

PROVINCIAL LAW GAZETTE FOR BURGENLAND

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31. Act of 26 March 2015 amending the Burgenland Act on the requirement to provide information, the re-use of information, and statistics (XX. Gp. RV 1203 AB 1215) [CELEX No 32013L0037]

Act of 26 March 2015 amending the Burgenland Act on the requirement to provide information, the re-use of information, and statistics

The following is enacted by decision of the Burgenland Parliament:

The following amendments are made to the Burgenland Act on the requirement to provide information, the re-use of information, and statistics (*Burgenländisches Auskunftspflicht-, Informationsweiterverwendungs- und Statistikgesetz* – Bgld. AISG), LGBL (Provincial Law Gazette) No 14/2007, as amended in LGBL No 79/2013:

1. The list of contents is amended as follows:

- a) The following is inserted after the title of Section 8: ‘Section 8a General principle’.
- b) *The title of Section 13 is amended to ‘Section 13 Scope of the documents to be provided’.*
- c) *The title of Section 14 is amended to ‘Section 14 Principles governing the calculation of charges’.*

2. *In Section 8(1) the words ‘insofar as they make them available for re-use’ are deleted.*

3. *In Section 8(3) the words ‘of the Data Protection Act 2000, BGBl. (Federal Law Gazette) I No 165/1999, as last amended by the Act in BGBl. I No 13/2005’ are replaced by ‘of the Data Protection Act 2000 (Datenschutzgesetz – DSG 2000), BGBl. I No 165/1999, as amended in BGBl. I No 83/2013’.*

4. The following Section 8a is inserted after Section 8:

‘Section 8a

General principle

(1) Documents falling within the scope of this section may – without prejudice to paragraph 2 – be re-used for commercial or non-commercial purposes in accordance with Sections 13 to 18.

(2) Documents made available for re-use in which libraries, including university libraries, museums and archives hold intellectual property rights may be re-used for commercial or non-commercial purposes in accordance with Sections 13 to 18’.

5. Point 1 of Section 9(1) is amended as follows:

- ‘1. the drawing-up of which
 - a) is an activity falling outside the scope of the public task of the public sector body concerned as defined by law or by other binding rules or, in the absence of such rules,
 - b) as defined in line with common administrative practice, provided that the scope of the public tasks is transparent and subject to review;’.

6. Point 3 of Section 9(1) is amended as follows:

- ‘3. access to which is restricted in accordance with the rules governing access to documents of public sector bodies, including those accessible only where a particular interest is demonstrated;’.

7. The following point 3a 5 is added after point 3 of Section 9(1):

- ‘3a. access to which is excluded or restricted in accordance with the rules governing access to documents of public sector bodies on the grounds of protection of personal data, and parts of documents accessible by virtue of those regimes which contain personal data, the re-use of which has been defined by law as being incompatible with the law concerning the protection of individuals with regard to the processing

of personal data;’.

8. Point 7 of Section 9(1) is amended as follows:

‘7. held by educational and research establishments, excluding university libraries;’.

9. Point 8 of Section 9(1) is amended as follows:

‘8. held by cultural establishments other than libraries, museums and archives’.

10. The following paragraph 1 a is inserted after Section 9(1):

‘(1a) This section does not apply to parts of documents containing only logos, crests and insignia’.

11. In point 4(d) of Section 10(1) the words ‘of the Federal Constitutional Act (*Bundes-Verfassungsgesetz* – B-VG), BGBl. I No 1/1930, as last amended by the Act in BGBl. I No 121/2005’ are replaced by ‘of the Federal Constitutional Act (*Bundes-Verfassungsgesetz* – B-VG), BGBl. I No 1/1930, as amended in BGBl. I No 102/2014’.

12. In point 3 of Section 11 the final full stop is replaced by a semicolon. The following points 4 to 7 are added:

‘4. “machine-readable format” means

a file format structured so that software applications can easily identify, recognise and extract specific data, including individual statements of fact, and their internal structure;

5. “open format” means

a file format that is platform-independent and made available to the public without any restriction that impedes the re-use of documents;

6. “formal open standard” means

a standard which has been laid down in written form, detailing specifications for the requirements on how to ensure software interoperability;

7. “university” means

any public sector body that provides post-secondary-school higher education leading to academic degrees’.

13. The following sentence is added to Section 12(4):

‘Libraries, including university libraries, museums and archives shall not be required to include such a reference’.

14. Sections 13 and 14 are amended as follows:

‘Section 13

Scope of the documents to be provided

(1) Public sector bodies shall make documents held by them available in any pre-existing format or language and, where possible and appropriate, in open and machine-readable format together with their metadata. Both the format and the metadata should, in so far as possible, comply with formal open standards.

(2) Paragraph 1 shall not imply an obligation for public sector bodies to create or adapt documents or provide extracts in order to comply with that paragraph where this would involve disproportionate effort, going beyond a simple operation.

(3) This section does not require public sector bodies to continue to produce or store a certain type of documents with a view to the re-use of such documents.

Section 14

Principles governing the calculation of charges

(1) Where charges are made for the re-use of documents, those charges shall be limited to the marginal costs incurred for their reproduction, provision and dissemination.

(2) Paragraph 1 does not apply to:

1. public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks;

2. by way of exception, documents for which the public sector body concerned is required to generate sufficient revenue to cover a substantial part of the costs relating to their collection, production, reproduction and dissemination. Those requirements are defined by law or by other binding rules or, in the absence of such rules, in accordance with common administrative practice;

3. libraries, including university libraries, museums and archives.

(3) In the cases referred to in points 1 and 2 of paragraph 2, the public sector bodies concerned shall calculate the total charges according to objective, transparent and verifiable criteria. Those criteria are defined by law or by other binding rules or, in the absence of such rules, in accordance with common administrative practice. The total income of those bodies from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public sector bodies involved.

(4) Where charges are made by the public sector bodies referred to in point 3 of paragraph 2, the total income from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction, dissemination, preservation and rights clearance, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public sector bodies involved’.

15. Section 16 is amended as follows:

‘Section 16

Transparency and practical arrangements

(1) The standard charges for the re-use of documents, the calculation basis for such charges and any applicable conditions shall be pre-established by public sector bodies and published in a suitable manner, on the internet where possible and appropriate.

(2) Where no standard charges have been set, the public sector bodies shall indicate at the outset which factors are taken into account in the calculation of the charges. Upon request, the public sector body shall also indicate the way in which such charges have been calculated in relation to the specific re-use request.

(3) The requirements referred to in point 2 of Section 14(2) shall be pre-established. They shall be published on the internet where possible and appropriate.

(4) Public sector bodies shall make practical arrangements facilitating the search for documents available for re-use, such as:

1. asset lists of main documents with relevant metadata, accessible where possible and appropriate online and in machine-readable format, and portal sites that are linked to the asset lists. Where possible the public sector bodies shall allow cross-linguistic search for documents;
2. information staff and information points’.

16. Section 18 is amended as follows:

‘Section 18

Prohibition of exclusive arrangements

(1) Contracts or other agreements between public sector bodies and third parties establishing exclusive rights with regard to the re-use of the documents falling within the scope of this section (exclusive arrangements) are prohibited.

(2) Paragraph 1 does 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, and at least every three years. The exclusive arrangement shall in any case include a provision giving the public sector body a special right of termination if the regular review shows that the grounds justifying the arrangement no longer apply. Exclusive arrangements entered into after 31 December 2003 shall be transparent and made public in a suitable manner, where possible on the internet. This paragraph does not apply to digitisation of cultural resources.

(3) Notwithstanding paragraph 1, where an exclusive right relates to digitisation of cultural resources, the period of exclusivity shall in general not exceed ten years. In cases where that period exceeds ten years, its duration shall be subject to review during the 11th year and, if applicable, every seven years thereafter. The exclusive arrangement shall in any case include a provision giving the public sector body a special right of termination if the review shows that the grounds justifying the arrangement no longer apply. The arrangements granting exclusive rights referred to in the first sentence shall be transparent and made public. In the case of such exclusive rights, the public sector body concerned shall be provided free of charge with a copy of the digitised cultural resources as part of those arrangements. That copy shall be available for re-use at the end of the period of exclusivity.

(4) Existing exclusive arrangements not covered by the exceptions in the first sentence of paragraph 2 shall end when the contract expires or be considered to have been terminated after 31 December 2008 at the latest.

(5) Exclusive arrangements in place on 17 July 2013 that are not covered by the exceptions in paragraphs 2 and 3 shall end when the contract expires or be considered to have been terminated after 18 July 2043 at the latest’.

17. Section 32 is amended as follows:

‘Section 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, 31.12.2003, p. 90) as amended by Directive 2013/37/EU (OJ L 175, 27.6.2013, p. 1)’.

18. The following paragraph 5 is added to Section 33:

- ‘5) The entries in the list of contents relating to Sections 8a, 13 and 14, and Sections 8(1) and 3, 8a, 9(1)

and (1a), 10(1), points 3 to 7 of Section 11, and Sections 12(4), 13, 14, 16, 18 and 32 as amended in LGBI. No 31/2015 will enter into force on 18 July 2015'.

President of the Provincial Parliament:
Steier

Provincial Governor:
Nießl