4) The presence of personal data in the public sector information, which has been requested for re-use shall not be considered grounds for refusal in the cases where this information constitutes or is part of a publicly accessible register.

Jurisdiction and appeal

Article 41j. A refusal to supply public sector information for re-use shall be subject to appeal before the administrative courts or before the Supreme Administrative Court, depending on the body which has issued the act, in accordance with the procedure laid down in the Code of Administrative Procedure.

§ 12. After Article 41j, a new Chapter Five, entitled: Administrative and Penal Provisions,” shall be added.

§ 13. Article 42 is amended as follows:

“Administrative offences and penalties

Article 42. (1) If not subject to a harsher penalty, a civil servant who failed to respond within the specified time limits to a request for access to public information without any exculpatory reason shall be fined between BGN 50 and BGN 100.

(2) If not subject to a harsher penalty, a civil servant who did not comply with a court order to grant access to public information shall be fined between BGN 200 and BGN 2000.

(3) Any failure to meet obligations under Article 31(3) shall be punished with a fine of between BGN 50 and BGN 100 for natural persons or between BGN 100 and BGN 200 property sanction for legal persons

(4) For failure to provide access to public information by the persons referred to in Article 3(2), the punishment shall be a property sanction of between BGN 100 and BGN 200.”

§ 14. Article 43 shall be amended as follows:

“Administrative penal body

Article 43. (1) The offences under this Act shall be determined by the officials appointed by the Minister of Justice in the cases referred to in Article 3(2), or by the relevant authority in other cases.

(2) The penalty acts shall be issued as follows:

1. under Article 42(1) – by the relevant authority referred to in Article 3(1), or by an authorised official;

2. under Article 42(2) – by the persons and in accordance with the procedure specified in Article 306 of the Code of Administrative Procedure;

3. under Article 42(3) – by the relevant body, and if the responsible person falls into the category specified in Article 3(2) – by the Minister for Justice or an authorised official;

4. under Article 42(4) - by the Minister for Justice or an authorised official.”

§ 15. The Additional Provision shall be amended as follows:

1. A new section 2 is added:

“2. “body governed by public law” is any legal entity established to meet needs of public interest which does not carry out any industrial activities and which complies with one of the following conditions:

a) more than half of its revenues are provided by the State budget, by the budgets of the National Social Security Institute or of the National Health Insurance Fund, by the municipal budgets or by other bodies governed by public law;

b) it is a subject to management supervision by a person under sub a);

c) having an administrative, management or supervisory board, more than half of whose members are appointed by persons specified under subparagraph a).”

2. The existing section 2 is deleted.

Additional Provision

§ 16. This law transposes the provisions of Directive 2003/98/EC of the European Parliament and of the Council regarding the re-use of public sector information.

Transitional Provisions

§ 17. Contracts regarding the exclusive supply of public sector information which were concluded before the entry into force of this Act and which do not comply with the requirements of Article 41e(2) shall be terminated upon their expiry, but not later than 31 December 2008.

§ 18. Within a six-month period following the entry into force of this law, the persons referred to in Article 3(1) shall be obliged to appoint officials from the relevant administrative body, who shall be directly responsible for the supply of public information and who shall establish a suitable place for reading the supplied information.

This Act was adopted by the 40th National Assembly on 7 June 2007, and the official seal of the National Assembly was affixed to it.

Chairman of the National Assembly:
Georgi Pirinski

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